

California Attorney General Advises Businesses That It Is Still Illegal Under California Law to Bribe Foreign Officials

April 11, 2025

On April 2, 2025, California Attorney General Rob Bonta issued a legal advisory warning businesses operating in California that it is still illegal under California law to make payments to foreign government officials to obtain or retain business, irrespective of the recent Executive Order by the Trump administration pausing enforcement of the Foreign Corrupt Practices Act (“FCPA”) pending the issuance of new guidance by the U.S. Department of Justice (“DOJ”). AG Bonta’s legal alert notes that violations of the FCPA remain actionable under California’s Unfair Competition Law (“UCL”) and that “businesses are expected to follow the law” regardless of changes in federal enforcement priorities.

This development signals potential enforcement by state and local enforcement authorities, while also potentially opening the door to private plaintiffs.

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Introduction

As discussed in our prior alert, on February 10, 2025, President Trump issued an Executive Order that temporarily “paused” enforcement of the FCPA, a federal law that prohibits bribery of foreign officials, pending the issuance of revised enforcement guidelines by DOJ. Citing to the President’s foreign policy authority and national security interests, the Executive Order directs the DOJ to refrain from opening any new FCPA investigations and to review pending FCPA investigations for up to six months, while DOJ considers and issues updated guidance that prioritizes “American economic and security interests.”¹

On April 2, 2025, the California Attorney General issued a legal advisory as an “Alert to Businesses on Violations of the Foreign Corrupt Practices Act” and a reminder to businesses operating in California that “it is illegal to make payments to foreign-government officials to obtain or retain business.”² The legal advisory also makes clear that, notwithstanding the Trump Administration’s Executive Order pausing FCPA enforcement, the FCPA “remains binding federal law and violations are actionable under California’s Unfair Competition Law.”³

California’s Unfair Competition Law as a Potential Enforcement Mechanism

California’s UCL broadly prohibits “unlawful, unfair or fraudulent business act[s] or practices and unfair, deceptive, untrue or misleading advertising.”⁴ The UCL was enacted “to protect both consumers and competitors by promoting fair competition in

commercial markets for goods and services.”⁵ The statute’s scope is intentionally broad, as the California Supreme Court has noted: “By proscribing ‘any unlawful’ business practice, ‘section 17200 ‘borrows’ violations of other laws and treats them as unlawful practices’ that the unfair competition law makes independently actionable.”⁶ Notably, the statute establishes “three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.”⁷ As noted by the California AG’s legal advisory, violations of federal laws and criminal laws, including the FCPA, can serve as the predicate for UCL claims.⁸

In an accompanying press release, AG Bonta stated, “Illegal activity is still illegal. Paying bribes to foreign officials is not only unethical, it’s also bad for business.”⁹ He further emphasized that “[a]s the fifth largest economy in the world, California has a vested interest in defending honest business” and reminded businesses that “bribing foreign officials is illegal under California law and will not be tolerated.”¹⁰ The legal advisory also makes clear that, despite any federal pause in enforcement, businesses operating in California must continue to comply with all provisions of the FCPA.

Both the California AG and private parties can pursue claims under the UCL. While there are no criminal penalties for violating the UCL, civil remedies include:

- **Civil penalties**
- **Restitution**
- **Injunctive relief**
- **Disgorgement**¹¹

¹ Cleary Gottlieb Client Alert, *President Trump Issues Executive Order Pausing FCPA Enforcement and Directs Revision of Enforcement Guidelines*, <https://www.clearygottlieb.com/news-and-insights/publication-listing/president-trump-issues-executive-order-pausing-fcpa-enforcement>.

² Cal. Dep’t. of Just., Off. of the Att’y. Gen., Legal Advisory, “Alert to Businesses on Violations of the Foreign Corrupt Practices Act,” <https://oag.ca.gov/system/files/attachments/press-docs/FCPA%20Legal%20Alert.pdf> (April 2, 2025).

³ *Id.*

⁴ Cal. Bus. & Prof. Code, § 17200.

⁵ *People v. Johnson & Johnson*, 77 Cal. App. 5th 295, 316, 292 Cal. Rptr. 3d 424, 441 (2022), as modified on denial of reh’g (Apr. 27, 2022).

⁶ *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180, 973 P.2d 527, 539 (1999).

⁷ *Id.*

⁸ Cal. Dep’t. of Just., Off. of the Att’y. Gen., Legal Advisory, “Alert to Businesses on Violations of the Foreign Corrupt Practices Act,” <https://oag.ca.gov/system/files/attachments/press-docs/FCPA%20Legal%20Alert.pdf> (April 2, 2025) (citing *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 63 P.3d 937, 943 (2003)).

⁹ Cal. Dep’t. of Just., Off. of the Att’y. Gen., Press Release, *Attorney General Bonta Alerts Businesses: It Remains Illegal to Bribe Foreign-Government Officials*, <https://oag.ca.gov/news/press-releases/attorney-general-bonta-alerts-businesses-it-remains-illegal-bribe-foreign> (April 2, 2025).

¹⁰ *Id.*

¹¹ Cal. Bus. & Prof. Code § 17206.

Civil penalties for UCL violations can be significant, as seen in an action brought against a large pharmaceutical company in 2020, in which a California state court ordered nearly \$344 million in penalties related to alleged UCL violations, among other claims. Though a California appeals court later reduced the penalties to \$302 million, the U.S. Supreme Court let the judgment stand in 2023.

Potential Legal and Practical Challenges

While the California AG's legal advisory signals possible state enforcement related to foreign bribery going forward, there are a number of legal and practical challenges that might emerge.

- **Evidence Collection:** One of the most significant challenges to investigating and prosecuting foreign bribery is obtaining access to evidence and witnesses located overseas. For example, bank records, emails, and other business records may reside in several different jurisdictions. While federal authorities can leverage mutual legal assistance treaties (MLATs) and international cooperation with foreign authorities, it may be more challenging for state and local authorities to obtain this evidence and build strong cases.
- **Adequate Resources and Specialized Expertise:** Foreign bribery investigations also benefit from having adequate resources and specialized expertise to navigate various enforcement challenges, including complex statutory frameworks, jurisdictional issues, and diplomatic considerations. Large and well-resourced State Attorneys General, like those in California, New York, and Massachusetts, may be well-positioned to devote sufficient resources and expertise into pursuing such high-profile cases.
- **Jurisdictional Limitations:** The UCL does not apply extraterritorially.¹² California courts have held that valid UCL claims must involve

injury in California, either to in-state plaintiffs or by in-state conduct.¹³ While this may limit the scope of some potential enforcement actions under the UCL, the large breadth of business operations and cross-border activity in California may translate into the California AG opening investigations into conduct with even the slightest nexus to California.

Beware of Private Plaintiffs

Beyond potential state-level enforcement, the UCL provides a private right of action that could create additional risk for companies. Unlike the FCPA itself, which does not afford a private right of action, the UCL permits private plaintiffs who have "suffered injury in fact and lost money or property as a result of unfair competition" to bring claims.¹⁴

The legal advisory and press release issued by the California AG may signal to plaintiffs' lawyers the possibility of using the FCPA as a predicate for private UCL claims, which could be increasingly attractive, particularly in light of the temporary pause on FCPA enforcement at the federal level. Private plaintiffs would need to establish standing by showing economic injury due to the underlying conduct.

Key Takeaways

Companies operating in California or conducting business with a connection to California should consider the following in light of the Attorney General's legal advisory:

- The FCPA remains an enforceable criminal law on the books notwithstanding the temporary pause directed by the Executive Order and may serve as a predicate violation under state and local laws.
- The California Attorney General has made it clear that his office may bring enforcement actions against businesses and individuals for

¹² *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207, 254 P.3d 237, 248 (2011).

¹³ *Norwest Mortg., Inc. v. Superior Ct.*, 72 Cal. App.4th 214, 222, 85 Cal. Rptr.2d 18, 23 (1999).

¹⁴ Cal. Bus. & Prof. Code, § 17204.

violating the UCL, including by engaging in conduct predicated on FCPA violations.

- Other states, such as New York and Massachusetts, may follow California's lead in stepping in to enforce FCPA violations through state competition and other laws.
- Private plaintiffs also may seize on the opportunity to pursue litigation under the UCL based on alleged FCPA violations, creating additional areas of potential risk for businesses operating in California.
- Companies should consider potential exposure to investigations and private lawsuits under the California UCL or other state and local laws in assessing their risk.
- Businesses should continue to maintain effective compliance programs and internal accounting controls, which remain essential tools for detecting, preventing, and remediating potential corruption risks.

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