

# Have No Fear

Martindale-Hubbell posed the following question to provide a variety of views on this important topic:

*What are the central elements in establishing a workplace where employees know they can report questionable practices without fear of retaliation?*



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- Pick the right person to head your complaint process—otherwise, no one will use it. The person must be recognized as having integrity and enough power inside the company so employees will believe retaliation won't be permitted.
- Create a corporate culture that takes pride in compliance. When a company constantly reinforces that it values compliance, employees will feel safer coming forward.
- Treat employees who raise concerns like canaries in a mineshaft. Listen carefully, take concerns seriously and reply promptly. Ask them to immediately report conduct that appears retaliatory.



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Create, communicate and enforce a strong policy prohibiting retaliation. The policy should be part of a larger open-door culture and should characterize reporting as an act of loyalty, since unknown problems cannot be corrected. Offer multiple avenues of reporting. Communicate the policy through handbooks, during employee orientation and on the company intranet. Reiterate the policy often. Enforce the policy strictly, and discipline those who retaliate in any way. Take seriously all complaints of illegal behavior. Inaction will discourage others from reporting in the future.



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In-house counsel should “walk the talk” by doing the following:

- Appoint a high-visibility chief compliance officer reporting to the CEO or chairman;
- Train employees on the company's legal compliance and ethics policies that set the bar higher than the legal minimum;
- Enforce performance standards rigorously to minimize legal exposure to “defensive whistleblowing” by underperformers;
- Constantly reinforce the company's message;
- Thank employees for reporting questionable practices;
- Perform thorough, independent investigations of possible wrongdoing; and
- Take decisive disciplinary actions against violators, and remediate violations.

Whistleblowing hotlines rank as one of the key components of a strong compliance program, giving employees a way to report corporate wrongdoing. Yet, to empower employees to step forward and spotlight potential problems, companies must do much more than simply establish a reporting mechanism.



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Two critical elements are: 1) a person who is recognized for keeping confidences to receive the whistleblower calls; and 2) a trustworthy, trained person to conduct the investigation. The reporting chain should not go through the immediate supervisor. The objectivity of the investigator, the promptness of the investigation and keeping the complainant informed of its progress are crucial to avoiding skepticism about the company's good faith in conducting the investigation and the investigation results.



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A written policy, circulated regularly, should encourage employees to report questionable practices, describe the types of conduct that should be reported, identify to whom such complaints should be made and offer more than one alternative. Ensure confidentiality to the extent consistent with the employer's obligation to investigate, take appropriate corrective action and prohibit retaliation. Once in place, the policy should be followed and endorsed from the top down. Employers may also consider an anonymous hotline.



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Communication is the key to creating a workplace where employees know they can report questionable conduct safely. Employers should promulgate policies stating that improper conduct will not be tolerated and provide procedures for making complaints. Procedures should allow more than one place to complain in the event that a supervisor is the source of the complaint. Policies should provide that the company investigates allegations of improper conduct promptly and thoroughly and should make clear that no employee who complains in good faith will be subject to any sort of retaliation.

Illustrations by Holly Haugen

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