Retaliation: Case Study on Prevention Strategies

Encouraging organizations to protect employees who report wrongdoing

Disclaimers

Some things to keep in mind during this presentation

1. Information summarized in this presentation include published research, documents, articles, interviews, and recollections.

2. The presenter would like to acknowledge the many professionals who worked on (1) the whistleblower retaliation case, and (2) the fraud case, including Michael Hirst, Esq., university investigators and internal auditors, as well as other investigators, and federal agents.
Outline

1. Whistleblowing 101
2. Retaliation: What and Why
3. Case Study
4. Prevention Strategies

Whistleblowing 101

Why Organizations Need Whistleblowers
Definition: Whistleblower

"An employee who discloses information that s/he reasonably believes is evidence of illegality, gross waste or fraud, mismanagement, abuse of power, general wrongdoing, or a substantial and specific danger to public health and safety."

Source: Government Accountability Project (GAP) web site, 2013.

Whistleblowers are Essential for Fraud Detection

2010 Global Fraud Study by the Association of Certified Fraud Examiners

"Tips were by far the most common detection method...catching more than three times as any other form of detection...employees were the most common source. (1)

Fraud costs a typical company about 5% of its revenue and that whistleblowing is the single most common form of fraud detection. (2)"

**Cost of Silence**

**Business Ethics Survey**

- 25% said they had observed unethical behavior within the organization
- 11% said they had felt pressured to participate in unethical behavior
- 13% said that they did not feel that they could report unethical behavior without fear of reprisal
- Only 66% said they believe that unethical behavior in the company would be detected and punished


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**Retaliation**

"Retribution exacted by co-workers or managers against an employee who has reported misconduct."

Source: Ethics Resource Center Summary of the July 2012 ERC Fellows Meeting: "Retaliation in the Workplace—Why it Matters and What Companies Can Do About it."
Observation: Reporting Wrongdoing of Higher Ups May Lead to Retaliation

“In theory … anyone who speaks out in the name of public good within the organization is a whistleblower … Rarely do employees get fired for reporting the misbehavior of subordinates … She [he] becomes a whistleblower when she [he] experiences retaliation … If there is no retaliation she [he] is just a responsible employee doing her [his] job to protect the company’s interest …”


Trends in Retaliation

- Over 22% of those who reported misconduct in 2011 perceived retaliation for doing so (1).
- This trend calculates to an additional $2.3 million more workers than reported in 2009 (1).
- In 2010, whistleblowers received $2.877 billion in compensation (2).

Research on Retaliation

1. Study by ERC (N=4,683 employees)
2. Study by Sociologist Dr. Rothschild (N=374 whistleblowers)

Ethics Resource Center

“Retaliation: When Whistleblowers Become Victims”

Types of Retaliation

- Excluded from decisions and work activities (64%)
- Given cold shoulder (62%)


Types of Retaliation

- Verbally abused by supervisor (62%)
- Verbally abused by co-workers (51%)
- Harassment (31%)

Types of Retaliation

- Demoted (32%)
- Hours or pay cuts (46%)
- Almost lost job (56%)


Retaliation “Harm”

31% experienced physical harm to person or property

Hallmark of Retaliation

Research on 374 Whistleblowers 39% Internal (I) and 61% Eternal (E)

- Fired or forced to resign (69% of I and 84% of E)
- Work closely monitored (68% of I and 82% of E)
- Criticized by co-workers (68% of both)
- Were blacklisted in their field (64% of both)

- “… it is the intensity of the adverse actions that senior managers sometimes take … from demotions and firing to public humiliation ceremonies … the complete demonization of the whistle blower, that is the hallmark of retaliations and cover ups.”


Disclaimer: Identifying information for some places and employees have been changed.

Retaliation: Case Study

Substantiated Whistleblower Retaliation Complaint
Sounding the Alarm!

- Allegations of $1400 embezzlement (February 2006)
- Internal Report (Ignored)
- Allegations of $20,000 in travel fraud (August 2006)
- Whistleblower "sounds the alarm" (August 2006)


Multiple Investigations

Results of Fraud Investigations

- $2.3 million case
- Fraudster went to prison
- University paid back agency

Exposure
Can spark retaliation!

- Media attention
- Adverse publicity
- Public exposure of wrongdoing


Retaliation
Wrongdoing exposure leads to:

- False allegations
- Threats
- Intimidation
- Harassment
- Isolation/Exclusion
- Fear
- Malicious rumors
- Reputation damage
- Privacy violations
- Blacklisting
- Harm to person and property

Retaliation Investigation: Quick Response

- Complaint filed (September 2007)
- Investigator hired (September 2007)
- Process (September – December)
- Report (December 2007)


Retaliation Prevention

Retaliation can happen to anyone, anywhere!

- Resources
- Challenges
Resources

Managers need to educate the workforce on the policies and laws that protect “reporters”

- Anti-Retaliation Policy
- Complaint procedures
- Standards of conduct
- Responsibility
- Official in charge
- Enforcement protocols

Use Technology

- Post policy
- Post complaint process
- Post contact person(s)
- Post resources
- Keep current
- Update frequently
- Distribute widely
Retaliation Hotline

Allows for anonymous reporting

- Anti-Retaliation policy
- Retaliation definitions
- Complaint procedures
- Contact person(s)
- Protection protocols
- Forms

Protection from Retaliation

Organizational Challenges

- Distribute anti-retaliation policy
- Train managers and supervisors
- Educate workforce
- Create “protection” forms
- Respond to allegations immediately
- Investigate promptly
- Communicate with “reporter”
- Reduce gossip: communicate facts to workforce
- Establish safeguards against post-employment retaliation
- Survey employee attitudes regarding retaliation
Enforcement

- **Strongly worded standards**: Zero tolerance policy!
- **Be credible**: Violators will be disciplined
- **Demonstrate commitment to enforcement**: Post results/consequences on valid cases

Ethical Culture

Workforce needs education

- Develop written ethical standards on workplace conduct to increase employee trust, collegiality, and morale
- Train managers and employees on workplace ethics
- Develop workplace safeguards for reporting wrongdoing
Preventing Retaliation

Is good public policy


Thank you!

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