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

Presented By

Carrie Penman | CCO and SVP Advisory Services, NAVEX Global
Debra Sabatini Hennelly | Founder and President, Resiliti

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 28 USC 9982.1
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 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.

<1% Percentage of retaliation reports
The Low Rate of Retaliation Reports Drops Even More

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

Percentage of Retaliation Reports

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>0.27%</td>
</tr>
<tr>
<td>2016</td>
<td>0.18%</td>
</tr>
<tr>
<td>2017</td>
<td>0.16%</td>
</tr>
<tr>
<td>2018</td>
<td>0.07%</td>
</tr>
<tr>
<td>2019</td>
<td>0.05%</td>
</tr>
<tr>
<td>2020</td>
<td>0.06%</td>
</tr>
</tbody>
</table>

Retaliation Substantiation Rates Increase

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

Substantiation Rate of Retaliation Reports

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>67%</td>
</tr>
<tr>
<td>2016</td>
<td>67%</td>
</tr>
<tr>
<td>2017</td>
<td>67%</td>
</tr>
<tr>
<td>2018</td>
<td>67%</td>
</tr>
<tr>
<td>2019</td>
<td>65%</td>
</tr>
<tr>
<td>2020</td>
<td>65%</td>
</tr>
</tbody>
</table>

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 Ethics and Compliance Hotline Benchmark Report
Anonymous Reporting Continues to Decrease Overall

Median Anonymous Reporting Rate

Unfortunately, No Change In Follow-Ups to Anonymous Reports

Median Follow-Up Rate of Anonymous Reports

Education Leads Anonymous Reporting by Industry

Highest Rate

Overall Median Rate: 56%

Lowest Rate

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*

(Data: From NAVEX Global’s 2018 Ethics and Compliance Hotline Benchmark Report)

**Case Closure Time – A One Week Difference**

(Data: From 2018 NAVEX Global Hotline Benchmark Report)

**Data: Geography Impact**
Geographic Reporting

Anonymous Reports by Geography

<table>
<thead>
<tr>
<th>Region</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>30%</td>
<td>35%</td>
</tr>
<tr>
<td>Latin America</td>
<td>25%</td>
<td>20%</td>
</tr>
<tr>
<td>Europe</td>
<td>40%</td>
<td>30%</td>
</tr>
<tr>
<td>Asia</td>
<td>15%</td>
<td>20%</td>
</tr>
<tr>
<td>Africa</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Middle East</td>
<td>5%</td>
<td>10%</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Region</th>
<th>Median Follow-up Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>70%</td>
</tr>
<tr>
<td>Latin America</td>
<td>60%</td>
</tr>
<tr>
<td>Europe</td>
<td>50%</td>
</tr>
<tr>
<td>Asia</td>
<td>40%</td>
</tr>
<tr>
<td>Africa</td>
<td>30%</td>
</tr>
<tr>
<td>Middle East</td>
<td>20%</td>
</tr>
<tr>
<td>EMEA &amp; APAC</td>
<td>10%</td>
</tr>
</tbody>
</table>

Source: NAVEX Global’s 2017 EMEA & APAC Whistleblowing Hotline Benchmark Report

Key Takeaways

- Higher follow-up rates in North America and Latin America.
- Lower follow-up rates in EMEA & APAC regions.
- Importance of timely follow-up in improving response times.

www.navexglobal.com
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