

Bond

Environment, Health & Safety: Whistleblower Investigations & Lessons Learned

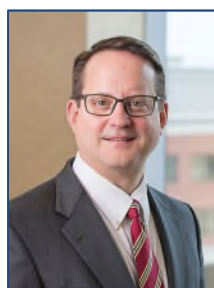
How to prepare,
How to respond...



Presenters



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What we'll talk about

Practical lessons learned in addressing employee complaints and managing corrective action

- Background
- The 6 Ps
- Initial Response
- The Response
- Closure and Corrective Actions
- Monitoring



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Background – Whistleblower Protection in EHS Statutes

- Asbestos Hazard Emergency Response Act
- Clean Air Act
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Federal Water Pollution Control Act
- Safe Drinking Water Act
- Solid Waste Disposal Act
- Toxic Substances Control Act
- Occupational Safety & Health Act



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Background – Whistleblower Statutes Generally

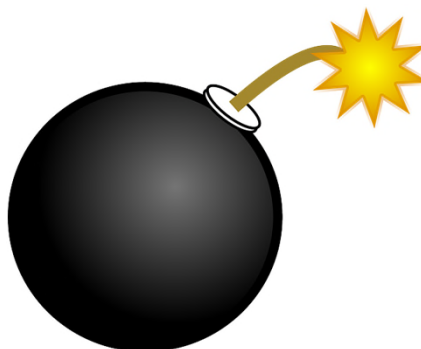
- OSHA enforces retaliation claims by whistleblowers under all the above statutes
- Retaliation determination:
 - Employee engaged in protected activity
 - Employer knew about or suspected the protected activity
 - Employer took an adverse action
 - The protected activity motivated or contributed to the adverse action.



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Triggering Event(s)

- Something is wrong and management is not responding responsibly.
- Something is OK, but appears wrong to an uninformed observer.
- Something is OK, but political payback is the motivation (needs an apparent impropriety).



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Proper Planning – Reputation

Real Estate – location, location, location

EHS – reputation, reputation, reputation

- Build honest, transparent relationships with the regulators... before you need it.

Result? Benefit of the doubt!



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Proper Planning – Monitor Your Workplace(s)

- Employees
- Contractors
- Government employees
- The Public (neighbors, interested parties, and remember FOIA)

Listen! (observe – walk the floor, talk, network)



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Proper Planning – Management Systems

Corporate policy and working system to collect complaints.

- Ombudsman, Compliance Officer
- Complaint mechanism (mail, phone, email)
- Direct discussion with management, corporate officers, legal, compliance
- Policy requiring employee cooperation (**important!**)



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Proper Planning – The Players

- Response Team (cogitate beforehand)
 - Legal
 - Security
 - Human Resources
 - Compliance & Ethics (or Responsible Executive)
 - Site / Function Leadership
 - Subject Matter Expert(s)
 - Public Affairs

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Contact!

(that awkward phone call, email, letter, conversation)...

Maybe they don't fully understand,
 Maybe they are right for the wrong reason,
 Maybe they are difficult and annoying,
 but...

Most of the time, Whistleblowers raise genuine substantive issues that need to be addressed!



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Initial Response

- Convene Response Team
 - Confidentiality!
- Notify Management
 - Or not...
- Contact Whistleblower
 - Confirm understanding of the concern
 - Assure a thorough investigation
 - Set up communication protocol
- Agency notification(s)



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The Response

- The Team
 - Internal, external, or combined
- Self-disclosure options
- Individual conflicts

...and you need a
Lead Investigator!



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The Response (continued)

- Interview (who)
 - two interviewers, notes (“I didn’t say that”), and get all viewpoints!
- Inspect (what)
 - collect & preserve photos / data / samples
- Records (how far, how wide)
 - collect and preserve records
 - electronic holds

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Closure

- Written Report
 - Findings and Recommendations
- Disciplinary Actions
 - Fundamental Fairness
 - “Al Capone Strategy”
- Corrective Actions
 - Capital Expenditures
 - Legal / Regulatory
- Preventive Actions
 - Management Systems



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Monitoring

- Assure follow-through of Closure items
- Review “Proper Planning” and see where improvements needed
- Keep the issue on your network’s radar
 - people, equipment, operation, function

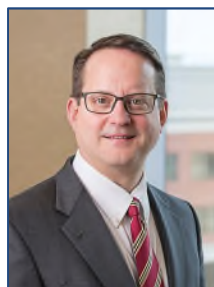


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