

米国司法省、新たな内部告発報奨制度とAI関連リスクへの重点的な取り組み強化を発表

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By: Anthony Barkow, David Bitkower, Brandon D. Fox, Katya Jestin, Erin Schrantz, Tali R. Leinwand, Carolyn S. Small, Paige Zielinski

米国司法省 (DOJ) は、最近、企業犯罪取り締まりへの取り組みを強化する2つの新たな施策を発表した。内部告発報奨制度と、連邦検察官が企業のコンプライアンス体制を評価する際に人工知能 (AI) 関連リスクを評価するためのガイダンスのアップデート版である。これらの新たな施策を踏まえ、企業にとっては、今が、内部通報制度の強化やAI関連リスクの把握・管理に向けたコンプライアンス体制の検討の良い機会であるといえる。

この内部告発報酬制度は、米国司法省が他の方法で知ることができない「重大な企業不正行為または金融不正行為」の発見に役立つ情報を提供した個人に対し、民事上または刑事上の没収金の一部を支払うものである。企業不正行為に幅広く適用されるが、DOJは、特に、米国金融システムの犯罪的悪用、証券取引委員会 (SEC) の管轄外の海外汚職事件、政府高官への企業からの違法献金などの国内汚職事件に関する情報に関心を持っている。犯罪行為に関与した者、DOJが不正行為について知った後に告発した者、経済的な動機があって告発した者に対しては、報奨金は支払われない。この制度は、DOJが今後90日間のうち具体的な内容を策定した後、今年後半に正式に実施される予定である。

連邦検察官は、DOJがアップデートした企業コンプライアンス体制の評価ガイダンスに基づき、コンプライアンスへの取り組みの一環としての企業のAI関連リスク管理能力を評価することになる。このガイダンスのアップデートは、DOJによるAIリスク対策への継続的な注力の一環として行われたものである。リサ・モナコ司法副長官は、AIについて、「かつてないほど鋭い刃」を持つ「両刃の剣」と呼んでいる。また、DOJは、初めて、AI関連犯罪への対応を監督する最高科学技術顧問と最高人工知能責任者を任命した。証券取引委員会や商品先物取引委員会などの他の規制当局も同様に、AI関連リスクに注目し、金融市場でのAIの利用方法について、新たな条件を課したり、パブリックコメントを求めたりしている。

企業犯罪の取り締まりは引き続きDOJの優先事項である。内部告発によって不意打ちでDOJから捜査を受けることを避けるためにも、企業のトップはコンプライアンス体制や通報窓口が十分か検証し、不正行為の発見や効果的な内部通報制度の整備のためのさらなる積極的な対策の実施を検討すべきである。また、AIを利用している企業は、現在のコンプライアンス・ポリシーがAIに関連する潜在的な法的リスクをカバーするのに十分なものとなっているか、あるいは、アップデートが必要かどうかについても検討すべきである。

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Whistleblower Rewards Program

DOJ has long relied on cooperators and self-reporting to uncover corporate wrongdoing. At least two US attorney's offices —the Southern District of New York and, most recently, the Northern District of California — are piloting initiatives that are, in essence, voluntary self-disclosure programs for individuals. Both are offering non-prosecution agreements to certain categories of at-fault individuals who self-disclose wrongdoing and cooperate against other, more culpable targets.

But DOJ is now going a step further by creating a rewards program to incentivize people to come forward with information about corporate misconduct. The rewards program is conceptually similar to whistleblower rewards in False Claims Act matters but will be used to incentivize reporting of a broader range of corporate misconduct. If the program is implemented effectively, companies could see an increase in criminal inquiries and enforcement action.

Under the new program, individuals who provide information that helps DOJ discover “significant corporate or financial misconduct” may be able to receive a portion of any resulting civil or criminal forfeitures. In describing the program, DAG Monaco emphasized that the information provided must not be otherwise known to DOJ. In other words, like those who report fraud under the False Claims Act, whistleblowers under the new program will “have to be the first in the door” to qualify for a financial reward. Whistleblowers seeking payments under the new program will have to meet three additional conditions not present in False Claims Act matters. First, no rewards will be paid to whistleblowers before all victims are fully compensated. Second, the whistleblower must not have been involved in the criminal activity. And third, there must not already be an existing financial disclosure incentive.

DAG Monaco also identified three types of information in which DOJ is “especially interested”:

- (a) information about criminal abuses of the US financial system;
- (b) foreign corruption cases outside the jurisdiction of the Securities and Exchange Commission (SEC), which already has a whistleblower rewards program; and
- (c) domestic corruption cases, “especially involving illegal corporate payments to government officials”.

This list provides helpful guidance to companies looking to identify areas in which their compliance programs should be particularly robust.

Many details about the program remain unknown, such as the amount of recovery a whistleblower might be able to receive and requirements for program eligibility. DAG Monaco noted that DOJ will continue to develop these specifics over the next 90 days. In the meantime, Acting Assistant Attorney General Nicole M. Argentieri previewed in remarks that DOJ expects to limit rewards to cases in which the agency orders sanctions of \$1 million or more. She also noted that DOJ's Money Laundering and Asset Recovery Section will play a leading role in designing the program, given that

the statutory authority is tied to DOJ's forfeiture program. DOJ will formally implement the program later this year.

AI-Related Risks

DAG Monaco's second important announcement was that she has directed the Criminal Division to incorporate assessment of AI-related risks into its Evaluation of Corporate Compliance Programs' guidance. She urged compliance officers to take note that going forward, federal prosecutors would be following this updated guidance, and assessing companies' ability to manage AI-related risks as part of their compliance efforts.

Assessing AI-related risks as part of the evaluation of corporate compliance programs is the latest in a series of steps DOJ has taken in response to the rapid emergence of AI. Attorney General Merrick Garland recently appointed DOJ's inaugural chief science and technology advisor and chief artificial intelligence officer. In addition, DAG Monaco delivered remarks last month at the University of Oxford, in which she signaled tougher enforcement against crimes involving AI. These steps highlight DOJ's continued focus on and investment in combating the risks posed by AI.

Other regulators, such as the Commodities Futures Trading Commission (CFTC) and the SEC, have also focused on AI-related risks. In January, the CFTC sought public comment regarding how AI may be used in the derivatives marketplace, including the risks of AI related to market manipulation and fraud, governance, and privacy and confidentiality. Similarly, the SEC proposed new requirements last year that would prevent broker-dealers and investment advisers from using AI in a manner that places the firm's interests ahead of the interests of customers and clients.

Key Takeaways

Corporate criminal enforcement continues to be a priority for DOJ. While the specifics of the whistleblower pilot program remain unclear, it could become a significant tool for DOJ to generate reports of alleged corporate wrongdoing. Indeed, 2023 was a record-breaking year for the SEC's whistleblower program, with the SEC seeing a 13% increase from 2022 in tips, complaints, and referrals. But offering potentially lucrative incentives could also increase the number of investigations based on false reporting or speculation and could disrupt companies' efforts to promote effective internal reporting and investigative channels. To avoid being caught off guard by a DOJ investigation based on a whistleblower complaint, corporate leaders should examine the strength of their compliance and reporting channels and consider implementing additional proactive measures to uncover misconduct and promote effective internal reporting. Companies should also be aggressive in conducting assessments of reports of wrongdoing so they are prepared to respond to DOJ should a whistleblower decide to take allegations to the government.

Separately, the proliferation of AI and the associated risks are front and center for enforcement agencies and regulators. Companies that use or rely on AI should consider whether their current

compliance policies are sufficient to cover the potential legal risks associated with AI, or whether an update is warranted.

Jenner & Block's Investigations, Compliance, and Defense Practice has deep experience helping companies navigate a whistleblower complaint, a government inquiry, or a compliance audit, and stands ready to assist should such a situation arise.

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関連弁護士

Anthony Barkow

Managing Partner, New York
abarkow@jenner.com
+1 212 891 1662

David Bitkower

Partner
dbitkower@jenner.com
+1 202 639 6048

Brandon D. Fox

Managing Partner, Los Angeles and Century City
bfox@jenner.com
+1 213 239 5101

Katya Jestin

Partner
kjestin@jenner.com
+1 212 891 1685

Tali R. Leinwand

Partner
tleinwand@jenner.com
+1 212 891 1697

Erin Schrantz

Partner
eschrantz@jenner.com
+1 312 840 8674

Carolyn S. Small

Partner
csmall@jenner.com
+1 213 239 2250

Paige Zielinski

Partner
pzielinski@jenner.com
+1 628 267 6844

関連記事

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