

## Insights

# WHAT PE FIRMS NEED TO KNOW ABOUT WHISTLEBLOWER RISK & HOW TO MITIGATE IT

Feb 25, 2020

Private Equity firms face risk from whistleblowers within their portfolio companies. There are some industries that are more susceptible to whistleblower risk, such as health care, telecom and military contracts. There are a variety of whistleblower laws that greatly incentivize and protect whistleblowers, which have prompted increased whistleblowing. Recently, the public reports of significant payouts to whistleblowers have further induced the act of whistleblowing in the hope of a lucrative payout.

PE firms need to manage this risk by creating an atmosphere where whistleblowers will first report their concerns to the company, rather than immediately go to the government or regulatory agency. But this is merely the first step. Studies show that while 90% of whistleblowers first report their concerns internally, many then go on to report outside based on their perception of how the company is handling their report. The company's response to reports of misconduct will also be evaluated by the government when determining penalties, if wrongdoing is ultimately found.

There are a number of actions PE firms can take to mitigate the risk of a whistleblower reporting their concerns outside the company. PE firms should also take action to help ensure that if the government or a regulatory agency becomes involved, they view the company's response as robust and effective, which will help minimize penalties.

1. **Accessibility:** Ensure portfolio companies have reporting channels that are easily accessible and well-publicized.
2. **Protection:** Establish anti-retaliation policies that are strictly enforced and that are well-known to employees.
3. **Seriousness:** While the credibility of all reports will need to be evaluated, all allegations should be taken seriously and investigated to determine if they have any merit that warrants opening a full internal investigation. If the initial findings show that the matter is potentially serious with significant ramifications, engage outside counsel.

4. **Manage Expectations:** Upon receiving the report, discuss with the whistleblower the company's next steps and their expected timeframe.
5. **Provide Updates:** Keep the whistleblower informed of the investigation to assure them that the company is actively working to uncover and resolve any misconduct. Be mindful not to disclose anything that will waive privilege or create issues with confidentiality.
6. **Share Results:** Keeping in mind confidentiality and privilege, share the results of the investigation with the whistleblower, demonstrating that even if no wrongdoing was ultimately found, the investigation was fulsome and thorough.

## RELATED PRACTICE AREAS

- White Collar
- False Claims Act
- Investigations

## MEET THE TEAM



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