

Best Practices for Addressing the Coming Surge of Whistleblower Claims

Monitor Effectiveness: Conduct Independent Audits of the Program

Even well-conceived anti-retaliation programs can founder. Problems can be hidden from management; normal data collection can't measure employees' fears or attitudes about reporting. To ensure that a reporting or anti-retaliation program is working as intended, leaders should periodically oversee audits that go beyond normal monitoring efforts by employing specialized, independent analysis, surveys, and interviews. Comparing internal reports to reports in external systems—such as workers' compensation, insurance claims, grievances, and exit interviews—can quickly reveal discrepancies. These and other auditing tools can reveal employees' willingness to report issues, their fears of retaliation, and the gap between program objectives and reality in the workplace. Such auditing requires extreme confidentiality in order to obtain candid replies. Senior leaders are frequently shocked by, and make significant reforms based on, the results of carefully conducted audits.

Best Practices

The most useful independent audits are likely to include some combination of the following:

- A simple examination of established whistleblower policy and program features to confirm that necessary basic policies are in place and roles are well defined.
- In-depth anonymous surveys and structured interviews with a broad sample of workers to determine whether they understand, have access to, and trust anti-retaliation policies and programs.
- Cross-checks of internal reporting data with other reporting channels, such as worker's compensation claims, grievances, attendance patterns, quit rates and locations, and exit interviews.
- Analysis of layoffs, terminations, and disciplinary actions to uncover correlations with prior reporting.
- Examination of incident investigation reports to see if policies and systems work under pressure.
- Improvement plans for delinquent facilities, work groups, and managers.
- Enforcement of parallel whistleblower and anti-retaliation provisions through supply chain contracts.
- Detailed reporting of audit results to the board so it can consider reforms or other action.

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Do	Don't
<p>✓ Independently evaluate the effectiveness of the anti-retaliation program.</p>	<p>✗ Assume that good intentions are enough or that low reporting numbers indicate few issues or problems.</p>
<p>✓ Conduct confidential, independent, in-depth employee surveys and interviews, and check external data.</p>	<p>✗ Assume from a simple work climate survey that workers feel comfortable raising issues.</p>
<p>✓ Carefully protect the confidentiality of survey and interview participants.</p>	<p>✗ Allow the auditing process to be misused for retaliation.</p>
<p>✓ Ensure proper safeguards to avoid conflicts of interest among independent auditors.</p>	<p>✗ Let audits be controlled by those who might have something to hide.</p>
<p>✓ Consider wide distribution of audit results.</p>	<p>✗ Hide the results of audits.</p>

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.