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Strengthening workplace dignity with anti-retaliation monitoring and reporting

What is the use in thinking about dignity in the business setting? As a compliance professional, you have your code of conduct that you train on. You have your ethics statement and hold people accountable through your compliance program. Your mission and values are posted on the walls everywhere. You have this covered and have achieved an ethical culture. Or have you?

Case in point
The equity division of a major investment firm seems to be waking up after years of favoritism and an “old boys’ club” mentality. Despite explicit training on “zero tolerance,” the culture allowed bullying, sexual harassment of junior staff, inappropriate comments, and pornography in the workplace. Adding to this atmosphere, the compensation structure allowed colleagues to rate each other, something like a 360 review, that caused jockeying for favors rather than improved performance. In addition, to achieve standing within the favored group, attendance at after-hours events, where sometimes questionable activity occurred, seemed required. This resulted in a culture of cronyism that favored those in the old boys’ club to the detriment and exclusion of others.

An unnamed spokesperson for the firm stated to a Wall Street Journal reporter, “Virtually any company of any size, including The Wall Street Journal, is going to have employees who make poor personal decisions from time to time.” The investment firm has a formal ethics program well established that did not prevent these activities. The fallout of just the incidences that have become...
public have damaged the reputation of the firm and spawned civil and criminal actions.

**Reflection on dignity in the workplace**

Could more have been achieved to remedy, or better yet prevent, the problems if the compliance training had included elements on workplace dignity?

In his 2001 book, *Dignity at Work*, Randy Hodson, the late, distinguished professor of Ohio State University’s Department of Sociology, defines human dignity as “the ability to establish a sense of self-worth and self-respect and appreciate the respect of others.”

Professor Hodson further argued that dignity is necessary for us to achieve a fully realized life. Dignity at work then is achieved by gaining meaning and self-realization at work. It nurtures pride in productive achievements and allows a level of control over our work lives. Achieving dignity in our work lives is one of the most important challenges we face, especially considering how much time we spend at work. For organizations, ensuring dignity is important to making effective use of human and social resources.

Many policies outline behavior and activity but do not define the standard of dignity. Instead, they tell people what not to do, such as this example from the United Kingdom’s Dignity at Work Act:

An employer commits a breach of the right to dignity at work of an employee if that employee suffers any of the following:

1. Behavior on more than one occasion which is offensive, abusive, malicious, insulting or intimidating;
2. Unjustified criticism on more than one occasion;
3. Punishment imposed without reasonable justification, or;
4. Changes in the duties or responsibilities of the employee to the employee’s detriment without reasonable justification.

Ethics and compliance professionals need to educate those in the workplace on how and to whom employees need to speak if they are informed or observe any of these behaviors.

**Problems in paradise**

So despite all your efforts as an ethics and compliance professional, you now incur an act of inappropriate behavior in the workplace, one that does not reflect dignity in your workplace. An employee speaks up, your office is contacted, and you proceed to investigate the concern in a timely manner. You follow your established processes and procedures, addressing the issue as thoroughly as possible. A determination is reached, corrective actions taken, lessons learned, and the investigation closed out. You feel relieved in getting the concern addressed and knowing that the issue has been resolved. But was it?

What have you actually done to help protect those individuals who spoke up or participated in the investigation from retaliation or possible future company liability? What protections do you have in
place to help ensure that individuals will be treated with dignity and respect in a retaliation-free workplace?

**What is retaliation?**
Let’s first define retaliation. Retaliation is the act of making someone afraid to speak up or come forward or an action taken against someone for reporting a concern. It’s something we all face in our daily lives whether we are at work, home, or play. It can take on overt forms such as discipline, demotion, harassment, threats, or change of assignment. It can also take on more indirect forms such as exclusion, avoidance, shunning, lack of recognition, or being passed over for promotion or assignment. As we know so well, retaliation can be imposed by managers, supervisors, and even our coworkers.

**Preventing retaliation while maintaining dignity in the workplace**
So how do we maintain dignity for our employees and possibly control retaliation or limit its spread in the workplace? One way to do so is to have a formal anti-retaliation monitoring and reporting process. The foundation of that process provides protection against retaliation in the workplace, supported in turn by corporate policy, senior leadership, and your code of ethics and business conduct.

Note: According to statistics released by the Equal Employment Opportunity Commission (EEOC), complaints of retaliation had the most individual charge filings for FY 17.

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The reasons for putting an anti-retaliation monitoring plan in place can be many, but your primary objective should be to help protect both employees and your company against retaliation and its effects. Timeframes for initiation and implementation can vary from the onset of an ethics investigation to and after its conclusion. Anti-retaliation monitoring plans should be established any time an ethics investigator, Ethics and Compliance office, or Legal department believes there is a possibility of retaliation occurring in the workplace. Once in place, the primary objective of the anti-retaliation monitoring plan is to monitor for any retaliatory actions and to immediately report the actions found to the Ethics and Compliance office or Legal department for investigation.

A basic anti-retaliation monitoring plan and report should consist of three primary parts: preparation, monitoring, and the report itself. Forms should be created to help you capture information during these steps as you take notes, document interviews, and report your findings.

**Preparation**
Your preparation will include the names of people to be monitored and interviewed. This could be the reporter(s), reported individual(s), or other individuals who may be involved. You will need to determine how you will conduct your interviews. In person is the most effective, but if that isn’t possible, then by telephone. You will have to decide when
and where the interviews will take place. Interviews should always be conducted in a private location with time, place, and setting to be considered in making the individual interviewed most comfortable. Next, formulate what questions need to be prepared to ask during the interviews. Your questions should be open-ended in order to learn more about an individual’s work environment and relationships. Some questions to use could be:

- How are things going?
- How would you describe your work environment?
- Have there been any changes that you have noticed?
- Is anyone making you or anyone else uncomfortable?
- Are you having any problems with anyone?
- Is there anything else you would like to add?

Next, set up a schedule and decide on the frequency and number of interviews you wish to conduct. Use whatever method you feel will be the most effective and confidential for the monitoring and interviewing process.

**Monitoring and interviewing**

Once your preparation is complete, you are now ready to start your monitoring and interviewing. Determining the length of your monitoring period is critical. Typically, your plan should run no less than 90 days, as shorter durations tend to be less effective. If you consistently need to have longer monitoring periods to prevent possible retaliation, it may reveal a more serious problem or trend within your workplace culture.

Begin your interview process by first contacting the employee you are most concerned to be the target of retaliation. You should always identify yourself as the monitor and inform the interviewee that you are following company process and procedure. Question the interviewee as planned, and be prepared to ask as many follow-up questions as needed. Always take notes to memorialize their responses. End your discussion by reminding the interviewee of your company’s protection against retaliation through the code of ethics and business conduct, policy, and leadership support. Always provide your contact information and remind the interviewee that any suspected retaliation should be reported immediately to their manager, the Ethics and Compliance office, or the Legal department. Finally, don’t forget to thank the interviewee for his or her forthrightness in your follow-up.

**Reporting**

Once the monitoring and interviewing period is complete, you will need to complete your report. An anti-retaliation monitoring report should explain what steps were taken to monitor and help prevent retaliation. This would consist of what individuals were interviewed, methods, dates, questions, responses, summaries, the monitor’s recommendations, and if any retaliation was found. You will also need to include in your report whether the interviewees were
informed of your company’s protection against retaliation and told that they should report any suspected retaliation immediately. Your completed report should then be sent to the Ethics and Compliance office.

Did it work?
The question you and others will ask once you have concluded your monitoring is, “Did the anti-retaliation monitoring and reporting process eliminate retaliation in the workplace?” Success depends on management commitment, program oversight, and having an experienced monitor and well-managed plan and report. Experience has shown us that nothing will totally eliminate retaliation, but we firmly believe that having such a process will greatly help reduce retaliation in your workplace.

Conclusion
Building on your code of ethics and business conduct, nurturing a speak-up culture, and having a solid anti-retaliation mind-set with clear accountability all help to uphold dignity in our workplaces. Consider how these elements are present in your company atmosphere and work to strengthen each one. This effort alone cannot be delegated to your code of ethics training, however. Leaders must be present during training programs and include sincere supportive messaging that makes speaking up the norm. A workplace imbued with dignity must be visibly embraced by leadership and consistently reinforced. It is only then we will have the ability to build and strengthen dignity in the workplace through values that ensure a sense of self-worth, self-respect, and that appreciate the respect of others.

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