

## Compliance Today – April 2020

### Best practices for responding to internal whistleblowers

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While most compliance programs tout policies and procedures encouraging employees and contractors to internally report their concerns, the reality is that many businesses are unprepared to respond appropriately when they receive a complaint from a whistleblower. This lack of preparation often stems from a critical failure to understand the whistleblower's concerns and to train frontline managers and compliance professionals on how to speak with internal whistleblowers. As a result, internal whistleblowers are frequently forced to discuss their compliance concerns with managers or compliance professionals who are unsympathetic, offer excuses for the organization, or are judgmental of the whistleblower and their concerns. Not only does this deprive the organization of a critical opportunity to detect and stop compliance violations, but it also raises the risk that the internal whistleblower will file a qui tam complaint or take other action outside of the organization.

Such concerns are not merely anecdotal. According to a 2018 survey by the Ethics & Compliance Initiative, 69% of employees surveyed reported workplace misconduct they had observed.<sup>[1]</sup> While these results are encouraging, the same survey indicated that 44% of employees who reported misconduct suffered retaliation, with 72% experiencing such retaliation within three weeks of their initial report. These numbers reveal the glaring failure by many organizations to take full advantage of critical information that internal whistleblowers provide about potential misconduct.

Organizations that are truly committed to an effective compliance program are best served by adopting and training on best practices for responding to internal whistleblowers. Such best practices include (a) avoiding misconceptions about internal whistleblowers that can taint objectivity, (b) appreciating the concerns of internal whistleblowers, and (c) using communication skills that encourage internal whistleblowers to be forthcoming about their compliance concerns. Adopting these best practices, and training frontline managers on them, can transform a whistleblower program from one that just looks good on paper to one that actually enhances overall compliance.

#### **Best practice step 1: Avoid misconceptions about internal whistleblowers**

Despite the meteoric rise in the number of whistleblower lawsuits, many organizations still fail to train their frontline managers on understanding who can become an internal whistleblower and what their motives for reporting compliance concerns are. As a result, frontline managers often have misconceptions about internal whistleblowers that can lead them to discount credible compliance concerns and drive would-be whistleblowers to report their concerns to outside groups, including the government and private counsel. Given that most internal whistleblowers report their compliance concerns to their frontline managers, the need to avoid these damaging misconceptions cannot be understated.

One common misconception about internal whistleblowers is that true whistleblowers are people in senior levels of an organization who possess detailed and documented evidence of their compliance concerns. While such

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whistleblowers exist, it is wrong to assume that whistleblowers are all the same. In reality, whistleblowers can come from anywhere inside or outside of your organization. In my 20 years of experience working on whistleblower matters, I have seen them from current employees, former employees, independent contractors, executives, customers, patients, consultants, accountants, data miners, physicians, nurses, and even competitors. As a result, it is essential that frontline managers be trained to be aware that anyone can be an internal whistleblower and that everyone who raises a compliance concern must be treated seriously, regardless of their role within the organization.

Another common misconception is that credible whistleblowers back up their compliance concerns with documented evidence. In reality, many internal whistleblowers are focused on doing their jobs and do not have the time or training to gather evidence. The investigations are best left to compliance professionals and legal counsel. Frontline managers should be trained not to discount the credibility of an internal whistleblower merely because they lack documented support or because their report seems incomplete. Even an incomplete report of a compliance concern can provide the tip needed to begin a meaningful compliance investigation. The goal of frontline managers should be to listen to all compliance concerns without being judgmental and then report those concerns to the compliance department.

Perhaps the most damaging misconception about internal whistleblowers is that they are motivated by personal grievances or the prospect of personal gain. While these are possible motives, in my experience, the overwhelming majority of whistleblowers are motivated by the desire to right a wrong, be it improper billing or a patient safety concern. More importantly, frontline managers must treat all compliance concerns seriously, because even people with questionable motives can raise credible compliance issues. Frontline managers should be trained to focus on encouraging internal whistleblowers and learning as much information as the whistleblower is comfortable sharing about their concern. Questioning the whistleblower's motives sends the wrong signal and can defeat the goal of gathering information that is critical to assisting the compliance department.

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