

Caution is key when handling whistleblower claims

With increased protection and a renewed focus on corporate accountability, whistleblower claims are on the rise in the U.S.

Having a case of white collar crime or accounting fraud occur at your company is never a situation you look forward to – or expect – but the way you handle the whistleblower in the wake of a claim is a critical decision.

Employers should handle whistleblower claims carefully and diplomatically while providing as much respect and confidentiality to the subject employee as possible.

Research shows that whistleblower claims increased by 46 percent shortly after the enactment of Sarbanes-Oxley



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(from 380 in 2001 to 555 in 2002).

The increase is primarily attributable to the attention given to whistleblowers and the protections they are now afforded.

With the increased focus on whistleblowers, it has become crucial for companies who are in the midst of a whistleblower claim to carefully follow the

protections and procedures spelled out by law.

That includes the initial reaction to the claim itself.

In the private sector, a whistleblower need only have a “reasonable belief” that a violation has occurred – he or she is not required to be correct in that belief for protection under applicable law.

Employees who “blow the whistle” may be protected by law in certain situations. Federal law protects whistleblowers who work in the private sector and report violations ranging from health and safety to potential fraud.

Employees in the private sector are also protected by federal law against adverse action for whistleblowing in some circumstances. The most notable protections come from the Sarbanes-Oxley Act of 2002 and the False Claims Act.

SOX Section 806 protects whistleblowers and is based primarily on provisions found in the health and safety fields and regulated by the Occupational Safety and Health Administration.

The False Claims Act contains its own whistleblower provision that seeks to protect employees who challenge potential fraud and misconduct. The FCA not only offers protection to the whistleblower but also permits them to receive a percentage of the funds recovered by the government in some situations.

Because of the existing protections, an employee should be afforded the “benefit of the doubt” at least until the claim has been sufficiently investigated.

Here are a few things to keep in mind when dealing with a whistleblower claim:

- A swift decision to terminate, demote,

suspend, retaliate or transfer an employee could result in a violation of the whistleblower protection laws and could potentially be more damaging than the underlying incident itself.

Larger companies may have a chief compliance officer who is charged with investigating the merits of such claims.

Even so, the use of an outside consultant, attorney or investigator with specialized skills may serve to uncover the facts efficiently and timely.

- As with most investigations, independence and objectivity are essential to obtaining witness testimony and investigating facts.

- A trained investigator such as a certified fraud examiner should be utilized in cases that may involve alleged fraud – regardless of the size.

The manner in which claims are handled may reduce the risks of lengthy administrative proceedings, investigation by federal agents, subpoenas, warrants, litigation and other costs.

Dedicated claim handling will also demonstrate management’s commitment to an ethical workplace and the company’s willingness to diligently investigate alleged improprieties.

- Finally, most allegations of wrongdoing are required to be investigated and findings reported to the federal government.

Employers should consult legal counsel regarding specific investigation and reporting requirements.

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