

WHISTLEBLOWERS

How to Make Them Friends Not Foes of Your Compliance Efforts



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Whistleblower-for-Reward Laws



- **False Claims Acts (Federal and 30 States)**
 - Fraud on the government, broadly defined
 - *Qui tam* “relators” can receive 15-30% of the recovery
- **SEC and CFTC whistleblower programs, created by Dodd-Frank in 2010**
 - Violations of securities and commodities laws, including FCPA
 - Whistleblower can receive 10-30% of the recovery
- **IRS Whistleblower program, created by the Tax Relief and Health Care Act in 2006**
 - Violations of federal tax laws
 - Whistleblower can receive 15-30% of the amount collected

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Understand the Issue



Top five misconceptions about whistleblowers that are undermining your compliance efforts

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Misconception #1



Whistleblowers are disgruntled employees and their cases are frivolous.



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The Facts

- \$30.3B of \$44.7B recovered by the US in FCA cases 1987-2014 came from *qui tam* whistleblower cases
- “The volume of tips has been greater and of higher quality than expected when the program was first adopted ... [W]histleblowers increase our efficiency and conserve our scarce resources.”
 - ✦ Mary Jo White, SEC Chair, April 2015
- “We are tremendously grateful to whistle blowers who have brought fraud allegations to the government’s attention and assisted us in this public-private partnership to fight fraud.”
 - ✦ Asst. AG Tony West, DOJ Press Release announcing \$3B in FCA recoveries in FY 2011

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Misconception #2

Whistleblower laws encourage employees to by-pass the compliance program in order to collect a reward



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The Facts



- **8% of corporate employees who reported wrongdoing went outside the company in the first instance**
- **Only 20% of those who reported internally ever chose to report externally**
- **“[W]hen employees reported externally, it was because they needed support and wanted to help stop misconduct or limit its harm”**

✦ Ethics Resource Center, National Business Ethics Survey of the US Workforce 2013

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Misconception #3



Whistleblowers are motivated by revenge



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The Facts



- 99.5% of employees said they reported because it was the right thing to do
- 79% said they reported because they believed corrective action would be taken
- “[P]ersonal agency – the idea that ‘I can have an impact’ – motivates reporting.”

✦ Ethics Resource Center, “Inside the Mind of a Whistleblower,”
2012 National Business Ethics Survey

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Misconception #4



There’s no fraud in
this company



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The Facts



- 41% of employees said they observed misconduct in the workplace
- 60% of misconduct involved someone with managerial authority from the supervisory level up to top management.
- 24% of observed misconduct involved senior managers.

× Ethics Resource Center, National Business Ethics Survey of the US Workforce 2013

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Misconception #5



Whistleblowers are a threat that needs to be managed



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The Facts



- “[T]he most significant factor that encourages potential whistleblowers to expose wrongdoing is ... whether the risk they take will lead to positive change.”
 - ✦ “Measuring the Effectiveness of Canadian Whistleblowing Law,” F. St-Martin, Int’l Anti-Corruption Academy, 2014
- Whistleblowers are an opportunity
 - They want to right wrongs
 - They are achievement oriented
 - They strive for results

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Change the Paradigm



- “[E]specially in the post-financial crisis era when regulators and right-minded companies are searching for new, more aggressive ways to improve corporate culture and compliance, it is past time to stop wringing our hands about whistleblowers. They provide an invaluable public service, and they should be supported.”
 - ✦ Mary Jo White, SEC Chair, April 2015

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Change the Paradigm



- **“Responsible companies with strong compliance cultures and programs should not fear bona fide whistleblowers, but embrace them as a constructive part of the process to expose the wrongdoing that can harm a company and its reputation.”**
 - ✦ Mary Jo White, SEC Chair, April 2015
- **“[R]ules and policies should ... clearly establish that whistleblowing is not disloyal but supportive of the firm.”**
 - ✦ “Measuring the Effectiveness of Canadian Whistleblowing Law,” F. St-Martin, Int’l Anti-Corruption Academy, 2014