



WHISTLE BLOWERS: What can we learn and why do we need them?



Whistleblowing is defined as an act that draws the attention of an authority figure or the public to perceived wrongdoing or unethical/illegal activities (corruption) within the public or private sector. **The person who brings these improper activities to light is known as a Whistleblower** and he or she can be an *employee, client, contractor, vendor or any other individual who knows about the improper, illegal or fraudulent activities.*

Examples of Improper/Illegal Activities:

- ◆ Fraud
- ◆ Corruption
- ◆ Bribery
- ◆ Coercion
- ◆ Theft
- ◆ Improper use of Authority
- ◆ Willful omission
- ◆ Sexual Harassment
- ◆ Gross misconduct
- ◆ Bullying

Did you know that a Whistle Blower's Disclosure can be Oral or Written?

How to Report as a Whistleblower?

- ◆ When an individual provides the information regarding the improper or illegal activities to suitable person(s), the individual has made a **Protected Disclosure as a Whistleblower.**
- ◆ Once a ***Protected Disclosure*** is made, the Whistleblower is afforded protection established by various whistleblower protection laws and internal policies.
- ◆ The actual process through which a ***Protected Disclosure*** is made will vary based on the information conveyed to whom that information is provided and the internal reporting mechanisms in place within the organization.

Topics Discussed:

- ◆ **What is Whistleblowing? Who is a Whistleblower?**
 - ◆ **Examples of Improper /Illegal Activities.**
 - ◆ **How to Report as a Whistleblower?**
 - ◆ **A generalized Guide to Whistleblowing.**
- ◆ **Safeguards from Retaliation for Whistleblowers.**
- ◆ **Why are Whistleblowing Policies needed?**
- ◆ **Should Whistleblowers be Rewarded?**
- ◆ **The Future of Whistleblowing.**

Section 48(1) of the Freedom of Information Act No. 6 of 2018 outlines the following list of activities (wrongdoing) that can be disclosed by a whistleblower.

- (a) A serious threat to the health or safety of an individual or a serious threat to the public or the environment;
- (b) The commission of a criminal offence;
- (c) Failure to comply with a legal obligation;
- (d) A miscarriage of justice;
- (e) Corruption, dishonesty or serious maladministration;
- (f) Abuse of authority or neglect in the performance of official duty;
- (g) Injustice to an individual; and
- (h) Unauthorized use of public fund.



The following is a generalized Guide to Whistleblowing.

1



- **Identify the Issue.**
- What is occurring and how do you know about it?

2



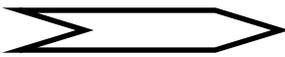
- **Document the Facts.**
- Prepare a summary of the facts describing what you witnessed or uncovered during your day to day activities. All opinions and speculation should be omitted. Consider the following to help guide you in clearly and succinctly articulating your disclosure:
 - What* are the facts?
 - Who* is involved?
 - When* did it occur?
 - Where* did it happen?*What*, based on the above, is the violation of law, rule, policy or regulation, an abuse of authority, or a substantial and specific danger to public health or safety?

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- **Who Needs to Know?**
- You should report a concern even if you have a reasonable belief of wrongdoing. At no time should you conduct your own investigation to gather the facts.
- Always report the information or alleged activity to an appropriate authorized recipient or to the appropriate person within the chain of command so that he/she may fully investigate the concern(s).

4



- **Make a Decision about Confidentiality.**
- Do you want to maintain confidentiality in reporting the wrongdoing?
- Certain authorized recipients are better able to maintain your confidentiality.

5



- **Make the Call or Submit Your Disclosure.**
- End the summary with contact information for potential witnesses.

Safeguards from Retaliation for Whistleblowers :

Retaliation means any form of harassment, victimisation or other action taken against a *whistleblower* by any person where it is suspected that such harassment, victimisation or other action is related to or undertaken in response to a complaint, submission, report or disclosure made by a *whistleblower* through the *whistleblower system*.

All complaints received through a whistleblower system should be handled, investigated and otherwise resolved as provided in the organisation's internal procedures for investigation, sanction and enforcement policy framework.

Whistleblowers are protected from any retaliation by law. Section 48(1) of the Freedom of Information Act, 2018 states that *that person shall not be liable in any legal proceedings or to any sanction relating to his or her employment if the information was disclosed in good faith and in the reasonable belief that it was true*. Additionally, Section 11(c) of the Protection of Employment Act, Cap 18:27 states that *an employer shall not terminate a contract of an employee for making a complaint or participating in proceedings against an employer involving an alleged violation of laws or regulations*.

In the case of a Compliance Officer/Reporting Officer, Regulation 11 of the Anti-Money Laundering Regulations (AMLR), 2011 make provisions for exemptions from criminal, civil or administrative liability for complying with the requirements of the regulations in disclosing any information or filing a suspicious transaction report in good faith. These exemptions extend to employees, directors, owners and other representatives of a regulated entity. Similar provisions are also outlined within Regulation 11 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations (ATR), 2011 and Anti-Proliferation (Financing of Weapons of Mass Destruction) Regulations (APR), 2011.

Why are Whistleblower Policies Needed?

A review of lessons learnt by previous scandals such as the Panama Papers, Luxleak, Danske Bank, for example have brought into the spotlight the role of whistleblowers in identifying money-laundering. It is important to note that the lack of clear protective measures can often serve as a deterrent to the reporting of misconduct by employees who may fear repercussions.

As a best practice, entities that value ethical and lawful conduct need to have policies designed to encourage timely, safe and honest reporting of alleged wrong doing. Additionally having a consistent institutional response adds to the validity of having whistleblowing policies to protect them.

An effective whistleblower policy should include:

- Examples of wrong-doing or unethical/immoral/fraudulent behavior or activities
- Mechanisms by which the whistleblower can report, whether written or verbal
- Person(s) to whom the whistleblower can report the relevant information
- Protection policy for whistleblower against any form of retaliation

Should Whistleblowers be rewarded?

The presence of reward legislation sends a message to potential whistleblowers that their information is valued and can mitigate the risks of retaliation. Reward legislation creates a safe, effective, and highly successful method for employees to disclose fraud to the appropriate authorities.

The Securities and Exchange Commission (SEC) in the USA announced awards to four (4) individuals for total payments of almost \$5 million. Each of these whistleblowers provided critical information that alerted the Commission of the alleged wrongdoing and resulted in successful enforcement action. This year, the SEC has made a record 39 individual awards of approximately \$175 million, which is more than in any prior fiscal year.

The Future of Whistleblowing

Today, whistleblowers are reporting all types of fraud, schemes and violations of securities laws which help governments to recover billions of dollars each year in ill-gotten profits. The year 2015 marked the most successful year for the False Claims Act since its inception in the United States. This trend is likely going to accelerate.

Recent history among the various programs and the modern trends in enforcement actions suggest the authorities hold all the weapons to obtain large recoveries and provide honest relators with substantial rewards.

In the U.S.A., there have been ongoing discussions about creating additional reward programs in other industries since the passage of the U.S. Dodd-Frank Act. These incentive-based approaches may have prevented events such as the BP Oil spill where safety rules were ignored or the Volkswagens emissions scandal.

Whistleblower laws have become a prominent part of the American legal landscape as the federal and local authorities have become increasingly reliant on private citizens to help detect fraud. The U.S. Government continues to indicate how highly it values the information contributed by improving the protections programs and increasing the bounties after each successful recovery. Similarly, in November 2019, the EU Whistleblower Directive (“the Directive”) came into force. Protection for whistleblowers in the UK is provided under the Public Interest Disclosure Act 1998 (PIDA).

Over the past 30 years, the U.S. Government has paid over \$5 billion in total rewards, with the largest individual payout of approximately \$100 million.



TEST YOUR KNOWLEDGE: *True or False?*

1. Whistleblowers believe that the interest of the public overrides the interest of an organization.
2. Whistleblowing always exposes illegal, unethical practices of individuals or organization.
3. Whistleblowers sometimes have privileged access to data or information of an organization that is used to inform the relevant authority or public.
4. Individuals blow the whistle to reduce their own individual liability in the reported matter.
5. Whistleblowers seek favour or remuneration for their exposure.



- ANSWERS
1. TRUE
 2. FALSE
 3. TRUE
 4. FALSE
 5. FALSE

References:

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Whistleblower Policy, Caribbean Development Bank, May 2015