

Insights

US Department of Justice Announces Changes to Corporate Investigation Protocol

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U.S. Deputy Attorney General Rod Rosenstein recently announced changes to criminal and civil corporate investigation protocol during a speech on November 29, 2018. For the past several years, the US Department of Justice (“DOJ”) has attempted to adhere to the Yates Memo, which focused on individual accountability in criminal and civil investigations, and allowed cooperation credit to cooperative corporations. The announcement continues to emphasize individual accountability, with a particular emphasis on corporate criminal investigations. Rosenstein emphasized that “pursuing individuals responsible for wrongdoing will be a top priority in every corporate [criminal] investigation.¹” Every company that self-reports conduct to seek cooperation credit in criminal cases “must identify every individual who was substantially involved in or responsible for the criminal conduct.” However, investigations should not be delayed simply to collect information about individuals who did not have substantial involvement in the criminal activities. The government wants to focus on individuals who played a “significant role in setting a company on a course of criminal conduct.” Corporations will receive cooperation credit when its members have a “full and frank discussion” about the allegations and operate in “good faith” to identify those responsible.

Rosenstein views civil cases differently. The DOJ “cannot take the time to pursue civil cases against every individual employee who may be liable for misconduct.” Companies are expected to identify all wrongdoing by senior officials and others who were “substantially involved in or responsible for the misconduct.” The DOJ may give cooperation credit when a corporation “meaningfully assists” in identifying those involved in the conduct, even if the company does not identify all such individuals.

This is a significant departure from the “all or nothing” approach under the Yates Memo, i.e., provide all such names or receive no cooperation credit, and a move toward greater DOJ discretion in resolving criminal and civil corporate investigations. Rosenstein further clarified that the DOJ may negotiate civil releases and settlement agreements for individuals who do not warrant additional investigation and may take into account an individual’s ability to pay in deciding whether to pursue civil judgments. A copy of Rosenstein’s remarks are available [here](#).

Federal investigators have applied the Yates Memo’s protocol to investigations of health care providers, and as such, the effects of Rosenstein’s recent change should likewise influence future health care provider investigations.

Health care investigations or regulatory violations are complex matters that require experienced and knowledgeable legal counsel. Please contact Marc T. Quigley at mquigley@kdlegal.com or Brandon W. Shirley at bshirley@klegal.com if you need assistance with corporate investigations or compliance issues.

1 A copy of Rosenstein's remarks are available here.