

Best Practices for Addressing the Coming Surge of Whistleblower Claims

Identify Conflicting Incentives: Measure Results and Mitigate Conflicting Messages

Many formal and informal workplace incentive systems, including productivity and cost-reduction incentives, can inadvertently encourage or mask retaliation. Organizations should therefore track reports of issues and incidents of retaliation and periodically assess these systems and those for measuring or rewarding work performance to ensure that they do not discourage employee reporting or encourage retaliation.

Best Practices

- Accountability and measurement efforts should focus on “leading indicators” such as behavior that encourages compliance with workplace safeguards and fosters a “speak up / listen up” culture—rather than on traditional “trailing indicators” such as reported incidents. Evidence shows that the common practice of rewarding management for low levels of reporting leads to suppression—the primary precursor to retaliation.
- Periodically, and after any breakdowns in reporting or response, carefully review the formal and informal incentives that influence employee and management behaviors.
- Top leaders and the board should receive “dashboard” reports on reported issues, retaliation allegations, and issue resolution, along with detailed results of system audits.
- Monitoring should include near-misses and emerging issues and incidents, as well as trends in the types of issues reported and to whom they are reported.
- To ensure that informal workplace incentives and systems are understood, organizations should engage supervisors/managers in developing and reviewing monitoring efforts. Employers should strongly consider measuring manager performance in fostering a transparent workplace as part of their annual performance review.
- Be prepared for the number of reported issues to go up when a new program or more open reporting is implemented. Initially higher numbers may be due to employees feeling safer about reporting.

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Do	Don't
✓ Consider using incentives that reward preventive activities and behaviors that encourage compliance with workplace safeguards.	✗ Risk complaint suppression by tying pay or group rewards to low volumes of reported issues.
✓ Use incidents (including near misses) to assess what should be changed.	✗ View reports of problems as negative information; instead, view them as opportunities.
✓ Pay attention to the types of issues reported, which can help pinpoint trends and problems.	✗ Close investigations without resolving the issue, addressing causes, sharing results, and ensuring a fair process.

If you have questions about any of these ongoing developments:

Please connect with [Greg Keating](#), chair of Choate's Whistleblower Defense Group and a former member of the Federal Whistleblower Protection Advisory Committee.