



# Workplace Whistleblower

## Department of Justice Focuses on Individual Accountability

*By Joseph J. Dyer and Daniel P. Wierzba*

In a move certain to attract the attention of corporate executives, the Department of Justice, on September 9, 2015, issued a new policy memorandum regarding the prosecution of individuals in corporate fraud cases. Titled “Individual Accountability for Corporate Wrongdoing,” the memorandum states that “[o]ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing.”

To that end, the memorandum lists six steps that the Department will pursue in any fraud investigation:

1. In order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct.
2. Criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
3. Criminal and civil attorneys handling corporate investigations should be in routine communications with one another.
4. Absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation.
5. Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases.
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual’s ability to pay.

The memorandum recognizes the difficulties in pursuing individual wrongdoers, and the relatively low monetary recovery therefrom. It believes, however, that doing so “will result in significant long-term deterrence.”

These steps apply to both criminal, as well as civil, investigations.

It is of course, difficult to know how this guidance will play out in any specific case. It appears, however, that if they hope to obtain any cooperation credit, companies will have to perform increasingly robust internal investigations with a focus on identifying not only the wrong-doing, but the wronger-doer(s) as well, and will have to fully disclose the same. The real question then, especially if the wrong-doing involves company executives, may not be so much what a company must do to get credit for cooperating, but whether the company will choose to cooperate at all.

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