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No quid, no crime: Supreme Court bribery ruling clarifies federal law

Critics say a U.S. Supreme Court ruling has weakened anti-corruption laws. In June 2024, the high court ruled that a federal anti-bribery law applies only when gifts are solicited or accepted before a government action.

In a 6-3 ruling, the court clarified that the federal law known as Section 666 applies only to bribes made in exchange for official acts and not to after-the-fact gifts or gratuities given without a quid pro quo agreement.

That distinction between bribes and gratuities has implications for companies that interact with government officials, affecting how they approach gift-giving and corporate hospitality.

Quid pro quo

The case revolves around James Snyder, the former mayor of Portage, Indiana, who solicited and accepted $13,000 from a local trucking company — after the city awarded that company a $1.1 million contract for five garbage trucks.

Federal prosecutors charged Snyder with violating a federal bribery law that makes it a crime for state and local officials to solicit or accept anything of value in exchange for an official act. Snyder argued that the payment was a gratuity for unrelated consulting work, not a bribe tied to the contract. However, he was convicted and sentenced to 21 months in prison.

After several appeals, the Supreme Court sided with Snyder, ruling that the statute applies only to bribes made with a prior quid pro quo agreement, not to gifts given afterward without such an agreement.

Writing for the majority, Justice Brett M. Kavanaugh wrote that the statute in question applied narrowly to bribes and that state and local governments hold the power to regulate gratuities.

What does it mean for companies?

Legal analysts say the decision is the latest high court action making it more difficult to prosecute government officials for corruption. Nevertheless, companies should tread carefully. While small, after-the-fact gifts may not fall under federal bribery laws, they could still violate state or local regulations.

Companies should review their policies on government interac-

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For whistleblowers: new programs and big settlements

In a push to combat corporate misconduct, the Department of Justice has launched a whistleblower rewards program aimed at encouraging individuals to expose fraud and corruption. Meanwhile, several states have launched whistleblower non-prosecution pilot programs also geared toward encouraging individuals to step forward.

New state programs

In September 2024, seven U.S. Attorney's Offices — including those in the Eastern District of New York, District of New Jersey, Southern District of Florida, Eastern District of Virginia, District of Columbia, Southern District of Texas, and Northern District of Illinois — launched whistleblower non-prosecution pilot programs.

These initiatives are designed to encourage individuals involved in certain corporate crimes to report misconduct. In exchange for early, voluntary disclosures and cooperation, participants may receive non-prosecution agreements, or NPAs.

These programs, modeled after those in the Southern District of New York and the DOJ's Criminal Division, target crimes like fraud, health care violations and public corruption. The broader goal is to incentivize corporate compliance and self-disclosure while enhancing internal investigations.

Each program has its own eligibility criteria, focusing on nonviolent offenses and excluding individuals who organized the illegal activity. Participation requires truthful, original disclosures, substantial assistance, and forfeiture of any criminal proceeds they may have received.

DOJ awards program

In August, the DOJ launched its Corporate Whistleblower Awards Pilot Program, a three-year initiative designed to encourage whistleblowers to report corporate misconduct.

Under the program, whistleblowers who provide original information that leads to a successful forfeiture of over $1 million can receive financial awards. The program addresses gaps in existing whistleblower systems, targeting crimes in areas such as financial institution violations, foreign corruption, bribery and certain health care offenses.

The pilot program covers misconduct involving money laundering, anti-money laundering compliance failures, bribery, and fraud in public and private sectors. Whistleblowers are not eligible for the reward if they were a meaningful participant in the criminal activity.

Additionally, the DOJ amended its Voluntary Self-Disclosure Policy. Companies that receive internal whistleblower reports and disclose the misconduct to the DOJ within 120 days may qualify for a presumption of a declination, avoiding prosecution.

This amendment, paired with the new reward program, places pressure on companies to investigate and report misconduct.

Recent whistleblower settlements

The following cases highlight recent DOJ settlements involving whistleblowers. Although these whistleblowers were rewarded under preexisting measures such as the False Claims Act, they showcase the kinds of corporate misconduct that whistleblowers can expose — and the significant rewards they can earn for doing so.

- Raytheon Co.: The DOJ announced a $950 million settlement with Raytheon in October over claims that the company defrauded the Department of Defense, violated the Foreign Corrupt Practices Act, and bribed foreign officials. A former employee will receive a $4.2 million share of the settlement under whistleblower provisions.
- California businessman: A businessman paid over $800,000 to settle claims that he and his companies violated Paycheck Protection Program rules by submitting duplicate payroll expenses and false employee data. The businesses will also repay all outstanding loans. The whistleblower will receive around $80,000.
- Precision Toxicology: A California lab will pay $27 million to resolve allegations that it billed federal health programs for unnecessary tests and violated the Anti-Kickback Statute by giving free test cups to physicians in exchange for returning specimens for additional testing. A whistleblower will receive $2.7 million.

The whistleblower effect

The DOJ's expanding whistleblower programs and the states' new initiatives are reshaping the legal landscape for corporate misconduct. Whistleblowers are vital allies in uncovering fraud, corruption and illegal practices, often receiving substantial financial incentives for their role.

As these programs gain traction, companies face increasing pressure to implement rigorous internal controls and encourage workers to report misconduct internally — before the government gets involved.

How the FTC's new rule on fake reviews might apply to you

When the Federal Trade Commission's new rule on fake reviews went into effect in October 2024, many businesses might have shrugged it off, thinking, "Well, we're not creating fake reviews — this doesn't apply to us."

But here's the catch: The rule goes beyond punishing blatant fakes. It digs into practices that even well-intentioned companies might not realize are walking the line.

What's new, what's the same, and what's surprising

The rule officially bans writing, buying and selling fake reviews, which most companies already know is a big no-no. What's significant is how the rule defines what's considered "false or misleading" and the costly new fines attached.

Here are a few ways companies could unintentionally run afoul of the new rule:

1. *Suppressing negative reviews:* If you host reviews on your own website (in a way that suggests you're representing most/all submitted reviews), you can't suppress the negative ones. Even with a content moderation policy in place, your process must be neutral and consistently applied. For example, that means you can't take down a negative review because it uses profanity but keep up a positive post with that same language.

2. *Endorsements and influencers need full disclosure:* If you're paying or incentivizing influencers to hype your brand, they need to make proper disclosures. The rule requires clear and conspicuous disclosures about any relationship between the reviewer and the company.

3. *That means your mom, too:* Similarly, the rule prohibits a company's officers, managers, immediate relatives and employees from writing reviews about the business without disclosing their relationship. There's some nuance here in terms of what management solicited or was aware of, but basically your mom shouldn't be out there posting glowing reviews of your products without letting people know she's your #ProudParent.

4. *Watch your "celebrity" testimonials:* Businesses are prohibited from writing or creating reviews that misrepresent a reviewer's experience with a product or service. Think about hiring a radio DJ or podcaster to plug your product, for example. Be careful with marketing scripts that would imply they've used (and liked) the product if they haven't.

5. *Handle negative reviews with care:* Spot a bad review online? You can absolutely reach out to a disgruntled customer to try and make things right. But if your "fix" is tied to a condition that they revise or remove their bad review, that's crossing the line. The FTC's stance is clear: you can't bully or incentivize people to clean up their reviews.

Other "no fake reviews" rules include prohibitions against incentivizing reviewers contingent on specific feedback, creating a separate website that appears to be an independent review site, and buying fake social media indicators such as followers, friends, views or likes.

The penalties for breaking these rules are significant. A single instance of a deceptive review could result in a fine of over $51,000 — potentially multiplied on a "per view" basis.

What companies should do now

The bottom line is that this new rule ramps up enforcement risks. To stay on the right side of the FTC, companies should understand the nuances of the new rules and update policies accordingly. Ensure that all employees, endorsers and marketing teams are trained on what constitutes a fake review or testimonial under the new rule.

Additionally, if you display reviews on your website, make sure your content moderation is transparent and fair across the board. And ensure full disclosure on all endorsements, no matter how small the relationship.

As always, if you're unsure whether your review practices comply with the new FTC rule, it's a good idea to consult legal counsel.

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tions, gift-giving and employee training to ensure compliance across all jurisdictions. Keeping thorough records of all gifts and benefits provided to government officials, and the timing thereof, could also help safeguard against potential legal issues.

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What happens to your trademark when you die?

When a business owner passes away, there are many assets to consider in their estate.

While physical property and financial accounts are often top of mind, intellectual property such as trademarks can be easily overlooked. However, trademarks can be valuable assets that continue to hold significance long after the owner's death.

Trademarks as property

First, it's important to understand that trademarks are considered intangible property. Like other forms of property, they can be transferred, sold or inherited. When the owner of a trademark dies, the trademark doesn't automatically expire or enter the public domain. Instead, it becomes part of the deceased's estate.

Avoid probate

To ensure a smooth transition, many trademark owners choose to include their intellectual property in their estate plan. That can be done in several ways:

- Will: You can name a specific individual or entity to inherit your trademark in your will. However, since the will goes through probate, this option can result in delays.
- Trust: By putting the trademark in a trust, ownership can transfer immediately upon your death, ensuring continuity for your brand.
- Business ownership: If your trademark is owned by a company rather than an individual, the business itself continues to own the trademark, even after the owner's death. In that case, succession planning for the company's ownership will determine who ultimately controls the trademark.

Transfer of ownership

Once the estate is settled, the trademark will typically transfer to the designated heir or new owner. The transfer must be recorded with the U.S. Patent and Trademark Office to maintain the trademark's validity and enforceability.

The new owner will need to file an "Assignment of Mark" with the USPTO, pay the required fees, and provide documentation of the transfer of ownership

Maintaining the trademark

Once a trademark is inherited, the new owner must continue using the mark to maintain its protection. Trademarks can last indefinitely, but only if they are actively used in commerce and renewed regularly (typically every 10 years, depending on the jurisdiction). Failing to use the trademark or renew it in time could lead to the loss of rights, leaving the mark vulnerable to cancellation.

Plan for trademark transition

While a trademark doesn't die with its owner, its future depends largely on proper planning and management.

Business owners with valuable trademarks should consult with an attorney to ensure their trademarks are protected and transferred according to their wishes after death.