Decades into Maturing Compliance Programs, Are Anonymous Reporters Treated With the Respect They Deserve?

Presented By

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Agenda

- Context
- Perceptions About Anonymous Reporting
- Latest Data on Anonymous Reporting
- Key Takeaways
- Questions

Context
Background

- The pros, cons, myths and truths of anonymous reporting have been discussed in the compliance and ethics community and among boards and executive teams for decades.

- With all of this discussion and work on building effective compliance and ethics programs:
  - Many employees still feel that anonymous reporting is the safest way to raise issues.
  - Many leadership teams still express frustration about accepting these types of reports.

- Internationally, anonymous reporting is a challenging cultural concern and is also subject to regulations on the types of issues that can be reported anonymously.

An “Effective” Ethics & Compliance Program is...

... a comprehensive system of policies, processes and procedures designed to prevent – or detect and correct – violations of law (or company policy).

Helpline or Hotline is a critical program element: “Mechanism” for employees to raise concerns and ask questions without fear of retaliation for doing so*

* Paraphrased from US Federal Sentencing Guidelines for Organizations 18 USC §8B2.1
Our Goal: A “Speaking Up” Culture

• The environment in which we can prevent, detect and correct violations, issues and concerns effectively

• The “WHY” – Proactively raising issues and concerns leads to early identification of issues and mitigation of risks

• The “WHAT” and “HOW”
  - Helplines (or Hotlines) are one of several channels or “reporting mechanisms” for raising issues and concerns or asking questions
  - Perceptions and fears of reporters drive the interest in confidential or anonymous reporting options

Definitions are Important

*There is a difference between “confidential” and “anonymous” reporting:*

• **Confidential Reporting:** absolute confidentiality is very difficult to guarantee (unless you are a priest in the confessional); but with care, confidentiality can and should be protected
  - The first question is often “who called you?”
  - Don’t refer to a reporter’s gender
  - Reports and notes that leave your office should safeguard identity of the reporter

• **Anonymous Reporting:** anonymity is only possible if you do not know the reporter’s identity
Regulatory Environment

- Two schools of thought on anonymous reporting
  - Those that require you to have it
  - Those that regulate against it
- Ensure you are mindful of the **distinctions among country requirements** regarding anonymous reporting options
  - Reflect these distinctions in your Code, policies and procedures
  - Adapt/customize your training and communications (including posters and brochures)
- Ensure that you handle the information/data you collect through the reporting process meets **local privacy and protection requirements**

Why Anonymous Reports are Important

- Data and research: anonymous reporting encourages reporters who would not otherwise raise concerns or report violations
- Government “whistleblower” protections / awards – the “debate”
  - Do they create incentives for “bad faith” reporting?
  - Do they motivate organizations to refresh / reinforce their helpline procedures, training and communications?
- “Good faith” reporters could choose to take their concerns outside the organization if internal reporting is not a viable option
Challenges of Anonymous Reporting

• Perception that these reports are less credible
• Inability to communicate “real-time” with the reporter
• Potentially extended case closure times impacting reports to leadership
• Rewards/incentives concern
• Perception that that these reports are “disrespectful”
  – “Washing the dirty laundry” outside of the team or department
  – Reporting to the government is selfish, done just for the “bounty”
Anonymous Reporting: How Do We Really Feel?

The elephant in the room...

Some Questions for Discussion

Leadership and CCO Perspectives

• Words matter: How do your leaders “refer” to those who raise concerns?
  − Employees?
  − Reporters?
  − Whistleblowers?
  − Snitches?

• Do you think that anonymous reports are treated with the same level of respect as named reporters in your organization? Why or why not?

• Why does it matter to leadership whether the reporter has given their name?

• Do compliance/ethics officers have a bias with respect to anonymous reporting?
Management Perceptions and Fears

*To have an effective process, these should be addressed head-on:*

- Credibility and reliability – perception that anonymous reports can’t be substantiated or disputed
- Reporters with personal agendas
  - Gossip
  - Vindictive callers
  - “Answer shopping”
  - Bypassing the management chain
  - Turf battles
- Bad news... now what?

Obstacles to Coming Forward

*If we focus on what drives anonymous reporting, can we impact it?*

- Fear of retaliation / job impact
- Belief that nothing will be done
- Lack of willingness to get involved
- Someone else will report it
- Not wanting to report on peers / friends

**NOTES:**
1. This is true at **all levels** of the organization; and
2. Fear of retaliation can be even higher at the more senior levels of the organization
3. This includes CECOs and in-house counsel
Why Employees Don’t Report – What Has Changed?

Retaliation: The Realities of Internal & External Reporting

• Lack of focus on proactive efforts to prevent or address retaliation

• Internal complaints remain below 1 percent of all reports received
  – External agencies continue to receive a high rate of complaints of retaliation.

• 60 percent of compliance officers surveyed said that preventing retaliation was not a priority in 2018

• Reducing fear of retaliation is one of the most important ways to improve a “speak-up” culture, yet it is not a priority.
The Low Rate of Retaliation Reports Drops Even More

Percentage of Retaliation Reports

Source: NAVEX Global's 2018 Ethics and Compliance Hotline Benchmark Report

Retaliation Substantiation Rates Increase

Substantiation Rate of Retaliation Reports

Source: NAVEX Global's 2018 Ethics and Compliance Hotline Benchmark Report
The “Other” Reason Why Employees Don’t Report

Belief that nothing will happen as a result of their report...

These Have Been the Same Two Reasons for Our 25 Years

What can we do differently to build confidence and reduce the need for anonymous reporting?

• Talk more about the types of reports we are receiving?
• Talk more about how we address the reports we receive?
• Talk more about the outcome of investigations?
• Be more transparent?
Latest Data on Anonymous Reporting

FROM 2018 NAVEX GLOBAL HOTLINE BENCHMARK REPORT

Median Report Volume Increases to an All-Time High

How Does Your Report Volume Compare to Others

Source: NAVEX Global’s 2018 Ethics and Compliance Hotline Benchmark Report
Anonymous Reporting Continues to Decrease Overall

Median Anonymous Reporting Rate

Source: NAVEX Global’s 2018 Ethics and Compliance Hotline Benchmark Report

Unfortunately, No Change In Follow-Ups to Anonymous Reports

Median Follow-Up Rate of Anonymous Reports

Source: NAVEX Global’s 2018 Ethics and Compliance Hotline Benchmark Report
Education Leads Anonymous Reporting by Industry

Highest Rate

Overall Median Rate: 56%

Source: NAVEX Global's 2018 Ethics and Compliance Hotline Benchmark Report

Substantiated Anonymous vs. Named reports

Comparison of Substantiation Rates between Anonymous and Named Reporters

Source: NAVEX Global's 2018 Ethics and Compliance Hotline Benchmark Report
Case Closure Time – A One Week Difference

Data: Geography Impact

FROM 2018 NAVEX GLOBAL HOTLINE BENCHMARK REPORT
Geographic Reporting

Anonymous Reports by Geography

Source: NAVEX Global's 2018 Ethics and Compliance Hotline Benchmark Report

Anonymous Reporter Follow-Up Rate Lower in EMEA & APAC

Median Follow-up Rate of Anonymous Reports

Source: NAVEX Global's 2017 EMEA & APAC Whistleblowing Hotline Benchmark Report
Key Takeaways

Getting the Most From Your Anonymous Reports

• Have a strong retaliation prevention and monitoring program
  - Code, policy, procedures, awareness
  - Special responsibilities for managers and leaders
  - Reminders during the investigative process
  - Culture Survey: perceptions about speaking up and anonymous reporting

• Reach out to reporters through messaging
  - Practice empathy
  - Remind reporters to keep their anonymity

• Train, train, train on how the process works (...refresh, repeat...)
“Help” from Managers and Leaders

• Focus on organizational culture and ethical leadership
  − Special responsibilities for managers and leaders
  − Respecting the process
  − Modeling ethical behavior and prohibition on retaliation
• Regulatory / litigation environment
  − Undermining the process and credibility
  − Being a “witness”
• Shift the focus from “who” is reporting to “what” is being reported
• Use data

Conclusions

A “Speaking Up” Culture and an Effective Compliance & Ethics Program require:

• Proactively raising issues and concerns to drive early identification / mitigation of risks
• Creating an environment in which we can prevent / detect / correct issues and concerns
  − Make it easy for employees to report
  − Address perceptions and fears head-on
• Driving continual improvement of your Program with preventive and corrective action
  − Share lessons learned with leaders, including Board
  − Communicate “sanitized” cases, including cases where retaliators have been disciplined
  − “Closure” includes ensuring that any “scar tissue” is addressed appropriately
  − Update policies, procedures, training and communications
• Credibility of the process comes from earning trust
Questions?

Thank You

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