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SEC Foot Locker Order Underscores Continued Focus on Whistleblower Protections

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KEY POINTS

- The SEC brought a settled enforcement action against Foot Locker Inc. for using separation agreements that required employees to waive their right to receive SEC whistleblower awards, in violation of Exchange Act Rule 21F-17(a).
- The SEC found that conditioning severance on an "award waiver provision" raised impediments to participation in the SEC whistleblower program, even if Foot Locker never enforced the clause or actually deterred any whistleblowers.
- Foot Locker phased out and then removed the award-waiver language before SEC staff contact, and agreed to a cease-and-desist order and a $148,000 civil penalty without admitting or denying the SEC's findings.
- The Foot Locker order under Chair Paul Atkins reflects continuity with prior rule enforcement under former Chair Gary Gensler and underscores that whistleblower protections remain an SEC priority across administrations.
- All SEC whistleblower-protection enforcement actions to date have been resolved through settlements, so there are still no court decisions on whether the challenged contractual language in fact impedes whistleblowers from coming forward.

On May 22, the Securities and Exchange Commission (SEC) announced a settled enforcement action against Foot Locker, Inc. for using separation agreements that required departing employees to waive their right to receive SEC whistleblower awards, in violation of Exchange Act Rule 21F-17(a). The case is noteworthy not only for its specific facts, but also because it reflects clear continuity in the SEC's whistleblower-enforcement agenda: after bringing a significant number of Rule 21F-17 cases under prior Chair Gary Gensler, this Foot Locker order is the first such action under Chair Paul Atkins and signals that the current Commission will continue to prioritize whistleblower protections.

Congress created the SEC's whistleblower program in § 21F of the Exchange Act, added by the Dodd-Frank Act in 2010, to encourage individuals to report potential securities law violations by offering financial incentives and anti-retaliation protections. To implement that mandate, the SEC adopted Rule 21F-17 in 2011, which prohibits companies from taking any action, including through confidentiality or severance agreements, that could impede individuals from communicating directly with the SEC staff about possible violations or from benefitting from the whistleblower program.

THE FOOT LOCKER ORDER

According to the SEC, from at least July 2020 through June 2024, approximately 148 departing senior executives and employees in finance, legal, supply chain, and operations signed separation agreements that included an "Award Waiver Provision." While the agreements expressly allowed employees to file charges with or participate

in investigations by government agencies (including the SEC), they also required employees to "waive the right to receive any award of monetary or other benefits" arising from those proceedings — even if relief was sought on the employee's behalf by the agency.

The SEC concluded that this language violated Rule 21F-17(a). The Commission emphasized that conditioning severance on a waiver of potential whistleblower awards "raised impediments" to participation in the SEC's whistleblower program, regardless of whether Foot Locker ever attempted to enforce the clause or whether any individual was actually deterred.

Foot Locker began phasing out the award-waiver language in March 2024 and fully removed it from its templates by June 2024, before being contacted by SEC staff. Without admitting or denying the findings, Foot Locker agreed to a cease-and-desist order and a $148,000 civil penalty. In accepting the settlement, the SEC credited Foot Locker's remedial steps and cooperation.

CONTINUITY ACROSS ADMINISTRATIONS: WHISTLEBLOWER PROVISIONS REMAIN A PRIORITY

As noted above, the SEC under former Gensler brought a steady stream of Rule 21F-17 cases targeting confidentiality, severance, and other employment-related provisions that could chill whistleblowing, often bundling multiple actions together toward the end of his tenure. The Foot Locker order, brought under Atkins, reaffirms that this is not a "prior administration" issue that companies can safely relegate to the past.

In our view, the message is clear: the current Commission intends to continue protecting whistleblowers and will bring cases against companies that use contractual language (whether in separation agreements, codes of conduct, NDAs, or other policies) that could be viewed as impeding employees from becoming whistleblowers or from receiving awards Congress has authorized. The fact that Foot Locker was no longer a public company at the time of the order (having been acquired in 2025) also underscores that legacy documents and past practices can still create enforcement exposure. It is also worth noting that the enforcement actions brought to protect whistleblowers all have been settled. As a result, we do not yet have any court decisions on whether the alleged offending language in fact impedes whistleblowers from coming forward.

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