



Treating Whistleblowers as Friends, not Foes

Publication

10.19.15

Sue Schaecher's article "Treating Whistleblowers as Friends, not Foes" was featured in *Law Week Colorado* on October 19, 2015.

In recent years, the number of whistleblower claims has increased. In the past fiscal year, ending September 2014, a record 42 percent of all discrimination charges filed with the Equal Employment Opportunity Commission alleged retaliation. The coverage of whistleblower laws has been expanding.

In the article, Sue provides employers with several steps to consider following to encourage employers to make internal reports:

- Know which anti-retaliation and whistleblower laws apply to your company and how they define protected activity.
- Have an effective anti-retaliation and compliance policy that is broad enough to encompass a variety of laws. Avoid relying solely on an anti-retaliation policy that is buried in a harassment policy.
- Have a policy with more than one avenue for reporting concerns. Employees should not be required to report up the chain of command because the next person may be the wrongdoer. Follow up periodically with whistleblowers to make sure there has been no retaliation.
- Promptly document all complaints as well as the company's response. Locking employees into their complaints at an early state can protect against the expansion that sometimes occurs after an employee talks to an attorney or government agency.
- Track complaints. One consequence of having multiple avenues for reporting is that no one person or department may have the complete picture. Identify a central repository for all complaints.
- Treat all complaints confidentially to the extent consistent with conducting a full investigation and taking any action warranted.
- Do not ask employees for complete confidentiality. The National Labor Relations Board has held that requiring employees to keep investigations confidential violates the National Labor Relations Act, which protects employees who engage in protected concerted activity concerning the terms and conditions of their employment.

- Consult with counsel before disciplining a whistleblower.
- Train managers, supervisors and anyone likely to field a complaint on how to recognize protected activity and how to respond to complaints.

Related People



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