



# When a Whistleblower Calls

## 1. FOLLOW YOUR PLAN

- It is important to develop—and regularly update—the company’s policies and plan for handling employee concerns and whistleblowers to reflect the current state of the law and best practices.
- An effective plan includes:
  - In-house reporting mechanisms that are known, effective, and utilized;
  - Defined response procedures;
  - Clear responsibilities and reporting obligations;
  - Procedure for assessing report credibility and preserving relevant physical and electronic material;
  - Escalation procedures for misconduct raising significant legal, business, and reputational risk;
  - Proactively managing against the risk of actual or perceived retaliation.
- The plan should be readily available to employees and included in new-employee training.

## 2. ACT QUICKLY

- All reports of misconduct should trigger review and response by the company, consistent with its policies and procedures. The scope of the investigation depends on a risk-based review of the facts, the context and credibility of the report, and potential risks.
- More significant issues may merit a more in-depth investigation, jointly with legal counsel, to address risk and preserve important company privileges, such as, if:
  - The issue is a significant instance of noncompliance or allegation of a larger trend (e.g., allegations of pervasive misconduct, criminal violations, senior management misconduct or conduct that presents significant regulatory risk);
  - There are indications that the government has or will become involved; or
  - The whistleblower is anonymous and cannot be consulted on an issue that creates a significant risk.

### Who is a Whistleblower?

A whistleblower is an individual who raises a potential issue or red flag about improper, illicit or unethical activity. More than 20 federal laws, and even more state laws, provide varying protections to whistleblowers designed to encourage reporting and shield whistleblowers from retaliation for doing so. While each law has a different definition of who qualifies as a whistleblower, if an individual raises a concern internally or to the government, he or she will likely be protected under at least one state or federal law.

### Getting Ahead of the Story

Increasingly, individuals are blowing the whistle in a very public manner—either through the government or the media. Companies should do more to ensure employees feel comfortable reporting matters of concern internally.

### 3. INVESTIGATION 101

- Establish a reporting chain within the company – who is the point person and who are the results reported to?”
- [Preserve relevant documents and data](#).
- [Protect privilege](#) by conducting investigation under the direction of counsel and clearly labeling documents and notes privileged and confidential.
- If known, engage the whistleblower to acquire as much detail—and evidence—as possible to fully understand the complaint, gather evidence and potential risks presented.
- Interview employees individually when their memories are fresh; provide [Upjohn warnings](#) and inquire about corroborating documents or other evidence.
- Analyze the evidence, document findings, and determine whether corrective action is required.
- Implement corrective action if necessary, including remedial actions, policy and procedure improvements, and training.
- Let the whistleblower know what happened. While it’s not always advisable to offer details, whistleblowers should be assured that the company takes the matter seriously, investigated and has addressed any issues.
- If required by law or otherwise advisable, consider a plan to disclose the results of a whistleblower investigation to the government.

### 4. NO RETALIATION

- Whistleblowers are protected against retaliation by numerous federal and state statutes. Employers cannot take adverse employment action against whistleblowers because they blew the whistle.
- Employers cannot prohibit or discourage whistleblowers from reporting illegal conduct to or cooperating with the government.
- Include anti-retaliation in all employees’ training.
- If the whistleblower is known, stay in touch to manage any concerns.
- If you’re asking yourself whether action against a whistleblower is arguably retaliation, you’re probably too close to the line.

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