



# Tech Whistleblowing Essentials: What To Know About Whistleblowing - A Glossary

*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.*

## **A**

**Advice:** Get legal advice ASAP. Getting advice doesn't mean you have to move forward — it just keeps your options open and allows you to take steps to protect yourself.

**Affidavit:** A sworn, written statement used as evidence in courts of law and other legal proceedings. You might sign one to support your allegations in an employment or whistleblower lawsuit. Don't sign one without consulting your lawyer first; you sign them under penalty of perjury.

**Agencies:** Can you report the incident to an agency? Which one? What protection can they offer? What could their impact be?

→ [Whistleblowing Reward Programs](#)

→ [Working with Regulators](#)

**Analyst:** An analyst is not a traditional “original source” (defined below), but is a person/intermediary who puts together public or secondary information in a manner that allows the Securities & Exchange Commission (SEC) or Commodity Futures Trade Commission (CFTC) to learn that a violation has occurred. This can also be a non-governmental organization (NGO).

**Anonymous:** Can you remain anonymous? What protection does anonymity offer? Can anonymity be counter-productive?

**Attorney–client privilege:** When you ask your lawyer for advice, or your lawyer gives you advice, your lawyer can't disclose what you discussed to anyone without your permission. In order for the attorney–client privilege to apply, you must have a “reasonable expectation of privacy” when communicating with your lawyer. “For example, you can communicate with your lawyer via a text over Signal or even a direct message (DM) on Twitter because those could be

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assumed to be private. However, if you say something in a meeting with people present who are not being represented by the lawyer in connection with the same matter, attorney–client privilege would not apply because you could not expect what you said to be private.” **Mary Inman, Partner at Constantine Cannon LLP**

→ [Working with Lawyers](#)

**Arbitration:** Arbitration is a quasi-legal proceeding that is typically less formal — and binding — than an official court proceeding. When is it a good option? Arbitration can help keep costs down, but you can also forfeit certain rights in arbitration that you’d otherwise have in court.

## **B**

**Background:** You can talk to a reporter “on background,” meaning the reporter can use your information but cannot attribute it to you. Speaking on deep background means the reporter cannot publish the information you give them. They can use the information for their general understanding of the issue. People use these terms differently, however, so the best practice is to make sure you and the journalist understand exactly the terms on which you are speaking to them.

→ [Working with the Press](#)

**Bluff:** Is your employer bluffing? Do they really want to sue you and go to court? Court records are public and the possible negative publicity might not be worth suing you.

## **C**

**Care:** Take care of yourself. This is the priority.

**Computer:** Don’t use your work computer for anything linked to the whistleblowing

**Congress:** Can be an effective partner in gaining attention to your case, working with regulators, and offering protection from retaliation.

→ [Working with the US Congress or UK Parliament](#)

**Conscience:** The voice inside all of us that tells us which action to take using the information and knowledge we have based on our personal moral code and analysis of the implications for ourselves and others.

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**Contingency:** A lawyer working for you on a contingency basis agrees to be paid only if you win money, either in court or through a settlement agreement with your employer. The lawyer receives a portion of the money you win, normally between 33% to 40% in the United States. If you lose, your lawyer doesn't get paid. This is in contrast to a lawyer you pay by the hour for their work. Many, but not all, attorneys who represent employees will work on a contingency basis. Almost all attorneys who represent whistleblowers in whistleblower reward programs work on a contingency basis. Always discuss the contingency and any other payment arrangements up front with your lawyer and include it in your engagement agreement.

→ [Working with Lawyers](#)

**Cost:** Think of the cost of whistleblowing. Costs can include the loss of your job; industry blackballing; retaliation; legal fees; destroyed relationships; and serious emotional distress, including feelings of anxiety and isolation.

→ [Budget Template](#)

→ [Personal Assessment](#)

**Crime:** Do not commit a crime to expose a crime.

→ [Documenting Evidence](#)

## **D**

**Defamation:** How do you avoid being sued for defamation? Talk to a lawyer to minimize the risks.

**Documents:** You will want to collect evidence of the wrongdoing, including documents. But you don't want your employer to know you are collecting documents and other evidence, and you don't want to gather information illegally.

→ [Documenting Evidence](#)

## **E**

**Embargo:** Agreement with a journalist or media outlet not to publish your information until an agreed-upon date and time. Always control the timeline of the journalists. Tell the journalist that your information is "under embargo until this day at this time. You cannot publish before then."

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**Engagement letter:** When you hire an attorney, put the terms of their representation in writing. This includes how they will be paid, whether on a contingency or hourly basis, and the scope of their work. Do you expect them to represent you in a lawsuit? Help you negotiate a severance package with your employer? Facilitate conversations with journalists? Will the attorney need to associate with other attorneys or professionals to represent your interests? You can always try to negotiate the engagement agreement. If possible, ask a friend who is a lawyer to help you negotiate your engagement agreement with the lawyer you hire.

→ [Working with Lawyers](#)

**Evidence:** If you have evidence of the crime in the form of documents or recordings, this can help you prove your court case. It can also increase your credibility with journalists. But be cautious — do not illegally gather evidence.

→ [Documenting Evidence](#)

**Exclusive:** You could potentially offer some information or an interview to a single media outlet. This would be called an exclusive.

→ [Working with the Press](#)

**Expectations:** Manage your expectations. You won't get your old job back. It takes years for wrongdoings to be corrected. Courts move slowly. Media investigations can take weeks, even months, to be published.

→ [Personal Assessment](#)

## **F**

**Family:** Talk to your family. Your decisions will impact them. You need their support.

→ [Personal Assessment](#)

**Fees:** What will the legal fees be? How will you pay? Contingency? Hourly? Will you have to cover the lawyer's travel or other costs?

→ [Working with Lawyers](#)

**Fired:** Prepare your plan if you are fired on short notice (healthcare, new job, savings...). Consider how being labeled a "whistleblower" might affect your future job prospects. How should you respond to new employers when they ask if you were fired?

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**“First to file” rule:** “Under the False Claims Act “[r]ewards are paid to the first whistleblowers to individually or jointly file the claim. If a whistleblower is the second person to file an identical claim, his or her claim could be denied [if no new information is provided]...The law also permits whistleblowers who “contribute” [significant] new information to an ongoing investigation to qualify for a reward.” **Stephen Martin Kohn, *The New Whistleblowing: A Step-By-Step Guide To Doing What’s Right And Protecting Yourself* (2017)**

→ [Whistleblowing Reward Programs](#)

**Flat fee structure for paying a lawyer:** “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 [employees who are representing themselves in court] 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.” **Tom Devine & Tarek F. Maassarani, *The Corporate Whistleblower’s Survival Guide, A Handbook for Committing the Truth* (2011)**

## H

**Health insurance:** In the United States, it is still tied to your employment. If you lose your job, can your partner or spouse add you to their health plan? Will your children be covered? Will you qualify for government-subsidized insurance? Can you afford a COBRA?

**Hourly fee structure for paying a lawyer:** “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 [ . . . ]. 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.” Devine & Maassarani (2011), p. 164

## I

**Injunction:** You can go to court to seek an injunction, which is an order commanding a person or company to do, or stop doing something. Getting an injunction is difficult and you should not rely on this kind of relief. Your company could get an injunction against you preventing you from doing something for a period of time. Talk to your lawyer about whether your whistleblowing could result in an injunction against you.

→ [Non-Disclosure Agreements \(NDAs\)](#)

## J

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**Job:** Get a new, safe job. If you can, look for a new job while you are still employed — but not if this puts your safety at risk.

**Journal:** Keep a contemporaneous journal with detailed records of incidents, meetings, and conversations. For each entry, write down the time and date you wrote it, and the time and date of the events described. This can serve as evidence in potential legal proceedings and help you tell your story. It should also provide a description of why you are deciding to reveal the information and why it is in the public interest, which can be an important determination in whistleblowing cases.

→ [Note Taking and Record Keeping](#)

## **L**

**Lawyer:** Your lawyer works for you. You tell them what you want to do. They tell you the risks and how to mitigate them.

→ [Working with Lawyers](#)

**Library:** If possible, connect to the internet in a library, create your ProtonMail account on this computer, and only access it from there. If not possible, use your personal computer. Never use your work computer.

**Lonely:** Whistleblowing can be a lonely journey. This is why you must build your team.

→ [Building a Team Template](#)

**Long:** Whistleblowing is a long journey. You must manage your expectations and commit to the “long haul” if you decide to come forward. It can often be worse to start the journey and not finish it than it is to take the case to its conclusion.

## **M**

**Media:** The media can help maximize the impact, but be thoughtful when talking to the media. If possible, speak with a lawyer before doing so. Before you talk to a journalist, come to a specific agreement about the terms on which you are speaking to them, whether you will remain anonymous, and how you will be described in the article. Understand how far the journalist and their employer will go to keep your identity confidential. Will they give over your name on receipt of a subpoena? Will they fight subpoenas for your identity in court?

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**Mistakes:** All whistleblowers make mistakes. Learn from past whistleblowers' mistakes. Mitigate the risks.

## N

**National Employment Lawyers Association (NELA):** “The professional society for trial lawyers who specialize in advocacy of employee rights.” Devine & Maassarani (2011), p. 332

**NDA:** [Non-Disclosure Agreements \(NDAs\)](#)

**Notice to appear in court:** If you are sued, the person or company suing you must provide you with notice of the lawsuit. Once you receive this notice, immediately contact a lawyer. Receiving notice of a lawsuit starts a clock ticking; you're required to respond by a certain time. Your lawyer will know this. You may also receive a notice to appear as a witness in court or to produce documents in a lawsuit. You should immediately consult an attorney if you receive these or any other notices from a court. A lawyer can help you decide how to respond, including whether you want to resist appearing and how to do so legally.

## O

**On the record:** The reporter can use and print what you are saying and attribute it to you. The reporter can quote what you say to them. Reporters always assume that what you say to them is ON THE RECORD. You need to make it very clear — sentence by sentence — whether your conversation is on the record or not. Make the reporter repeat and acknowledge your instructions. If possible, get your agreement in writing (email is fine).

→ [Working with the Press](#)

**Off the record:** This means different things to different people. Some people use this to mean the reporter cannot use this information in their reporting. Others use it to mean the reporter can use it but cannot attribute it to the source. Make the reporter repeat and acknowledge your instructions.

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**Original information:** Must be “derived from the independent knowledge or analysis” of the whistleblower. If you want to claim a reward you will need to be the one who “originally” provided the information that the authorities use for enforcement.

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**Original source:** The source of “original information.”

**Outcomes:** What do you want to achieve by blowing the whistle? How long will it take? Who are your allies? Your enemies? What are you risking?

## **P**

**Phone:** Make sure you do your whistleblowing activity on your personal device, not your work phone. You can also use your personal phone to take pictures of documents instead of printing or sending emails from a work account that could tip-off your employer.

**Post-whistleblowing life:** Think of what you would like your life to be after speaking out. Start working towards that goal.

**Protection:** This is not a roadmap to bring the whistleblowing path to zero risk. “*Whistleblowing is inherently trouble,*” as Ben Wizner, Director of the ACLU’s Speech, Privacy, and Technology Project sums up.

**ProtonMail:** An encrypted, free email service. Use it.

**Public traded company:** If your company is publicly traded and registered with the SEC, or even if it has filed to go public, its wrongful activity could run afoul of shareholder or other financial obligations. This could be as small as not notifying shareholders of new risks, like a data breach, or something as large as outright fraud, like lying to investors about the commercial viability of a product. Revealing these violations to the SEC could result in a reward, however, it is important to go to a lawyer first to see what your options are.

→ [Whistleblowing Reward Programs](#)

## **Q**

**Qui Tam:** Qui tam is from the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, meaning “[he] who sues in this matter for the king as well as for himself.” The qui tam provision of the Federal Civil False Claims Act allows a private citizen to file a suit in the name of the US government alleging that fraud has been committed against the government. The qui tam provision allows the citizen to share in a portion of any money recovered.

## **R**

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**Recording:** In most places, the law allows reporters and others to record conversations without consent, so if you do not want them to do so, make that a condition of speaking with them. If you are gathering evidence of wrongdoing, you may need consent to record a conversation for evidentiary purposes. Recording without permission could be a crime or civil offense in certain states. Eleven states generally require the consent of everyone involved in a conversation before it can be recorded: California, Delaware, Florida, Illinois, Maryland, Massachusetts, Montana, Nevada, New Hampshire, Pennsylvania, and Washington. This issue is complex; ideally you should consult a lawyer before recording anyone without their consent.

**Regulator:** In many instances it will be important to involve a regulator during the process of speaking out. A regulator is someone who works at a local, state, or federal agency who oversees your company's compliance with certain laws and regulations. If you disclose information to a regulator with or without a rewards program (e.g., SEC, CFTC, IRS, DoL, etc.) they likely will be the ones using your information to start and carry out an investigation of the company, as well as potentially sanction the company. Your (or your lawyer's) relationship with the regulator is important to ensuring a proper and effective investigation.

→ [Working with Regulators](#)

**Rent:** How will you pay your rent if you lose or leave your job?

**Research:** Researching the experiences of different partners (lawyer, NGO, union, etc.) and their track record of working on similar cases is crucial and will help you find the partner who is the best fit.

**Resign:** To obtain future employment, it is better to resign from a company than to be fired. However, income is an important issue and it is important to consult with your "emotional team," including your lawyers and those who may be affected by you no longer having a job, before making decisions that will affect your career.

**Restraining order:** If your safety is being threatened by someone, you may go to court to seek a restraining order to prevent the person from contacting you. Talk to a lawyer.

**Retaliation:** Punishment of an employee by an employer for engaging in legally protected activity such as making a complaint of harassment or participating in workplace investigations. Retaliation can include any negative job action, such as demotion, discipline, firing, salary reduction, or job or shift reassignment ([Cornell Law School, Legal Information Institute](#)).

**Reward:** → [Whistleblowing Reward Programs](#)

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**What is retaliation?**

Consistent with most other employment discrimination laws, the Whistleblower Protection Act broadly defines the adverse actions from which whistleblowers are to be shielded. Adverse "personnel actions are actions that impact the following areas of an employee's job or pay:

1. an appointment;
2. a promotion;
3. disciplinary or corrective action;
4. a detail, transfer, or reassignment;
5. a reinstatement;
6. a restoration;
7. a reemployment;
8. a performance evaluation;
9. a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this [list];



**Risks:** This is not a roadmap to bring the whistleblowing path to zero risk. “*Whistleblowing is inherently trouble,*” as Ben Wizner, Director of the ACLU’s Speech, Privacy, and Technology Project sums up.

→ [Personal Assessment](#)

## **S**

**Sarbanes-Oxley Act of 2002 (SOX):** “The landmark financial industry reform law that included whistleblower protection with the paradigm shift to jury trials.” Devine & Maassarani (2011), p. 335

**SEC:** The Securities and Exchange Commission oversees both publicly traded and private companies, although unique sets of rules apply to each. The SEC offers rewards to people who disclose wrongdoing at these companies. If you disclose information to the SEC, it will take steps to ensure you remain anonymous.

→ [Whistleblowing Reward Programs](#)

**Shareholders:** Shareholders are important stakeholders to a public company’s wellbeing.

**Signal messenger app:** Signal is an end-to-end encrypted messages service. You can also set messages to disappear after a few minutes, days, or weeks. You can make calls and create groups. It is useful when communicating with anyone about your efforts to reveal wrongdoing.

**Solidarity:** It is crucial not to begin your whistleblowing journey alone. No matter what your issue of concern is, there are lawyers, NGOs, and others who can help. It is also important not to forget your emotional support network of family and friends, as speaking out will likely be one of the hardest things you’ve done.

**Source protection:** Some media companies will go to great lengths to protect the identity of a confidential source. They will file motions in court to fight a subpoena, they will pay fines instead of giving up the name, and their journalists may even be willing to go to jail if ordered to reveal a source. Other media companies do not have the institutional need or the resources to offer this sort of protection. If you plan to give information to the media confidentially, ask what they will agree to do to protect your anonymity.

**Strategic lawsuit against public participation (SLAPP):** “A lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.” Devine & Maassarani (2011), p. 335

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Some states have anti-SLAPP statutes that allow the prevailing defendant to get their attorneys' fees back.

**Subpoena:** A subpoena is a document issued by a court or government agency requiring you to appear in court or before the agency to testify, or to produce documents. You can be penalized for failing to comply with a subpoena. Immediately contact a lawyer if you receive a subpoena; they can help you comply or legally resist complying.

## **I**

**Taxpayers Against Fraud (TAF):** “The NGO support group for lawyers and employees who participate in False Claims lawsuits.” **Devine & Maassarani (2011), p. 335**

**Team:** It is crucial not to begin your whistleblowing journey alone. No matter what your issue of concern is, there are lawyers, NGOs, and others who can help. It is also important not to forget your emotional support network of family and friends, as speaking out will likely be one of the hardest things you've done.

→ [Building a Team Template](#)

**Theft of company property:** If you take documents or information from your employer, the employer may accuse you of stealing their trade secrets. If you take company information for the purpose of reporting a violation of the law and also provide that information to the government or an attorney, you will generally be protected. You cannot, however, break into company property — including accessing company computers without appropriate authorization — and expect to receive legal protection. If you believe you need to take information from the company to expose wrongdoing, you should first consult a lawyer if at all possible. Depending on the industry you work in, there may be additional risks to consider and precautions to take.

**Time:** Think about the time you will need to dedicate to your whistleblowing journey over the next few months and even years. This could include working with lawyers, talking with regulators, or even more public appearances with press and advocacy organizations if that is your preferred route.

**Timeline of wrongdoing:** Create and maintain a timeline of events as they happen.

**Timeline of whistleblowing:** Consider the whole process of whistleblowing and how it will affect your life in the short, medium, and long term.

→ [Personal Assessment](#)

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## U

**Unions:** While not many tech companies have unions at this point, there are several workplace organizations and a few actual unions that can help you navigate your journey. Unions can be key for building solidarity with coworkers, supporting your legal journey by paying for or connecting you with lawyers, and can help with larger advocacy campaigns as well.

## V

**Visa:** If you are working in the United States with a visa, could your whistleblowing affect your visa status?

## W

**Whistleblower:** “The term whistleblower must be broadly defined so as to cover any individual or legal entity that reveals or reports, in good faith, a crime or lesser offence, a breach of the law or a threat or harm to the public interest of which they have become aware either directly or indirectly.” [Council of Europe](#)

**Witness:** Anyone who has first-hand information about an event that could lead to consequences for the company. While you may witness something at work, in a courtroom a witness takes on a very official role. If called as a courtroom witness it is not usually possible to keep your identity anonymous. Different pathways require you to be a witness, so it is important to discuss your options with a lawyer.

**Wrongdoing:** Illegal, dishonest, and/or unethical behavior.