



Build a credible response to deal with complaints of retaliation

In a scenario where every company just tries to be compliant with laws of the land, it is understandable that those responsible for drafting the Whistle Blower Policy and or Code of Conduct routinely include a paragraph or two in relation to retaliation against the whistle blower.

The normal phrase is that no retaliation against the whistle blower will be tolerated and that a full protection will be provided to the genuine complainants. There are consequences of these statements.

Corporates have started realizing what the true meaning of these assurances could be when a dynamic human behaviour of its workforce

starts playing out in real life. An unprepared corporate response may seriously undermine the whistle blower mechanism or the governance at the workplace.

It is important therefore that we look at some of these issues so as to prepare a credible response to complaints of retaliation.

1. BLANKET ASSURANCE

Avoid blanket assurance on protection against retaliation. It is not uncommon for the employees to disclose not so important concerns and then demand protection against 'retaliation' which may just be normal administrative decision. It is advisable to link

protection with the nature and extent of wrongdoing.

2. THE NEXUS:

The company policy must insist on proving nexus between retaliation and the protected disclosure. Such nexus must be established by the employee, rather than the management, seeking protection against retaliation. A far-fetched nexus obviously may not merit protection.

3. TIME FRAME:

The protected disclosure cannot be cited forever against say, recent and genuine administrative actions terming them as retaliatory measures. What should be the time frame is a 'fine line' of rulemaking. Ethics officer or legal officer must be involved in the exact language to be used in these decisions.

4. RED FLAG DISCLOSURES:

It is a misnomer that any disclosure is fit for granting protection to the whistle blower. It is better to recognize reported issues deserving protection at the very outset within a given time period. Only those disclosures that could perhaps bring about retaliation to the whistle blower should be red flagged.

An apt example of retaliation is the vendor complaint about not getting contracts subsequent to his whistle blowing. A good policy should balance the need for protection and the likely misuse of such provision.

5. SPECIFY 'PROTECTION'.

What the company means by protection should be adequately made clear so that there are no undue expectations from staff or that the managers do not overreach on protection measures. Many companies have included clauses to the effect that physical protection

will be provided which may turn out to be not feasible in actual practice.

Even the State is not capable of extending physical security in all cases of retaliation.

CONCLUSION

An anti-reprisal policy, in the end, is a document that may govern a very delicate human resources value chain and therefore must be drafted in a way that strengthens relationship among the management, employees and other stakeholders.

Credibility of the mechanism will be enhanced if the rule book is explicit, devoid of being misused either by management or the employees and actions conform to the laid down procedures.

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