

Report Shows Rise in Whistleblower Activity

May 3, 2016

Many organizational leaders would agree that it is critical for them to learn of potential violations of law or regulations within the organization as soon as possible so that they may address them and move the organization forward. Many would also prefer to learn of potential violations from the employees who discover them, rather than from federal or state regulators swooping in to investigate.

An [annual study](#) recently published by Navex Global – analyzing data from organizations that use Navex for their ethics hotline needs and that individually received ten or more internal reports in 2015 – confirms what we at Katz, Marshall & Banks, LLP, are seeing daily in our practice: Internal reports are on the rise. The Navex Global study reveals a significant rise in internal reporting of corporate misconduct over the last several years, increased internal substantiation of reports in 2015, and increased percentage of individuals making reports who choose not to be anonymous. But it also reveals an increasing duration for internal investigations and a marked increase in the rate of confirmed reports of retaliation against the employees.

Increase in Internal Reports

Perhaps because of the rapidly-increasing [whistleblower protections](#) in federal law, the authors of the study saw a 44 percent increase in internal reports between 2010 and 2015, with the new rates of reporting consistently high over the last several years. The report's authors speculate that the new higher level of reporting could be due to more media attention on workplace rights and whistleblower laws, maturing ethics and compliance programs, a greater variety of management tools used to capture reports, or increasing confidence that speaking up would make a difference. These rationales fit well with what we see in our practice: an increasing number of individuals who have made reports within their companies before coming to see us and who say they have done so because they know about new whistleblower protections or because the company has developed a robust culture of compliance.

Reduction in Whistleblower Anonymity

The report's authors found that after a steady decline since 2008 in reporters who chose to stay anonymous, 2015 was the first year that rate fell below 60 percent – meaning that nearly half of internal reporters chose to attach their names to their reports. This may be related to increasing general knowledge about available whistleblower protections. The study's authors suggest – and it is borne out by our experience speaking with whistleblowers – that employees were more fearful of the retaliation that could accompany using their names during the recession, when another job was hard to come by. Another motivation the authors posit is that, with greater knowledge of whistleblower reward programs such as those sponsored by the [Securities and Exchange Commission](#) or [Internal Revenue Service](#), employees may be attempting to mark themselves as the original source of information, should they decide to make an external report later on.

Internal Investigations Taking Longer

Somewhat surprisingly, the time it took an organization to complete its investigation climbed in 2015,

from a low of 32 days in 2011 to a high of 46 days in 2015. This may suggest that organizations do not yet have the infrastructure in place to rapidly handle an increasing number of reports. Reports in the category of “Accounting, Auditing and Financial Reporting” took, on average, the longest to resolve: 55 days in 2015, nearly half the 120-day period some employees must give the company to investigate before reporting the misconduct to the Securities and Exchange Commission. Our clients who report internally frequently find that investigations take much longer than expected, which can be a major source of frustration when the issues reported merit urgent attention or rectification. On the other hand, organizations should take the time to do a thorough and accurate investigation.

Retaliation Incidents Rise

That lengthy time period for investigations affects our clients in another way: a longer time in which to wonder whether the proverbial other shoe will drop and they will suffer retaliation for having made the report. While the percentage of reports analyzed in the Navex Global study that included a report of retaliation rose from 0.52 percent to 0.91 percent between 2011 and 2015, representing a small number of reports, the substantiation rate for these reports rose to 26 percent in 2015 from 10 percent in 2011. It is not clear from the data the report analyzed whether this increase is due to increased incidence of retaliation in the context of a tightening regulatory framework, due to improved investigatory efforts, or due to something else. It also does not address the fact that, in our experience, most employees who believe they have suffered retaliation in the workplace do not report that retaliation to their employers out of fear of further retaliation.

The statistics in this study offer a fascinating viewpoint into the world of internal whistleblower reporting. We are optimistic that employees who learn of misconduct in their workplaces will continue to become more comfortable reporting it internally – even using their own names – and that organizations will continue to refine their investigatory techniques to speed investigations and make accurate determinations about underlying misconduct and about allegations of retaliation.