



WHISTLEBLOWER CASE MANAGEMENT

TIPS FOR INVESTIGATING WHISTLEBLOWER ALLEGATIONS

All private or public companies dealing with whistleblower complaints, face difficult personnel, professional and legal decisions. During these stressful and time-sensitive events, due diligence and proper investigative techniques are key to mitigating associated risks. How your company responds will have a significant impact on your workforce and your business viability moving forward. Fortaris Capital Advisors works alongside legal counsel to guide clients quickly and seamlessly through the investigative process.

Tip # 1 Knowledge is Power - Do not discuss the allegations with other co-workers unless they are in a need-to-know position. These are not conversations for the water cooler or lunchroom.

Tip # 2 Proper Due Diligence - Ensure your employee handbook addresses whistleblower claims to include whistleblower action under the False Claims Act. Some federal and state laws prohibit certain agreements or releases being offered to the potential whistleblower. These may present a significant risk to your business.

Tip # 3 Identify Internal Individuals Involved - Identify internal parties of the complaint. Validation of wrongdoing, criminal versus civil allegations and fully understanding potential liabilities and risks. What type of case is being leveraged against you, Whistleblower, Qui Tams, and the motivation of the parties alleging the complaint.

Tip # 4 Protect Corporate Documents - Parties who take documents or other evidence may have stolen corporate property or trade secrets or violated privacy laws. In general, there are exceptions to these violations. We can help navigate through these scenarios. Having policies and procedures in place up front will help mitigate your risk.

Tip # 5 Use of Audio or Video Recordings - Recordings can be powerful evidence when defending fraud, waste or abuse. Some state laws, however, prohibit recording conversations in some situations and violating those laws can expose you to civil and even criminal penalties. Evaluation of whether one is legally allowed to tape conversations is a difficult one that needs to be evaluated with your investigator and attorney.

Tip # 6 Preserve Your Evidence - Some of the most important evidence for defending the allegation may be in your digital files, documents, recordings or in conversations. You need to preserve all of it. For example, company cell phone, laptop, and other devices will contain evidence, from emails to text or instant messages, social media and videos or recordings. Be sure to retain and back up that data. Most of the time, evidence is on company-issued devices — ideally, being able to quickly identify if an employee is transferring documents or backing up files to an unauthorized device provides a strategic advantage.

Tip # 7 Don't Talk or Post on Social Media - Don't talk to others or post on social media or industry message boards about the nature of your defense of the allegations.

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KEVIN M. CRONIN
PRINCIPAL

248.410.3839

kevin.cronin@fortariscapital.com
www.fortariscapital.com

These kinds of casual communications can have consequences that you may not be aware of. For example, you might put the idea of whistleblowing into the head of another individual, who ends up filing a case and being “first to file.”

Tip # 8 Time is Critical- When you are defending a whistleblower case, time is critical for several reasons. First, whistleblower laws typically have a “race to the courthouse” or “first to file” rule — the first one to file is the one who gets the reward. Second, a whistleblower who files first may still be barred from recovering a reward if the allegations had previously been “publicly disclosed.” Finally, fraud statutes generally contain a “statute of limitations” that requires the misconduct to be prosecuted within a certain period of time. In the case of the False Claims Act – filed with the court.

Tip # 9 Expect a Long Road - C-suite executives defending whistleblower cases often have a difficult time with the process when they expect quick and decisive results. The wheels of justice turn slowly. Despite many protections under the law, defendants have very little control over the process. The government is the real party in interest in False Claims Act cases.