

# Handling Whistleblower Risk

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## Overview

- ➔ 1. Overcoming barriers to reporting
- 2. Recognizing “internal” whistleblowers
- 3. Deterring “external” whistleblowers

## Anatomy of a whistleblower

- Disgruntled employee...
- Has raised concern inside organization...
- Feels the concern was ignored...
- Personal motives questioned...

A pattern of misunderstandings,  
miscommunications or worse.

3

## Assumptions about whistleblowers

The “whistleblower fallacy”:

- Our employees report problems.
- No employee reported anything.
- Therefore, whistleblower:
  - Identified known problem; or
  - Is completely wrong.

**But: Test premise!**

4

## Why employees do not report (1)

### Kitty Genovese Case

- 1964 assault/murder
- 38 witnesses, no police call
- Perceived lovers' quarrel
- Reinforced by others

### Darley/Latane Study

- 1969 study of staged seizure
- Perceived other bystanders which remained unseen
- Responses drop as # of bystanders increase

### Milgram Study

- 1961 study of obedience
- > 450 volts to others, 65% shocked another to death
- Perceived rules of "study"
- Adverse role of obedience

### Divinity School Study

- 1973 Good Samaritan study
- Most divinity students ignored bleeding man
- Training/duties irrelevant
- Perceived deadline was key

## Why employees do not report (2)

### Kitty Genovese Case

- 1964 assault/murder
- 38 witnesses, no police call
- Perceived lovers' quarrel
- Reinforced by others

**Denial**

### Darley/Latane Study

- 1969 study of staged seizure
- Perceived other bystanders which remained unseen
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**Avoidance**

### Milgram Study

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**Helplessness**

### Divinity School Study

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**Fear**

## Why employees do not report (3)

### **Denial**

("There is no problem")

- Pluralistic ignorance
- Failure to use outsider's perspective

### **Avoidance**

("It isn't my problem")

- Diffused responsibility leads to "social loafing"
- Failure to reward individual responsibility

### **Helplessness**

("I can't do anything about the problem")

- Strong org's Achilles Heel
- Failure to encourage individual initiative

### **Fear**

("I'll be punished if I do something about the problem")

- Deadlines, business goals
- Failure to reward reporting

## Improve routine reporting

- Review your organization's reporting mechanisms
- Recognize what a report requires:
  - A step outside direct hierarchy
  - "Outside the box" thinking
  - Individualized responsibility
  - Loyalty to the organization
  - Personal courage

## Encouraging routine reports: Ombuds and Hotlines

- Ombuds versus Hotline
- Process
  - Segregate policy from non-policy cases
  - Prompt referrals to legal/compliance
  - Focus investigative resources
  - Maintain communication with employee
  - Close cases (quickly and in writing)
- Structure
  - Locate in functions, not Legal/Compliance
  - One ombuds per 75 employees

9

## Encouraging routine reports: Feedback and confirmation

- Compliance communications
  - Publicize reporting “wins”
  - Publicize reporting numbers
- Compliance auditing
  - Develop metrics for reporting
  - Check reporting mechanisms
  - Test!

10

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11

## Recognizing the “internal” whistleblower

- Elevates concern after receiving response
- Positives
  - Personal/professional courage
  - Could be right!
- Negatives
  - Potential external whistleblower/relator
  - Potential de facto extortion (HR)
  - Receives huge regulator attention
- Beware “rogue” and “never-ending” reports
- Don’t overlook first responder!

12

## Mitigating risks: Liability risk in concern

- Consider self-disclosure early
- Document retention, audit committee....
- Retaliation risk
- Individual reward
- Public recognition (Boeing model?)
- Collateral issues, corrective actions

13

## Mitigating risks: No liability risk in concern

- Deter external complaint
  - Prompt responsiveness
  - Clarify confusions/misunderstandings
- Keep balance
  - Between process and “no legitimate concern”
  - Between employee and company
- Close case
  - Oral responses but written closure
  - Use outside resources if necessary
- Prevent retaliation

14

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15

## Deterring external reports: Known complaint

- “If you don’t do \_\_\_\_\_, I’ll tell \_\_\_\_\_.”
- Dealing with the complaint
  - Avoid bunker mentality
  - Consider obtaining advisory opinion
  - Never too late to disclose!
- Dealing with the employee
  - Don’t over-lawyer
  - Newspaper test

16



## Deterring external reports: No known complaint

- Exit interviews
  - Coverage, follow-up, documentation
  - Get confirmation of summary
  - Outside counsel interview departing lawyers/compliance officers
- Do due diligence: staff/vendor/customer interviews
- Encourage routine, internal reporting

17

## Encourage routine internal reporting

### ~~Denial~~ Identification/Acceptance

"We have a problem:" Encourage outsider's perspective

### ~~Avoidance~~ Ownership

"The problem is my responsibility:" Encourage ownership, spread compliance beyond legal/compliance functions

### ~~Helplessness~~ Action

"I can do something about the problem:" Encourage individual responsibility for decisions at every level

### ~~Fear~~ Reward

"If I identify/solve a problem, I'll be rewarded:" Encourage public/private recognition of reports wherever possible

18

Thanks for your time and attention!

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