

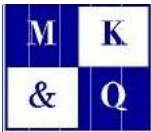
IF YOU SEE SOMETHING, SAY SOMETHING: CONSIDERATIONS FOR EMPLOYEES TO SAFELY REPORT MISCONDUCT

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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, “legal advice.” If you are presented with a specific issue, you should consult with legal counsel.



INTRODUCTION

Misconduct by employees can cause serious damage to an organization. Employee misconduct can include:

- violating employer policies;
- health or safety violations;
- conducting personal business on company time;
- sexual misconduct;
- harassment;
- discrimination;
- misuse of internet or social media; and
- theft.

INTRODUCTION

(continuing)

Employees who timely report known or suspected misconduct of coworkers allow the employer to take timely action to minimize legal liability.



Conversely, employees who are aware of misconduct of coworkers or supervisors, but fail to inform organization leadership, can subject the employer to significant legal liability.

INTRODUCTION

(continuing)

This discussion will address the following issues:

- What are some reasons why employees are reluctant to report misconduct?
- What steps can an employer take to encourage employees to report misconduct?
- What should an employer do when it receives information about suspected employee misconduct?

EXAMPLE

- A) Employee in parish preschool observes a coworker make repeated harsh, loud, and demeaning comments to students in the preschool, and then fails to report that to preschool leadership.



Question: What are the risks with failing to report and allowing that to continue?

EXAMPLE

- B) Employee in parish Faith Formation Program observes an adult male volunteer driving a middle-school-aged male student to the home of the volunteer without another adult being present. The Faith Formation Department employee does not report that to supervisor or parish leadership.

Question:

What are the risks with failing to report?



EXAMPLE

- C) Parish Business Administrator observes a married male employee and married female employee (both with separate spouses), who are intoxicated at parish event, leave event together. The female employee returns two hours later appearing disheveled and distraught.



Question: What action, if any, should be taken by the Business Administrator?

FACTORS THAT DISCOURAGE EMPLOYEES FROM REPORTING MISCONDUCT

Lack of Support from Organization Leadership

- Messaging and actions from top management indicating that employees who report misconduct will not be protected.

Intimidating Personalities

- Dominating manager or supervisor personalities can discourage subordinates from reporting misconduct.

FACTORS THAT DISCOURAGE EMPLOYEES FROM REPORTING MISCONDUCT (*continuing*)

Mistrust

- If employee is not sure which individuals in the organization can be trusted, fear of making report to “wrong person” can discourage reporting.



Excessive Team Loyalty

- Loyalty to an organization is generally a good thing and can strengthen the organization. Misplaced loyalty may encourage an employee to overlook misconduct for the “good of the team.”

FACTORS THAT DISCOURAGE EMPLOYEES FROM REPORTING MISCONDUCT (*continuing*)

Leadership Does Not Want to Hear About Problems

- Excessive focus on accomplishing a task or goal can discourage a staff member from reporting possible misconduct for fear of it being considered a distraction.
- An employee who wishes to raise a concern can be considered as “not contributing” and should be ignored.
- “If you are not with us, you are against us.”



FACTORS THAT DISCOURAGE EMPLOYEES FROM REPORTING MISCONDUCT *(continuing)*

Lack of Effective Policy or Procedures

- If an organization does not have policies that encourage reporting misconduct and that prohibit retaliation, the implicit message can be that reporting misconduct is not a priority.



PROBLEMS WITH THE REPORTING PROCESS

Perception that Wrongdoing Will Not be Addressed if Reported

- If an employee observes that other reports of misconduct were not addressed, or worse, that the employee who reported the misconduct was retaliated against, the clear message is: “Don’t report.”



PROBLEMS WITH THE REPORTING PROCESS

(continuing)

Fear That Report Will Not be Handled Anonymously or Confidentially

- Employees can have a high level of concern that a report of suspected misconduct will not be kept confidential.



PROBLEMS WITH THE REPORTING PROCESS

(continuing)

Fear That the Reporter's Identity Will be Revealed to Others in the Organization

- In smaller organizations, it may be very easy for the individual who is the subject of the report to deduce the identity of the person making the report. That can discourage reporting.



PROBLEMS WITH THE REPORTING PROCESS

(continuing)

Concerns That the Person Accused of Misconduct Will Not be Held Accountable

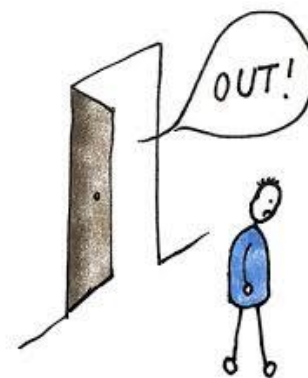


- If the paper trail leads to someone other than the person who engaged in the misconduct, the reporter might conclude that the wrongdoer will not be held accountable.

OTHER CONCERNS ABOUT REPORTING

Retaliation by Coworkers

- Retaliation can take many forms (being ostracized by coworkers; moved to less desirable position; changed duties).



Termination

- Reporting of misconduct is a significant impediment if reporting could result in termination (especially if reporter is the family's sole provider).

OTHER CONCERNS ABOUT REPORTING

(continuing)

Diminished Reputation

- Reporter may be concerned that whistleblower tag will follow the employee.



Fear of Adverse Impact on Others

- The reporter may be concerned about the reputation of the accused, the organization, and outside supporters of the organization.

OTHER CONCERNS ABOUT REPORTING

(continuing)

Fear That Allegations of Misconduct Are Not Substantiated

- The employee may not know all of the facts. It may be that the employee's concerns are misplaced. In that event, suspicion may turn to the person who made the report.

Emotional Cost of Whistleblowing



- Whistleblower typically experiences great uncertainty, fear, suspicion, and anxiety.

FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT

Top Managers Set Right Tone

- Leadership must announce support for reporting misconduct and prohibiting retaliation.



FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT (*continuing*)

Promote Strong Ethical Culture

- The organization must be transparent, encourage open communication, and engage employees in the ethical culture of the organization.



FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT (*continuing*)

Emphasize Importance of Reporting Misconduct



- Repeatedly training employees to report misconduct for the good of the organization can set the proper tone.
- Refer to established whistleblower policies.

FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT *(continuing)*

Promote Strong Anti-Retaliation Policy

- Employees need to be confident that concerns can be reported without fear of retaliation.

Whistleblower Policy

- Individuals responsible for administering the whistleblower policy must be viewed as having independence and integrity.

FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT (*continuing*)

Provide Ongoing Training to Employees Regarding Handling Suspected Misconduct

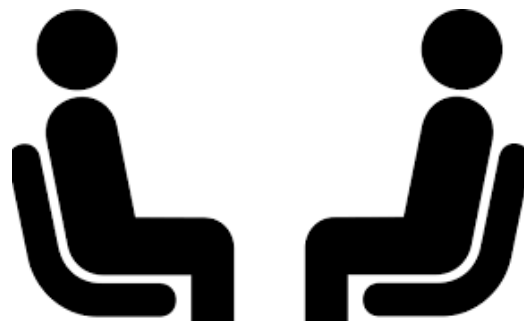
- Training should include:
 - *What is considered misconduct?*
 - *Importance of reporting misconduct.*
 - *Clear methods for reporting misconduct.*
 - *Emphasize anti-retaliation policy.*
 - *Examples of how a prior report of misconduct benefited the organization; wrongdoing was punished and reporter was protected.*



FACTORS THAT ENCOURAGE REPORTING OF SUSPECTED MISCONDUCT (*continuing*)

Communicate Ethical Expectations Beginning With Hiring Process

- Develop interview questions that present ethical issue for candidate to discuss.
- Emphasize importance of organizational ethics.



REPORTING PROCESS

Develop and Promote Formal Policies and Procedures

- Procedures should be developed for receipt, evaluation, and processing reports of suspected misconduct.

Train Managers and Supervisors on Procedures for Responding to Report of Misconduct

- Many policies encourage employees to report misconduct to a supervisor. The supervisor must be trained on what to do when a report is received.

REPORTING PROCESS

(continuing)

Establish a Proper Investigation Process



- Employees must view an investigation process as independent, fair, impartial, and thorough.
- The employee who made the report must be informed that an investigation was undertaken, the general results of the investigation, and assured that retaliation is prohibited.

REPORTING PROCESS

(continuing)

Disciplinary Action Must be Impartial

- Employees must be assured that the code of conduct applies to all employees equally, regardless of their position in the organization.

Communicate

- There are obvious limits on how much information can be released about misconduct and the results of any investigation, but the organization should be proactive in disclosing as much information as possible.

REPORTING PROCESS

(continuing)

Update and Reassess Whistleblower Policy

- Modify the whistleblower policy and process as warranted.



REPORTING PROCESS

(continuing)

Validate Employees Whose Conduct Exemplifies Organization Ethics



Take Appropriate Action Against Any Employee Who Violates the Anti-Retaliation Policy



SUMMARY

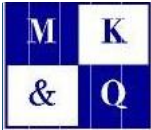
General principles for creating and maintaining a comprehensive ethics program include:

- Create and update written standards for ethical conduct.
- Hire and promote staff with demonstrated commitment to organizational ethics.
- Provide regular training to staff on organizational ethics standards.
- Include assessment of ethical conduct in performance evaluations.
- Emphasize importance of reporting suspected misconduct without fear of reprisal.
- Conduct prompt, independent, and thorough investigation.
- Discipline any employee who violates organization standards.
- Discipline any employee who retaliates in response to a report of suspected misconduct.

MOST IMPORTANTLY

Leadership sets the tone at the top
that emphasizes organizational culture
with strong ethics.





Questions?