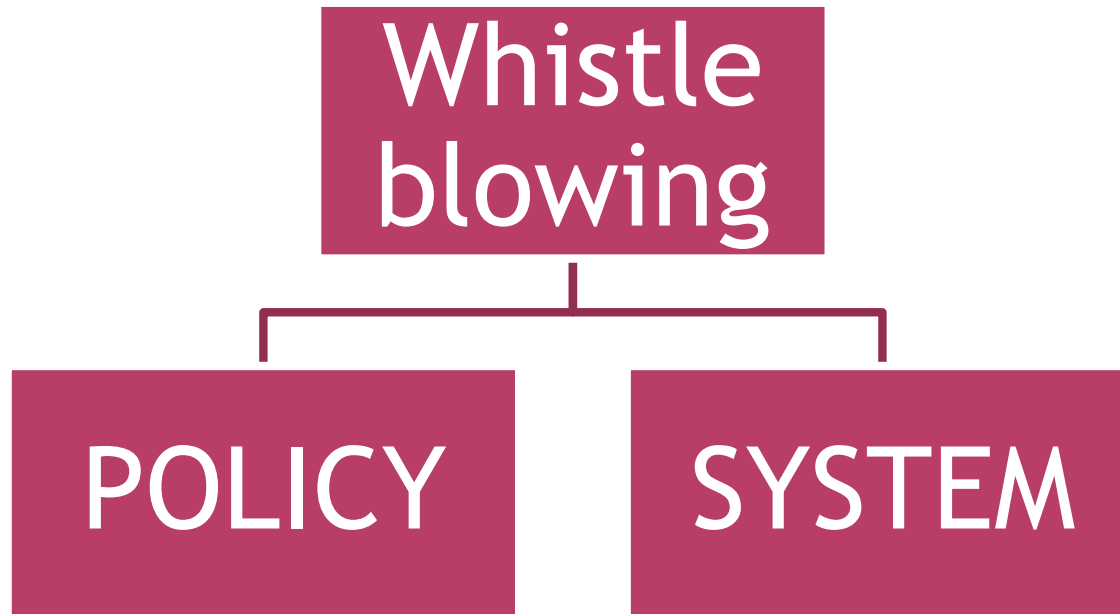


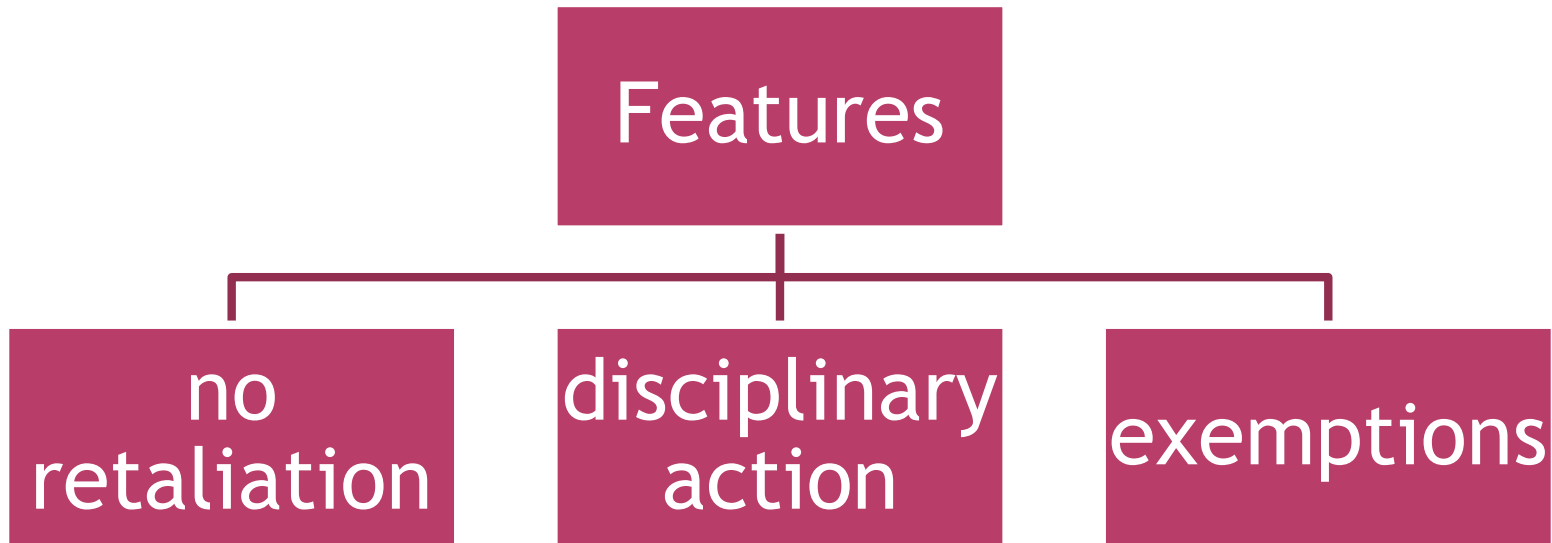
FACTORS TO BE CONSIDERED IN IMPLEMENTING A WHISTLE BLOWING POLICY AND SYSTEM - OVERVIEW



WHISTLE BLOWING POLICY SHOULD INCLUDE

- ⦿ Purpose/scope/tolerance/definition
- ⦿ An operating standard, therefore:
 - Must be compliant with
 - internal disclosure
 - external disclosure
 - associated legislation and regulation
- ⦿ -must be monitored and reported

WHISTLE BLOWING POLICY (CONTINUED)



WHISTLE BLOWING POLICY - CONTENT

◉ Roles and responsibilities

- Senior management
- All employees
- Managers
- Legal/Compliance/Fraud Officer/IAD
- Human resources
- Chief Compliance Officer

EXAMPLE OF A WB REPORT

- ◉ Summary report
- ◉ Description and date reported
- ◉ Risk rated
- ◉ Action plan and owner
- ◉ Estimated closure date
- ◉ Key issues and recommendations

DEVELOPING A WB SYSTEM

- ◉ Preferably use external resource for hotline unless you can cope internally
- ◉ Give option of anonymity
- ◉ Give multi-language opportunities
- ◉ Give many ways of contact - postal address, phone, email.

IMPLEMENTATION OF A WHISTLEBLOWING POLICY

DOs 

DONTs 

WB SYSTEM MUST

- ⦿ Have procedures in place for receipt, retention and treatment of complaints
- ⦿ Assure the WB that complaint will be dealt with confidentially and anonymously
- ⦿ Feedback must be provided to the WB in a timely manner.

PRACTICAL CONSIDERATIONS - DO

- ⦿ Explain absolute management commitment (tone @ the top) to the policy ✓
- ⦿ Train all employees in the policy, i.e. how to raise a concern internally, how to get independent advice, how to make external contacts if necessary, matters raised maliciously ✓
- ⦿ Protect the employee ✓
- ⦿ Explain how matters will be handled ✓

DON'T

- ⦿ Don't make it a grievance procedure ✗
- ⦿ Don't drag out investigations ✗
- ⦿ Don't make management decisions and fail to communicate these with those who need to know ✗
- ⦿ Don't entertain malicious gossip ✗

ILLUSTRATIVE EXAMPLES OF WB COMPLAINTS

1. Recruitment allegations
2. Employees receiving kickbacks
3. Alleged bribery and corruption

CASE 1 - RECRUITMENT ALLEGATIONS

- Two employees complained to a Board Director, then through the WB hotline about the suspicious behaviour of their new HR director
- Local management investigated and found no case to answer, but HO Compliance had questions
- In the meantime both employees resigned

CASE 1 - RECRUITMENT ALLEGATIONS

- The independent investigation found that:
 - The HR director lied on her CV
 - The HR director was suing an old employer for defamation and was being sued by her previous employer for data theft
 - The background search done by vendor employed by HR director was not detailed and was incomplete
 - Local management took a lot of convincing to terminate the HR director

CASE 1 - RECRUITMENT ALLEGATIONS

○ Lessons learned

- Don't dismiss allegations as being from "disgruntled employees" - look at motivation
- Don't let local management undertake the investigation - independence issue
- Back ground checks are not always reliable or accurate
- Timing is all

CASE 2 - EMPLOYEES RECEIVING KICKBACKS

- ⦿ Local management received several anonymous complaints from auto workshops, naming 3 claims employees who were asking for 10% kickbacks before signing off on claim amounts payable to the auto workshops
- ⦿ Kickback payments were made through a third party law firm handling the claims

CASE 2 - EMPLOYEES RECEIVING KICKBACKS

- ⦿ All negotiations were done by e-mail between the claims handlers and their contact in the law firm who dealt with the auto workshops
- ⦿ The kickbacks were received by the law firm contact and banked in the claims employees' bank accounts

CASE 2 - LESSONS LEARNED

- ◉ Local management were inclined to ignore anonymous letters since there were so many of them and they contained some wild allegations
- ◉ Local claims department did not want to lose 3 experienced claims handlers
- ◉ Were all the people involved discovered?
- ◉ Problem of finding definitive evidence- company e-mails, confessions.

CASE 3 - ALLEGED BRIBERY AND CORRUPTION

- A WB used a courier company to deliver an anonymous letter to 3 senior staff alleging bribery and corruption and HR violations by the head of the claims unit
- WB was very detailed about the bribery and corruption activity and threatened to go to the regulator if a thorough investigation was not carried out

CASE 3 - ALLEGED BRIBERY AND CORRUPTION

- One of the people who received the letter was the labour union representative who sent the letter around the company to all union members so that the investigation became very high profile within the company.

CASE 3 BRIBERY AND CORRUPTION - CHALLENGES IN THE INVESTIGATION

- ◉ Language - outsource
- ◉ Data privacy laws-victim provided copies of his passport and personal bank accounts for review
- ◉ Computer forensics- PCs e-mails
- ◉ Hearsay evidence versus actual evidence obtained in interview
- ◉ Discounting offer of "help" from an employee
- ◉ Working with an external firm of investigators

CASE 3 - LESSONS LEARNED

- ⦿ Make all efforts to locate WB
- ⦿ Be mindful of business relationships e.g. with vendors -can you ask them to tattle on employees?
- ⦿ Train all employees in Code of Conduct and all other compliance policies re gifts and entertainment. Entertainment can be OK with in reason - encourage transparency.

GUIDANCE ON HANDLING WB CASES

WHAT TO DO

GUIDANCE ON HANDLING WB CASES

1. Timing of investigation and communication is key
2. Make all efforts to contact WB , but treat him like an informer.
3. If you make promises be sure you can keep them i.e. check your authority
4. In bribery and corruption allegations (most WB complaints) look for good evidence that will stand up in court.

GUIDANCE ON HANDLING WB CASES

5. Draw up plan but be flexible- list of interviewees, order of interviews, findings (don't miss anything), deal with language difficulties, correlate all sources of evidence.
6. Ensure internal and external reporting is accurate and timely.
7. Follow up on legal/management action.

GUIDANCE ON HANDLING WB CASES

8. Inform WB of progress, if necessary (but can be a double edged sword!).
9. Share lessons learned with employees

THE IMPORTANCE OF WB REPORTS

ACFE 2012 Report to the Nation on Occupational Fraud and Abuse. Methods of fraud discovery :

- 43%** from tip offs (34% in 2006)
- 14% by management review
- 14% by internal audit (21% in 2006)
- 8% by internal controls (19% in 2006)
- 7 % by accident (25% in 2006)
- 3% by external audit (12% in 2006)
- 3% by police
- 8% by other