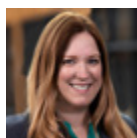


What to Do When a Whistleblower Comes Forward

Whistleblowers play an increasingly important role in the investigation of businesses by federal and state governments. While few businesses expect to become the subject of a government investigation, it happens every day across every industry. It is imperative that all organizations consider the risks in advance, develop effective compliance programs, and encourage their employees to report issues to management before turning to the government.

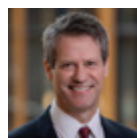
Dykema attorneys have helped many clients prepare for whistleblowers and have advised them about how to appropriately respond when a whistleblower comes forward. Companies should follow the steps listed below as a starting point—although nothing replaces the guidance of competent and experienced counsel:

- 1 Refer to your company's policies on internal investigations and apply them consistently.**
- 2 Start an internal investigation as soon as possible.** If you wait too long, the whistleblower may go to the authorities, other employees may become less willing to talk, and the government may decide it no longer needs your assistance.
- 3 Consider who will conduct the investigation.** Using an attorney can shield the investigation with attorney-client privilege.
- 4 Scope the investigation appropriately and revisit throughout.** To qualify for cooperation credit from the government, you must identify all individuals involved in the misconduct and all facts relating to it. Balance that desire for completeness with cost and avoid scope creep.
- 5 Have your counsel issue a litigation hold to ensure relevant documents are preserved and determine which employees should receive it.** Consider whether your IT department can preserve documents without notifying certain employees.
- 6 Collect relevant documents as efficiently as possible.** Prepare a plan for review of those documents, balancing the desire for completeness with costs.
- 7 Decide how you will memorialize the information you collect from interviews.** Interview memoranda should allow facts to be extracted from attorney mental impressions and other work product, allowing the facts to be reported appropriately without waiving privilege.
- 8 Conduct interviews.** Start with the whistleblower, perhaps even before reviewing documents. Allow your list of other interviewees to evolve as you collect information. Likely end with interviews of allegedly culpable individuals, but consider that they may be less forthcoming if they learn about the investigation from others. Consider whether interviewees need separate counsel, and provide each with a thorough Upjohn warning.
- 9 Determine to whom and in what format you will report your findings.** Consider internal compliance obligations, accountants and auditors, and appropriate government bodies. Whether to self-disclose to the government is a fact-sensitive analysis that should be done with the assistance of counsel. Written reports are the best record but can also become a roadmap to later government investigations.
- 10 Do not impose adverse employment consequences on the whistleblower for complaining.** But, you may choose to reprimand employees who refuse to cooperate or to discipline wrongdoers in accordance with your company's disciplinary policies.



Jennifer L. Beidel

Member | Bloomfield Hills
248-203-0506 | jbeidel@dykema.com



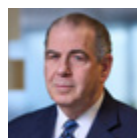
Mark D. Chutkow

Member | Bloomfield Hills
248-203-0715 | mchutkow@dykema.com



Chantel L. Febus

Member | Washington, D.C.
202-906-8680 | cfebus@dykema.com



Jonathan S. Feld

Member | Chicago / Washington, D.C.
312-627-5680 / 202-906-8716 | jfeld@dykema.com



www.dykema.com

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C. | Wisconsin

As part of our service to you, we regularly compile short reports on new and interesting developments and the issues the developments raise. Please recognize that these reports do not constitute legal advice and that we do not attempt to cover all such developments. Rules of certain state supreme courts may consider this advertising and require us to advise you of such designation. Your comments are always welcome. © 2024 Dykema Gossett PLLC.