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Supreme Court Broadens SOX Whistleblower Protection – Now Covers Employees of Private Contractors that Provide Services for Public Companies

On March 4, 2014, the Supreme Court held that the protection for whistleblowers applies to employees of (i) public companies, and (ii) contractors and subcontractors performing services for public companies.

Background. The Sarbanes-Oxley Act (“SOX”) prohibits retaliation against employees who engage in certain, protected whistleblowing conduct (e.g., providing information about a securities law violation). The statute is clear that this protection applies to employees of public companies. However, it is less clear whether the protection also applies to employees of private companies that are contractors or subcontractors of public companies.

Facts. In *Lawson v. FMR LLC*, FMR LLC (“FMR”) was a private investment adviser firm that performed contract work for Fidelity, a public mutual fund company. The employees of FMR claimed that FMR took adverse action against them because they blew the whistle on alleged accounting fraud and securities filing inaccuracies related to Fidelity.

Whistleblower Protection Applies to Contractors. The Supreme Court concluded that SOX anti-retaliation protection covers employees of a public company’s private contractors and subcontractors – including FMR.

Next Steps. Public companies have had to implement special internal investigation and termination policies specific to SOX. Now private companies that perform contract work for public companies will need to update internal investigation and termination policies to include provisions on:

- Internal complaints, and
- Other whistleblowing conduct potentially protected by SOX.

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