

BLOG POST

The Answer, My Friend, Is Blowing [in] the Whistle

July 31, 2014

Yesterday, the Senate did something.

(Aside: I know, right!? In the words of one of my colleagues, “Shut the front door!” Because at the end of 2014, this 113th Congress will be the [least productive](#) ever in passing legislation signed into law.)

Okay, I’ll grant you that the Senate didn’t pass a law or anything. But what they did do is to pass a resolution to exercise more often – whoops, sorry, that was my New Year’s resolution – to designate July 30, 2014, as National Whistleblower Appreciation Day. The resolution was [passed unanimously](#) (!) on what was the 236th anniversary of the first whistleblower law.

According to the font of all wisdom, [Wikipedia](#), a whistleblower is a “person who exposes misconduct, alleged dishonest or illegal activity occurring in an organization.” From Deep Throat to Edward Snowden – whatever you think of them – whistleblowers expose private information often at significant [personal risk](#). As such, whistleblowers are afforded protection by the government, and often receive monetary awards. Both the SEC and CFTC, for example, have announced awards to whistleblowers, including a [\\$14 million award](#) from the SEC and a [\\$240,000 award](#) from the CFTC. In fact, the SEC has had more than [6,500 individuals](#) offer information since mid-2011. Jeepers.

So here’s what I’m not going to comment on: whether whistleblowers should receive monetary rewards, whether they should have anonymity, or even whether David Lee Roth was better than Sammy Hagar. Instead, I’m going to assume that whistleblowers are a fact of life and that they often begin with their complaints in-house and escalate when no action is taken.

So given these facts of life, what does an organization need to know?

Do you need to know motivation, like why does a whistleblower emerge? Well, I can think of three reasons why people blow the whistle: (1) Money. Federal law incentivizes them to do it by paying them. If reporting wrongdoing can net \$14 million, people are coming forward to talk about it. (Note to self: Try this at home. Direct girl-child to report on boy-child’s nefarious activities in exchange for snacks. Find out whether he’s intentionally burying Legos in the carpet to disable me.) (2) Morality. It’s the right thing to do. Those who have given their blood, sweat, and tears to companies for twenty years do not want to see them going down the wrong paths. (3) Revenge. People who perceive that they have been treated unfairly may believe that anonymous reports are their way of striking back.

As the representative of an organization who receives a whistleblower complaint, does knowing these motivations do anything for you? Heck no! Why? Because whatever motivational camp

you believe the whistleblower falls in, the organization's response *should not change*. It should take every complaint seriously and treat every whistleblower with respect. Because it's pretty easy to shift a category one or two whistleblower into a category three hurricane-style whistleblower with a callous, tone-deaf response

So first, *assess*. Listen to what the whistleblower is telling you. Does it make sense? Do you have all of the details you need to follow up? Can s/he give you documentation or specific names or events? Common sense here: let your whistleblower know that you are going to follow up, that you take it seriously, and that you will have an answer within a specified amount of time. Treat the whistleblower how you would want to be treated if you went to get your car repaired – not how you're treated when you try and get your air conditioning fixed ("I'll give you a six-hour window, pal!"). Oh, and if you need to do this, do it privately.

Next, *evaluate*. Can you substantiate what the whistleblower is telling? Have you talked to everyone you need to talk to? Have you gathered all of the documents that you need?

Finally, *determine appropriate action*. Look, you've either got a problem, or you've got a problem, right? You've either got an unhappy whistleblower or you've got a problem in your company. The only thing you can do here is fix your company's problem or show that you investigated the issue but are ultimately unable to conclude that there's something that needs to be addressed. In the event that your unhappy whistleblower talks to a federal agency, count on your response being scrutinized.

Tough issue, right? And one that's fraught with personality, peril, and pride. (I'm going to pause for a moment while you appreciate my alliteration. Go ahead. Okay. Ready to wrap up? Let's do it.) I'm sure that none of it makes you want to throw a barbeque or exchange presents in honor of National Whistleblower Appreciation Day, does it? No. But there is one thing that any whistleblower day does have.

It does come with its own fireworks.