



THE SIGNALS NETWORK
the whistleblowers foundation

Tech Whistleblowing Essentials: How to Work with Lawyers

This resource is meant to help you make informed decisions, to give a balanced and concrete overview of the possibilities and pathways, and to remove some of the uncertainty that so many former whistleblowers experienced in order to build your own overall strategy.

Finding your lawyer

It's important to figure out what kind of lawyer you want to work with. There are labor lawyers, qui tam lawyers, movement lawyers, and each has a different style and different goals.”

Jack Poulson, Executive Director of Tech Inquiry, a tech accountability nonprofit

The nature of the wrongdoing should guide you to the right lawyer. Just as doctors specialize in treating different parts of the body, lawyers specialize in addressing different types of wrongdoing. To find the right lawyer, think over how you would explain the wrongdoing. Is it a workplace discrimination issue? Is it fraud? Is it a health hazard? The right lawyer will understand who has jurisdiction — A state agency? A federal agency? Both? — and which has a better record for handling your kind of case.

There are different kinds of lawyers based on what kind of case you want to bring and what you want the outcome to be. Your team may consist of just one lawyer, several lawyers specializing in the same area, or several lawyers across specializations.

“For a labor law case, you can approach the employment lawyer association in your state. Make sure you are looking for ‘employee lawyers’ and not ‘employer lawyers.’”

Tom Devine, Legal Director of the Government Accountability Project

“There is no easy roster of lawyers for tech whistleblowers as each person will have a different need and therefore need a different lawyer.” **Tom Devine, Legal Director of the Government Accountability Project**

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“Remember that a retainer agreement is a contract. Treat this agreement with as much respect as you would any other contract. It may be one of the most important contracts you ever sign.” **Devine & Maassarani (2011), p. 165**

The following resources may help you find representation:

- [National Employment Lawyers Association](#)
- Your state and county bar associations
- Whistleblower support groups have attorney referral programs and a familiarity with other lawyers’ track records, such as:
 - [The Signals Network](#)
 - [The Government Accountability Project](#)
 - [Taxpayers Against Fraud](#)

“Taxpayers Against Fraud lists their membership directory. Any *rewards program* lawyer you work with should be in that directory.” - **Mary Inman, Partner at Constantine Cannon LLP**

What kind of lawyer is right for you?

Labor/Employment Lawyer

Helps with employment discrimination, retaliation, non-disclosure agreements, severance agreements, privacy, and all matters related to your employment. State employment lawyer associations are good resources for finding an attorney. Make sure you are looking for lawyers who represent employees, not employers.

Whistleblower Reward Programs Lawyer

Helps file a complaint or tip with regulators and seek a financial reward related to the information provided.

First Amendment Lawyer

Helps reduce the risk of defamation suits, maintain your anonymity, and engage the press.

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Campaign/Social Movement Lawyer

Helps build an advocacy team and bring more public attention to your issue.

Criminal Defense Lawyer

Helps protect you against any accusations of criminal wrongdoing or potential exposure to such claims.

Intellectual Property Lawyer

Helps with sensitive information, if relevant, and can determine whether trade secrets are at issue. Fraud is never a trade secret, as Theranos whistleblower Tyler Shultz puts it.

Paying your lawyer

There are three main methods for paying for a lawyer, as outlined in Devine & Maassarani (2011), p. 164. The three methods are outlined below. Depending on the lawyer, you may be able to negotiate a hybrid scheme if necessary.

Hourly fee structure

The advantage of the hourly rate is that you pay only for the time your attorney spends on your case. Possible problems include “over-lawyering” to run up [the] bill, dragging the case out, and billing support staff time at the lawyer’s hourly rate. To lessen these potential problems, you should compare bills to estimates, require your written consent to exceed a maximum amount, and offer to contribute your own time to complete minor tasks.

Flat fee structure

The flat fee structure provides certainty in advance about the cost, and it may work out to be cheaper per hour than hourly billing. It’s also good for “pro se” employees who need help with some issues. But it’s not practical with lengthy proceedings whose duration is difficult to predict, and it’s a financial disincentive to make extra effort. You should specify what is and is not covered in the fee.

Contingency fee structure

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The main advantage of the contingency fee is that you may not need to pay anything if you lose the case. This may be the only option for some employees. On the downside, there are considerable fees if you do win, and there's little financial incentive for sustained effort if settlement negotiations fail to produce easy resolution. You should ask several lawyers what your chances of success are and how much you might be awarded, determine the lawyer's percentage (calculated after deducting expenses from the court award), and specify in the retainer the minimum level of commitment the lawyer will make to ongoing efforts in the case.

Below are typical fees in specific contingency fee arrangements:

- For False Claims Act cases, lawyers may collect 40% of the reward.
- For regulatory agency cases, lawyers may collect 30–33% of the reward.
- For employment/labor cases, lawyers who work on contingency may collect 30–40% of the reward.

"No reward lawyer should be charging hourly; they should be on contingency." Leah Judge, Attorney at Constantine Cannon LLP

Your engagement letter should outline the fee structure.

"Prepare your pitch for your lawyer so they take you on contingency." Ifeoma Ozoma, Pinterest whistleblower

Tips for asking a lawyer to work with you on contingency

1. **Do your research on the attorney before approaching them.** Look at their website — do they (or does their firm) regularly work on a contingency basis? If they do not, you are unlikely to convince them to do so.
2. **Clearly explain the relief you hope to obtain.** Are you seeking to be reinstated at your job after blowing the whistle, or are you seeking monetary damages? Are you hoping to file a tip with the SEC, or are you planning to report to a government entity that does not provide rewards for whistleblower tips? A lawyer needs to know whether the type of legal action contemplated is likely to result in a monetary payment to you. If not, the lawyer cannot work on a contingency. Instead, you will need to pay an hourly legal rate, a flat fee, or seek pro bono representation.
3. **Prepare a written summary of your allegations and accompanying evidence.** In clear writing, explain:
 1. The misconduct;

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2. What you have already done in response (e.g., have you reported to a supervisor? A government agency?); and
 3. What evidence you have. The more organized the better (bullet points work).
 4. Lawyers are busy and assess many cases. The more clearly and concisely you can present your case, the more attention it is likely to receive. Anything you provide the lawyer, regardless of whether you retain them, will remain confidential. It also cannot be used against you if you decide not to hire that lawyer.
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4. **Be responsive to the lawyer's questions (and honest).** Even if you have provided a written summary, the lawyer will have follow-up questions. Heed the call of the question and continue to present information clearly and, if asked, in writing. Do not try to "spin" facts, or omit facts that are unhelpful. The lawyer needs to apply the law to the facts as they exist, not as you wish they were. Facts are more important than opinions of facts.

Working with your lawyer

Questions you could ask potential lawyers when deciding which one(s) to work with:

- Are you familiar with my company and how it handles lawsuits? Are you familiar with the lawyers it hires?
- Could I be eligible for a reward through a whistleblower reward program? (Even if you weren't trying to obtain a reward, it might be possible.)
- Do you have experience working on similar cases? (One of the best ways to decide if the specific law firm or lawyer is right for you is to ask what their record and experience is like with similar cases. If a lawyer only assisted on a similar case it may be better to go with one of the primary lawyers on that case.)
- What is your experience working with companies similar to mine?
- Have you conducted a conflict-of-interest check, to verify the firm's current and past docket?
- Have you had previous litigation with this party? If so, what was the outcome?
- What is your experience working with whistleblowers? (This is especially important if you intend to make the information public instead of just correcting the company's wrongdoing internally because they will need to help navigate relationships with journalists, advocacy organizations, and other actors who want to get involved.)
- Are whistleblowing cases your specialty, or is it just one of many things you do?

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- What are my options in regards to my intentions and objectives? Can you provide a timeline?
- What are the risks if I speak to the press? How can I do it safely? How can I publicize the information with the least legal exposure (if this is my intention)?
- How do I best protect myself against retaliation from my company?
- Do you have experience coordinating with regulators and law enforcement in these cases? (In order to maintain your anonymity it is important for lawyers and regulators/law enforcement to coordinate throughout the investigation since an unintentional disclosure of a piece of evidence may identify you based on circumstance.)
- What are the lawyer's fees? (If they are coming from a different city, will you be asked to pay for their travel expenses?)

When you meet with a lawyer, they will also ask you a set of questions. These not only help them get a sense for the case, but also give a sense of who you are. It can come off as intimidating, but lawyers know whistleblowing is a difficult task and they want to be sure you are prepared for the journey ahead. Know that they are asking these questions to help you and they are on your side. Some of the questions they will ask that you should prepare for are below:

- Have you read about whistleblowing to get a sense of what you're getting into, such as further ugly personal attacks that are often worse than prior retaliation?
- Have you discussed your plans with your family or others you love and care for? Do you have their support?
- Are you prepared to work on this case, including with lawyers and other stakeholders, for several years?
- Are you prepared for a long, multi-year journey, not having updates on your case for months at a time, because the legal system has not produced any developments?

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