

# Infoletter

Zentrum für Wettbewerbs- und Handelsrecht

## Compliance Kompakt

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### **Whistleblowing: Misconceptions that bring communication challenges for the Compliance Officers**

**Whistleblowing is a controversial topic on which everyone has an opinion. In the light of some much-publicized cases of whistleblowers and their treatment, quite quickly the opinion is about the perceived lack of whistleblower protection. There are, however, misconceptions that are worth a closer look. The endless debates by politicians about legal protection at the national level may still take years. For compliance professionals dealing with reporters of wrongdoing on a daily basis, there are several misconceptions to be aware of in their internal communication, the most important of which are described below.**

#### **Misconception 1: Whistleblowers face severe retaliation and run personal risks**

The whistleblowers we read about occasionally are the extreme cases. There are, of course, cases where things go seriously wrong, and where individuals suffer as a result. However, when things turn out well for a whistleblower you will not read about it in the newspaper because his or her identity (or the mere fact that a case of abuse or misconduct was reported by a whistleblower) is kept a secret. Unfortunately for compliance officers, the public has come to believe that whistleblowing is risky and dangerous, a misconception which might prevent employees from making valid reports.

When providing information to employees about how to report problems, compliance officers need to focus on the positive aspects. Even the term “whistleblowing” should be avoided, if possible. The fact that a company has an internal reporting procedure that gives employees the opportunity to report their concerns anonymously clearly shows that the organization is prepared to protect its whistleblowers.

Besides communicating in a positive way about internal reporting procedures, a company will also benefit from communicating what safeguards have been by the compliance function to protect reporters of wrongdoing, for example by publishing the internal investigation procedure describing who investigates and what governance model has been adopted to deal with compliance incidents. Publishing the internal investigation procedure on the company’s intranet site demonstrates commitment to an objective analysis of reports received.

## **Misconception 2: All whistleblowers are angels and victims (including people claiming to be whistleblowers)**

Blowing the whistle on misconduct seems a noble thing to do, especially in combination with the previous misconception that whistleblowers face severe retaliation and run personal risks. The reality is that no person is 100% good or evil. Sometimes, reports are (deliberately) false. Even when a report is valid, there is often some involvement on the part of the whistleblower him- or herself. Whistleblowers themselves are close to where the reported misconduct takes place, which is why they are able to observe it. And who is also usually close to where misconduct happens? People who have at least some involvement in the misconduct taking place. In other words, some whistleblowers are not complete angels but have at least some involvement in the wrongdoing. When investigating a report, this can sometimes present a dilemma for the compliance officer concerning the treatment of the person who has initially reported the wrongdoing. Should the employee be completely forgiven for his or her previous wrongdoing? Not always. In the case of sanctions, however, the company runs the risk that the person reporting the wrongdoing will claim that he or she has been punished as a whistleblower.

Again, transparent communication is necessary to overcome this misconception. First, in a more general way, it is advisable for the compliance officer to publish the number of received, investigated, and substantiated reports. In this way, it can be shown that not all reports are valid and/or material.

Secondly, when reported behaviors are investigated, situations remedied, and sanctions given it is a good idea to communicate this. Not only does transparency have a preventative effect, for the rest of the organization, but also to explain what measures have been taken and that enforcement actions were needed towards individuals.

While it is not always possible to give full details of a specific case, it would be good if the compliance officer informs the stakeholders at least in a general way. This will enable the organization to learn from such incidents.

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