#### WHISTLEBLOWERS

How to Make Them Friends Not Foes of Your Compliance Efforts

#### LESLEY ANN SKILLEN

HEALTHCARE ENFORCEMENT COMPLIANCE INSTITUTE
HEALTH CARE COMPLIANCE ASSOCIATION
OCTOBER 25-28, 2015
WASHINGTON DC

GETNICK & GETNICK LLP
521 FIFTH AVENUE
NEW YORK, NY 10175
WWW.GETNICKLAW.COM

#### Whistleblower-for-Reward Laws

- False Claims Acts (Federal and 30 States)
  - o Fraud on the government, broadly defined
  - o Qui tam "relators" can receive 15-30% of the recovery
- SEC and CFTC whistleblower programs, created by Dodd-Frank in 2010
  - o Violations of securities and commodities laws, including FCPA
  - O 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

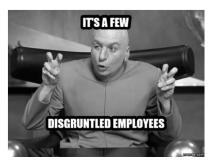
### Understand the Issue

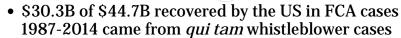
Top five misconceptions about whistleblowers that are undermining your compliance efforts

Cetnick & Cetnick LLP

# Misconception #1

Whistleblowers are disgruntled employees and their cases are frivolous.





- "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."
  - x 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

Getnick & Getnick LLP

### Misconception #2

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



- 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

Getnick & Getnick LLP

# Misconception #3

Whistleblowers are motivated by revenge



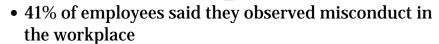
- 99.5% of employees said they reported because it was the right thing to do
- 79% said they reported because they believed corrective action would be taken
- "[P]ersonal agency the idea that 'I can have an impact' motivates reporting."
  - ★ Ethics Resource Center, "Inside the Mind of a Whistleblower," 2012 National Business Ethics Survey

Getnick & Getnick LLP

# Misconception #4

There's no fraud in this company





- 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

Getnick & Getnick LLP

### Misconception #5

Whistleblowers are a threat that needs to be managed





- "[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
  - o They are achievement oriented
  - They strive for results

Getnick & Getnick LLP

# 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."
  - x Mary Jo White, SEC Chair, April 2015

# **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