

# SEC Blows the Whistle on Foot Locker

May 26, 2026

On May 22, 2026, the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) announced a settled enforcement action against Foot Locker, Inc. (“Foot Locker”) for impeding protected whistleblower activity by using separation agreements that required departing employees to waive their ability to recover whistleblower awards for reporting alleged misconduct to the SEC. According to the SEC’s settlement order, these separation agreements violated Section 21F of the Dodd-Frank Act and Exchange Act Rule 21F-17(a) thereunder because they impeded participation in the Commission’s whistleblower program. To settle the matter, Foot Locker agreed to pay a penalty of \$148,000, which amounts to \$1,000 for each of the 148 separation agreements that the SEC found to have included a violative award waiver provision.

The SEC’s action against Foot Locker marks the first such settlement since January 2025 and the first of its kind under the Atkins Commission. The settlement also serves as a reminder that while the current Commission may be less active in bringing cases involving violations of Rule 21F-17(a), the enforcement staff will continue to pursue instances in which companies include language in their agreements that the staff views as clearly violative.

Notably, the settlement order with Foot Locker is also void of any indication that the company agreed to refrain from publicly denying the SEC’s findings—reflected by the order noting that Foot Locker settled “without admitting the findings herein”—an obvious contrast from the decades-long qualification in SEC settlements that the respondent is settling “without admitting or denying the findings herein.” This change is consistent with the SEC’s May 18, 2026 rescission of the so-called “no admit, no deny” or “gag” rule.

**A Closer Look at the Commission’s Findings.** The Commission found that, from at least July 2020 to June 2024, approximately 148 departing Foot Locker employees, ranging from senior executives to divisional employees, signed separation agreements containing a provision that purported to waive the employees’ rights to receive whistleblower awards from the Commission, even though the agreement is not alleged

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to have otherwise interfered with the employees' right to file charges or participate in investigations or proceedings conducted by the SEC or other government agencies. The order notes that Foot Locker began to phase out this award waiver provision in March 2024, but that certain form separation agreements were not updated until Commission staff contacted the company about the issue in June 2024. The order also notes that there are no known instances in which the company took action to enforce the provision or in which the provision otherwise impeded specific whistleblower activity.

Nonetheless, the SEC found that the existence of the award waiver provision violated Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 21F-17(a) thereunder, which provide whistleblower protections and incentives, including a bounty program for individuals that report original information to the SEC. Specifically, Rule 21F-17(a) prohibits "any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement."<sup>1</sup> In prior years, the Commission has been vocal about its position that language in employee agreements, company policies, and other material could have a chilling effect on potential whistleblowing activity and therefore violate Rule 21F-17(a). Accordingly, the SEC found that the existence of the award waiver provision in Foot Locker's separation agreements "raised impediments to participation in the Commission's whistleblower program by requiring those individuals to forgo possible whistleblower awards in exchange for severance payments from Foot Locker."<sup>2</sup>

Foot Locker agreed to pay a \$148,000 penalty to settle the action, which appears to represent a calculated result that prices the sanction at \$1,000 per violative agreement. While the order cites Foot Locker's cooperation after being approached by SEC staff and its pre-contact initiation of phasing out the award waiver provision as factors that influenced the Commission's enforcement decision, this cooperation and remediation did not forestall enforcement action. In addition, this particular outcome may serve as a possible benchmark for a more formulaic approach to penalty calculations, at least for Rule 21F-17(a) actions going forward.

**Takeaways.** The SEC's enforcement action against Foot Locker serves as another reminder for public and private companies to conduct a comprehensive review of documents across their businesses to ensure that those materials appropriately carve out whistleblowing activities from their confidentiality provisions and avoid award waiver and similar provisions, regardless of whether any steps have been taken to enforce such restrictions. To the extent prior versions of documents contain such language,

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<sup>1</sup> 17 C.F.R. § 240.21F-17(a).

<sup>2</sup> *In the Matter of Foot Locker, Inc.*, Exchange Act Re. No. 105542 (May 22, 2026).

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companies should ensure that those versions are no longer in use. Documents to consider reviewing for potential Rule 21F-17(a) relevance include:

- employment-related agreements (e.g., employment agreements, separation agreements, confidentiality agreements, restrictive covenant agreements, equity agreements, retention agreements);
- settlement agreements;
- consulting agreements;
- confidentiality or non-disclosure agreements;
- company policies (e.g., compliance manuals, codes of conduct; employee handbooks);
- training materials, including training related to electronic communications practices; and
- client, customer, and investor agreements, including releases and tender documents.

Companies should consult with counsel regarding the most effective way to address any current or historical agreements or other documents that could be read to restrict or otherwise have a chilling effect on an individual's ability to communicate with the SEC or other government agencies about potential violations of law.

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Please do not hesitate to contact us with any questions.



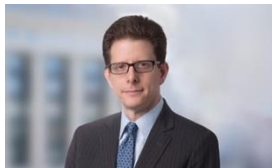
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