

Preparedness is Power

LEGAL



This legal guide is one of four guides that make up the *Tech Worker Handbook*, a collection of resources for tech workers who are looking to make informed decisions about whether to speak out on issues that are in the public interest.



Table of Contents

1 Tech Worker Handbook Introduction	01
2 Legal Guide Introduction	03
3 Where to start?	
3.1 It all starts with an “incident” at work	05
3.2 Personal Assessment	06
3.3 Fifteen Lessons Learned	10
4 Building a team and solidarity, what to know about:	
4.1 What to know about talking to family and friends	13
4.2 What to know about working with lawyers	14
4.3 What to know about working with colleagues, unions & civil society	21
4.4 What to know about working with the press	25
4.5 What to know about working with the US Congress	28
4.6 What to know about working with regulators	31
5 “Legally speaking,” what to know about:	
5.1 What to know about non disclosure agreements (NDAs)	33
5.2 What to know about whistleblowing reward programs	37
5.3 What to know about reporting internally & being retaliated against at work	42
5.4 What to know about documenting evidence	43
6 Resources	
6.1 Glossary	49
6.2 Whistleblowing Options Overview	59
6.3 Key steps in whistleblower reward programs from the Constantine Cannon LLP - A sense of timeline with SEC, CFTC, False Claims Act, and IRS programs	69
6.4 Partners, websites, and books on legal aspects of whistleblowing	73
7 Toolkit	
7.1 Personal Assessment	77
7.2 Sample Budget Template	82
7.3 Building a Team Template	88
7.4 Considerations and questions to facilitate note taking and record keeping	92



Tech Worker Handbook Introduction

Deciding to go toe-to-toe with a powerful and well-resourced corporation is difficult for many reasons. Access to information about how to find legal counsel, file a complaint with a governmental organization, work with the media, secure personal information, or ensure physical safety should not be an additional barrier.

This handbook addresses the need for centralized and accessible baseline resources for tech workers. Rebalancing power through the distribution of resources is not the sexiest work of tech accountability, but it's sorely needed.

The *Tech Worker Handbook* is for ALL tech workers. Whether you provide labor at your tech company as a senior engineer, warehouse handler, content moderator, food prepper, sales manager, custodian, assistant, HR lead, or any other role, this *Handbook* should be both useful for and accessible to you. So-called "employee handbooks," provided to workers at the beginning of employment, are ubiquitous within the tech industry. They are filled with the information an employer wants a worker to know, but are void of the content workers need to protect themselves.

The *Tech Worker Handbook* is not a how-to set of instructions, checklist, or call to action to blow the whistle. Whistleblowing — the act of speaking up in order to improve a situation for others — is an individual decision that should be made after a careful consideration of risks, options, and intended outcomes. My hope, though, is that those who do decide to take great risks in coming forward — for all of us — are better prepared and supported.

To that end, this *Handbook* is akin to a resource guide for building and using a slingshot, there when needed for battle with a Goliath.

As I learned from my own experience blowing the whistle on racism, sexism, and wage discrimination, the journey to accountability is long and arduous. But it cannot even begin without the choices that brave individuals make to speak up about wrongdoing, often at great personal expense.

I am grateful for the many tech workers who have gotten us all a few steps closer to accountability within this industry by risking their safety, careers, access to healthcare, and more in speaking up. I am grateful for the many coworkers who have been true allies to those of us who have blown the whistle, by speaking up internally and providing tangible assistance in countless other ways — staying inside to fight another day. I am grateful for the individuals and organizations, like the contributors to this *Handbook*, who have spent years doing everything they can to help protect workers. I am grateful for the individuals at supporting foundations — people like Sarah Drinkwater and Aniyia Williams — who have championed this work and provided the time and respect to carry it out honestly and independently.

Thank you to everyone who continues to fight for workers.

- **Ifeoma Ozoma**, *Founder of Earthseed, Creator of the Tech Worker Handbook*



Tech Worker Handbook Introduction

The Tech Worker Handbook consists of four guides. This PDF is of the Legal Guide.

- **Legal:** Learn how to find and work with lawyers, what to know about NDAs, and possible rewards.
- **Media:** Learn how to talk with journalists, including the formal and informal media rules.
- **Security:** Learn how to protect yourself online and in person.
- **Stories:** Learn from past whistleblowers' personal experiences.



Legal Guide Introduction

No matter what reason you had for visiting this site, you should know there is a whole community of people out there, including other whistleblowers, lawyers, journalists, non-profit organizations, unions, advocates, and many others who for decades have been dealing with the sensitive process of bringing public interest information to light and holding powerful interests accountable.

The Signals Network, the 501(c)(3) non-profit organization that compiled these legal considerations, is one of these actors. The Signals Network enables whistleblowers and international journalists to work seamlessly together to hold powerful interests accountable.

The Signals Network operates in 12 countries (US and Europe) where, as of September 2021, we are actively supporting three dozen selected whistleblowers who have provided information on the most important media stories of our time, including malfeasance by tech companies, #MeToo, corruption, tax evasion, bribery, online political propaganda, health hazards, governments' human rights violations and COVID-19, to media outlets ranging from *The New York Times*, *The Guardian*, *The New Yorker*, *BBC*, and *NPR* to *Der Spiegel* and *Radio France*. Already, we have coordinated the publication of three major investigations through media in the US and across Europe (*Die Zeit*, *El Mundo*, *Miami Herald*) that reached hundreds of millions of readers.

As you read these legal considerations, remember that there is no one right way to speak out. This section covers some key information to be aware of based on the experience of past and current whistleblowers and the people who helped them. This handbook doesn't and is not intended to provide specific legal advice, and the considerations discussed herein are not universally applicable. 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 puts it. We all have different levels of risk tolerance, a unique personal situation, and different goals regarding the impact of our actions. Whistleblowing can be a long and life-defining journey and it is important to know what your life may hold in the coming months and years and who you need to have on your side.

This handbook 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.

We are deeply grateful to those who spent countless hours speaking to us and reviewing this section, especially Leah Judge (Constantine & Cannon LLP), Mary Inman (Constantine & Cannon LLP), Tom Devine (Government Accountability Project), Erika Cheung (Theranos whistleblower), Tyler Shultz (Theranos whistleblower), Ifeoma Ozoma (Pinterest whistleblower), Jack Poulson (Tech Inquiry), Christopher Wylie (Cambridge Analytica whistleblower), Meredith Whittaker (AI Now), Stephen Kohn (Kohn, Kohn & Colapinto, LLP), Daniel Gross (Labor Law for the Rank & Filer), Wes McEnary (CODE-



Legal Guide Introduction

CWA), William Fitzgerald (The Worker Agency), Ben Wizner (ACLU), Ashley Kissinger (Ballard Spahr LLP), Peter Rukin (Rukin Hyland Riggin LLP), and Nick Hanlon (CODE-CWA).

Whatever your decision, know that you are alone neither at this pivotal point nor throughout the process.

- **Delphine Halgand-Mishra**, *Founding Executive Director of The Signals Network*

Learn more about our work at thesignalsnetwork.org, on Twitter [@TheSignalsNetw](https://twitter.com/TheSignalsNetw) and on [LinkedIn](https://www.linkedin.com/company/the-signals-network). You can reach us directly at info@thesignalsnetwork.org.

Everything included in this *Handbook* can be reposted and repurposed freely with proper attribution ([CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/)).

Disclaimer: The Signals Network does not request, encourage or counsel potential whistleblowers to act unlawfully. This section covers some key information to be aware of based on the experience of other whistleblowers who have been through this before and the people who helped them. This section doesn't offer legal advice, and potential whistleblowers are encouraged to consult with counsel about their particular situation.



Where to start?

3.1 It All Starts With An “Incident” At Work...

You witnessed wrongdoing or discovered it after the fact. It can be fraud, unlawful discrimination, product defects...and you know you have to do something. What can you do?

1. Make a personal assessment

Use the *Personal Assessment* template

- What are my goals?
- Am I ready for a long process?
- What is my level of risk tolerance?
- Will I be okay if the disclosure does not have the impact I hoped for?
- What is my emotional support system?
- Where will I find the right lawyer?
- Should I try to find another job?
- What’s my financial situation?
- Am I staying anonymous or going public?

2. Understand your options

Learn about the *Whistleblowing Options Overview*

- What’s the nature of the incident?
- Does it break a law? A government regulation? A company policy? Shareholders’ disclosure requirements?
- Do you know of similar incidents in other companies? Any lessons learned? Who were the lawyers of the employees who disclosed those incidents?

3. Talk to the right lawyer and ally

See *Working with Lawyers*

- The nature of the incident will guide you to the right lawyer. Think about how you would describe the incident using legal wording. Is it a labor discrimination issue? Did the company defraud a customer or a business partner? Is there a health hazard being covered up? Different lawyers have different specialties.
- Is there a non-profit organization that has experience working with whistleblowers on this particular issue? Does a union advocate on this issue currently?

“

It can be useful to get a consensus from your family and those close to you on how to move forward so they understand how they will be impacted by your speaking out.”

ERIKA CHEUNG, THERANOS WHISTLEBLOWER



Where to start?

RELEVANT LINKS

- [Non-Disclosure Agreements \(NDAs\)](#)
- [Working with Lawyers](#)
- [The Signals Network](#)

3.2 Personal Assessment

These are questions to consider when you are thinking about speaking out regarding wrongdoing at your company. Not all of them will apply in every case, and you shouldn't feel you need to answer positively to all of them before speaking out. These questions are helpful to assess where you are and what you are willing to go through in order to speak out.

General Considerations

"Whistleblowing is inherently trouble. Everyone has a different risk tolerance. If you are not able to speak out because of your personal situation, that is okay."

- **Ben Wizner**, Director of the ACLU Speech, Privacy, and Technology Project

"Not everyone has the same privilege and ability to speak out. However, when considering what to do when encountering wrongdoing, it's important to consider who will get hurt if this information is not out there. What are the stakes of this wrongdoing?"

- **Meredith Whittaker**, Faculty Director of the AI Now Institute at New York University

"No matter what we call it, all [risk assessments] share the same basic four components: identifying (1) who or what is a threat; (2) what you are trying to protect; (3) how that threat could manifest; and (4) its potential impacts. Then you can evaluate the possible scenarios, prioritize them, and make plans accordingly. Nobody can eliminate all the dangers, but you can certainly reduce your risks."

- **Tim Schwartz**, *A Public Service: Whistleblowing, Disclosure, and Anonymity* (2019), p. 78

"This is the biggest financial, career, or personal decision you've made . . . If you quit in the middle, it would have just been better to keep quiet . . . The more ambitious your goals, the uglier the retaliation and the more strength, support, and stamina you will need to follow through."

- **Tom Devine**, Legal Director of the Government Accountability Project

My objectives

1. What do I hope to achieve by speaking out? What are my intentions? What impact do I want to have? How realistic is it that I will make this impact? What are the paths/leverages to achieving my goals?
2. What level of risk (professional, financial, legal, personal, etc.) am I willing to take to achieve my goals?



Where to start?

3. Would I be okay if the information I revealed didn't have the impact or achieve the objectives I wanted it to?

"Sometimes whistleblowers' valid objective is to do the right thing so they can live with themselves, regardless of the impact."

- **Tom Devine**, Legal Director of the Government Accountability Project

4. What would I like my life to look like after speaking out? What would I like to see happen to be at peace with my decision so that I can move on?
5. Why is speaking out externally the best option over an alternative solution (i.e., internal reporting, speaking with colleagues, talking to the board, etc.)?



One of the most important pieces of advice is that the world may not believe that the issue has the same significance that the whistleblower thinks it has."

BEN WIZNER, DIRECTOR OF THE ACLU SPEECH, PRIVACY, AND TECHNOLOGY PROJECT

Whistleblowing process

6. Is this objectively misconduct? Am I in a position to know that what I see as misconduct really is a misconduct? Does my job position provide sufficient insight to ensure my conclusions are not the mistaken product of tunnel vision, even if my information is accurate? (You may not immediately know the answer to these questions, and that's OK. Talking securely with trusted lawyers and other stakeholders can help you think through these questions).
7. Will knowledgeable peers and colleagues support my concerns, and help to expand the record from my personal knowledge?
8. Have I read other accounts of whistleblowers to understand what the process can be like?
9. Am I willing to commit to a multi-year endeavor (one year, three years, five years, or more) and what support will I need to do so?
10. Am I willing to invest significant amounts of time working with lawyers, educating NGOs, government investigators, Congress, and the media?
11. Do I understand how to engage properly with the media?
12. How do I feel about repeated public speaking engagements?

Emotional support

13. Do I have an emotional support system? Who do I turn to for emotional support? (Partner, family, friends, religious mentor, professional mentor, therapist, etc.)
14. Are there other people at the company who would help me in this effort without getting me in trouble?



Where to start?

15. Do I have a plan for countering retaliation or negative things the company may say about me?
16. Can I remain sufficiently centered and detached to emotionally withstand inevitable smear campaigns?
17. Who are my allies and who are the people who would work against my effort?
18. Am I prepared for the potential trauma caused by whistleblowing?
19. Do I have a system of evaluating who I can trust with sensitive information?
20. Do I have pre-existing medical conditions that could be aggravated by stress?

Legal support

21. Do I know where to find legal support for my case? What type of lawyer do I need to reach out to (i.e., employment lawyer, whistleblower lawyer, healthcare fraud lawyer, etc.)?
22. Do I have a secure way of reaching out? Personal phone/computer? Signal Messenger app? Protonmail?
23. Do I have a way to pay for a lawyer if they do not work fully on contingency?
24. Do I have a friend or a family member who is a lawyer? To advise me? To find the right lawyer? To help read my lawyer engagement letter, etc.?
25. Have I prepared a concise summary of my case, and a timeline of key events to have ready for initial interviews with prospective lawyers?

Employment

26. Will I try to find another job before revealing the information?
27. What is my exit plan for my current role? Should I resign? What happens if I get fired? What will happen to my immigration status (if applicable)?
28. What other kinds of jobs would I like to have?
29. Would I be okay not working in this industry again?
30. Would I be okay not working in a similar role again?

Finances

31. What benefits will I need to cover (health care, child care, education repayment, etc.) if I lose my job? What is my plan for paying for those? (See the [Budget Template](#) to help assess what costs you'll have coming up).
32. How much savings do I have?

"Whichever path you choose – anonymity or public disclosure – be decisive. The worst approach you can take is to remain semi-anonymous."

- **Tom Devine**, Legal Director of the Government Accountability Project



Where to start?

Considerations about staying anonymous

33. Will an anonymous internal disclosure effect change? Or will it give the wrongdoers an opportunity to cover up the problem?
34. Does the anonymous channel, such as a hotline, operate with credible, effective technology to prevent exposure?
35. Will remaining anonymous sustain my access to ongoing evidence and developments that the institution is trying to conceal?
36. Can I prove my allegations with information/documents that do not require my public explanation?
37. Can this information/documentation be traced back to me because only a small group of people have access to them or because my copies are uniquely marked? (Beware of trace-backs through printers' identifications or email trails.)
38. How likely is it that I will be the focus of suspicion because of my previous efforts to raise concerns?
39. Can I act nonchalantly when these documents are disclosed so as not to attract suspicion?
40. Do I feel comfortable and justified in being evasive or not telling the complete truth if confronted by my boss about the disclosure?
41. Am I prepared for the possibility that somehow my anonymity is broken without my consent?

Considerations about going public

42. Are my family and I financially and mentally prepared for a protracted public fight with my employers and exposure to attacks to prove my allegations? And to try to retain a job?
43. Am I mentally ready to have my fellow workers and perhaps some friends turn against me because my public disclosures threaten the institution's health and their jobs?
44. Will going public cut off support from witnesses who would otherwise back my charges in official proceedings?
45. Will going public cut off the flow of evidence necessary to prove my charge or more effectively make a difference, and, if so, are the benefits from public solidarity more significant?
46. Am I ready for personal attacks against my character and to have any past indiscretions made public?
47. Do I have enough evidence to prove my charges without having to go back to my workplace?
48. Even if I can prove my initial allegations, would I be more valuable if I didn't go public and kept my access to new information?



Where to start?

49. Am I sure that my motivations are to expose the wrongdoing on behalf of the public interest and not just for revenge, a quest for financial gain, or public attention?
50. Am I financially and mentally ready to risk my career?
51. Am I ready to have the professional reputation of someone who attacked their employer?

RELEVANT LINKS

- [Building a Team and Solidarity: Introduction](#)
- [Whistleblowing Options Overview](#)
- [Budget Template](#)

3.3 Fifteen Lessons Learned

The quotes below are from whistleblowers and lawyers we interviewed to compile this section. Their stories and experiences are varied. While some quotes below may contrast with others, each is an honest account of what that person's experience entailed. Each person's path is unique.

LESSON 1

"Do not wait to talk to a lawyer. Talk to a lawyer ASAP. Your lawyer works for you. Tell them what you want to do."

- **Ifeoma Ozoma**, Pinterest whistleblower

LESSON 2

"Look for lawyers who have worked on similar cases to yours. Lawyers who have experience working with publicly traded companies for example. Make sure the lawyer you are working with is a member of the bar in the state where your claim is."

- **Ifeoma Ozoma**, Pinterest whistleblower



Where to start?

LESSON 3

"Deciding what to tell and to whom can be paralyzing, and whistleblowers should not have to navigate these decisions in a vacuum. You need someone you can trust, who can connect you to resources, and who can help navigate through the legal, ethical, and personal issues associated with whistleblowing. I wish The Signals Network existed back in 2014."

- **Tyler Shultz**, Theranos whistleblower

LESSON 4

"Identify what your anchor is. You will face retaliation and lots of difficulties navigating the legal system, but the thing that kept me going was knowing that the company was wrong and causing harm to people by hiding a certain defect in their product. That anchor is what I turned to when I was facing especially difficult circumstances."

- **Erika Cheung**, Theranos whistleblower

LESSON 5

"The world may not believe that the issue has the same significance that you think."

- **Ben Wizner**, Director of the ACLU's Speech, Privacy, and Technology Project

LESSON 6

"Stay under the radar at your company as long as possible."

- **Tom Devine**, Legal Director of the Government Accountability Project (GAP)

LESSON 7

"Talking to a reporter should not be your first step."

- **Tyler Shultz**, Theranos whistleblower

LESSON 8

"Make a clear timeline of events from your hire to the incidents. Collect evidence early. This well-documented timeline will be useful to share with your lawyer, regulators and journalists. Stick to what you can prove 200% to never be questioned on what you are saying."

- **Ifeoma Ozoma**, Pinterest whistleblower



Where to start?

LESSON 9

"In our case, both the regulator and the media reporting created long-term impact."

- **Erika Cheung**, Theranos whistleblower

LESSON 10

"Do not call, text, or otherwise keep evidence on your work phone/computer/cloud. Your access can be cut at any time. Your employer can also access those materials. Do not forward work emails to your personal email accounts. Take pictures of the emails on your personal phone instead."

- **Leah Judge**, Attorney at Constantine Cannon LLP

LESSON 11

"Use secure apps, like Signal Messenger and ProtonMail, to communicate with your attorneys and others helping you."

- **Mary Inman**, Partner at Constantine Cannon LLP

LESSON 12

"Do not obtain evidence improperly. You cannot commit a crime to catch a crime."

- **Tom Devine**, Legal Director of the Government Accountability Project

LESSON 13

"In my case, going on the record was the biggest protection against retaliation. If you share information anonymously, they can still find your identity and if they retaliated it would be private. If you are public the retaliation will be as well."

- **Ifeoma Ozoma**, Pinterest whistleblower

LESSON 14

"Solidarity is the best protection. It's hard to discredit 40 or even 10 people. Retaliation becomes counterproductive."

- **Tom Devine**, Legal Director of the Government Accountability Project

LESSON 15

"Plan your post-whistleblowing life. Do not focus only on whistleblowing, it takes years to see concrete outcomes. Manage your expectations regarding the outcomes. You won't get your job back. It takes years to correct wrongdoings — look at Theranos."

- **Ifeoma Ozoma**, Pinterest whistleblower



Building a Team and Solidarity

"The magic word for survival is solidarity. The fatal word is isolation. The worst isolation is when someone loses their family."

- **Tom Devine**, Legal Director of the Government Accountability Project

"Who is in your emotional support team? You need one."

- **Tom Devine**, Legal Director of the Government Accountability Project

The two most common themes whistleblowers discuss when they recall their journey are . . .

1. It is difficult, and
2. They wish they had more people supporting them or they were glad they had people supporting them.

In this section, you will learn who you can reach out to and how you can make the most out of these relationships in order to best protect yourself and to have maximum impact.

Throughout the literature, and in discussions with whistleblowers and lawyers, there are three common ground rules for building a team:

1. Maintain control over the process: This is usually done simply by being honest about your goals up front and agreeing on how the relationship will work.
2. Ask team members to go along on this journey with you: Take time to build trust and strengthen the relationship with each member of your team.
3. Check the history of your team: When approaching anyone, check their history of working with whistleblowers, especially on issues related to yours.

“

Unlike a career or skill learned over time, safely disclosing information isn't typically an art that people are able to practice ... The best way to combat this lack of experience is by working with a partner – a person or group that has been through the process before and can help navigate the social, technical, and legal hurdles.”

TIM SCHWARTZ, A PUBLIC SERVICE: WHISTLEBLOWING, DISCLOSURE, AND ANONYMITY (2019), P. 97

4.1 Talking to Family and Friends

"It can be useful to get a consensus from your family and those close to you on how to move forward so they understand how they will be impacted by your speaking out."

- **Tom Devine**, Legal Director of the Government Accountability Project

"It's important to make sure your family is starting this journey with eyes wide open. While you can't prevent all of the damage that may occur, it helps to be honest about what the potential consequences are."

- **Tom Devine**, Legal Director of the Government Accountability Project



Building a Team and Solidarity

“Assessing the strength, safety, and trust in your relationship with family and friends is crucial in whistleblowing. You’ll need someone who can provide an objective perspective as well as a mechanism to de-stress and recuperate.”

- **Erika Cheung**, Theranos whistleblower

NOTES

- **BE MINDFUL** as your family and friends could be pressured into getting involved in legal proceedings or they could have professional interests that could be negatively impacted based on your exposure.
- **TALK TO YOUR LAWYERS** about these risks for your family and close ones.

RELEVANT LINKS

- [Personal Assessment](#)
- [Building a Team Template](#)

4.2 Working with Lawyers

“Talking to a lawyer is not a breach of your NDA. What you say to a lawyer is protected by the attorney–client privilege.”

- **Tyler Shultz**, Theranos whistleblower

“A well-informed and sympathetic attorney can offer assistance at every step of the whistleblowing process, not just in the courtroom against retaliation. An attorney can help you prevent reprisals from occurring in the first place by supervising and monitoring your disclosure through the safest channels.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 157

Lawyers can help you:

- Take a breath
- Understand the full consequences of speaking out
- Discuss what is likely (not certain) to happen
- Develop a plan for which avenues and actions to pursue
- Understand the shifting terrain beneath you during this experience, such as the company’s reaction and many other factors that may not be familiar to you



Building a Team and Solidarity

Different types of lawyers can help you:

- Protect your employment rights
- Talk to the press
- Maintain your anonymity
- Apply for a financial reward for providing authorities with information

NOTE

- It is important to know that your lawyer works for you and you should tell him/her what your best-case scenario is and ask how they can help you achieve it.

"The most significant factor is trust — that the lawyer's commitment is to you and your goals rather than making profits from you; will work with you rather than give you orders; will responsibly safeguard your evidence; has credibility in the community you have to persuade; will work as hard as needed to prevail; will be honest in dealings with you and all parties relevant to the representation; and will be there when you need support. Trust is essential for you to be fully open with your lawyer in a professionally intimate partnership. Holding back could be fatal for effective advocacy of your rights. All significant relationships must be grounded in trust, and this is one of unsurpassed significance for your professional life."

- **Tom Devine**, Legal Director of the Government Accountability Project

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



Building a Team and Solidarity

"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

"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 attorney is allowed to terminate the relationship if further proceedings would be frivolous, unreasonable, or groundless; if irreconcilable differences arise; or if you fail to perform your legal or financial obligations."

- **Devine & Maassarani** (2011), p. 168

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.



Building a Team and Solidarity

First Amendment Lawyer

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

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

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

“

Many lawyers will be quite flexible in fee arrangements that are customized for your resources.”

DEVINE & MAASSARANI (2011), P. 165



Building a Team and Solidarity

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:
 - a. The misconduct;
 - b. What you have already done in response (e.g., have you reported to a supervisor? A government agency?); and
 - c. What evidence you have. The more organized the better (bullet points work).
 - d. 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



Building a Team and Solidarity

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.

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

"Your lawyer should start by asking you for a clear timeline and evidence to document it. You will need to get granular."

- **Ifeoma Ozoma**, Pinterest whistleblower

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?
- 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.)



Building a Team and Solidarity

"So often, the evidence is your signature."

- **Tom Devine**, Legal Director of the Government Accountability Project

- What are the lawyer's fees? (If they are coming from a different city, will you be asked to pay for their travel expenses?)

"Know that the goal of the opposite party is to exhaust you. Financially, psychologically. . . . So you should exhaust all the options as soon as possible to save time and money."

- **lfeoma Ozoma**, Pinterest whistleblower

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?

RELEVANT LINKS

- [Glossary](#)
- [Whistleblowing Reward Programs](#)
- [Key Steps in Whistleblower Reward Programs](#)



Building a Team and Solidarity

4.3 Working with Colleagues, Unions & Civil Society

“Solidarity is the best protection. It’s hard to discredit 10, 40 people. Retaliation becomes counterproductive.”

- **Tom Devine**, Legal Director of the Government Accountability Project

“Working with coworkers to build support for changing company practices and reporting internally may work for some things, but there will likely come a time when the company doesn’t want to change and then you have to decide what to do. If you do speak out, it helps to understand where you are vulnerable and where you can go for help.”

- **William Fitzgerald**, Campaign Staff at The Worker Agency

What to know about working with your colleagues

“Figure out who you trust. There’s no one trick for developing trust. It’s relational. You begin to form relationships that go beyond the traditional hierarchy that structures almost all workplace environments. You begin to see each other as friends, not as competitors for status and standing. And, you begin to put your commitment to these relationships above your commitment to a given institution, or boss, or quarterly goal. Once you have an organized and trusting network in place, it can also facilitate safer whistleblowing – in which you can funnel information to people in this network who might not be under as much scrutiny.”

- **Meredith Whittaker**, Faculty Director of the AI Now Institute at New York University

“

The first thing workers should consider is the unique power they have by staying on the job and working collectively with co-workers, rather than quitting.”

DANIEL GROSS, LABOR LAW FOR THE RANK & FILER

Keep in mind

Your colleagues can help you to judge whether what you’re seeing crosses a line, and building solidarity at work can apply more pressure internally on the company to change. They may be able to provide you with contacts within the workplace whom you could speak with about the issue in order to resolve it internally, or to ask follow-up questions.

Raising the issues in a nonthreatening and constructive manner gives the institution the ability to do the right thing.



Building a Team and Solidarity

NOTES

- **YOUR COLLEAGUES** might inform management of your concerns, which may cause retaliation. If they have also noticed the same thing but are not ready to get involved, they may distance themselves from you in order to avoid any consequences that may arise.
- **IT IS IMPORTANT** to be careful when discussing sensitive situations or potential cases of wrongdoing as it could make your colleagues or managers fearful that you may make the information public.

“Remember, protection of others is also your responsibility vis-à-vis co-workers or other witnesses who may face retaliation for disclosing supportive evidence or otherwise assisting you. Like you do with a reporter, legislator, or government investigator, you should commit to protect them and shield them from risks they assumed to help you.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 89

How to check with your colleagues carefully

“When thinking about colleagues you could reach out to build solidarity, it’s vital to create what’s called a workplace chart. The chart is basically a spreadsheet that maps how co-workers relate to each other through formal and informal networks. You then think about who your most respected co-workers are and who you trust to have a confidential conversation. Prioritize starting with your most marginalized co-workers. You can ask a co-worker to meet you after the shift and check in on a couple of things. It’s important to get off the bosses’ property or company software to chat. The important thing then becomes just listening to them and seeing what their concerns are as well. If it goes well you can have further conversations and think about how to progress the issue.”

- **Daniel Gross**, *Labor Law for the Rank & Filer*

Past whistleblowers and lawyers who work on such cases emphasized how important it is to frame things in a nonthreatening manner and in ways that would suggest you have the company’s best interest at heart. Potential ways to frame the conversation could include:

- Does this seem off to you?
- Does this cross the line?
- Is this going to create liability?
- Are we going to get into trouble over this?
- Am I misunderstanding this, or will we have trouble with auditors?
- What should be done to change this?
- What would you do?



Building a Team and Solidarity

What to know about working with unions and organizing at work

"[Unions] have established political access, deference among legislators, and working relationships with regulators."

- **Devine & Maassarani** (2011), p. 151

If your company has a union, you can bring the information to the attention of union leadership. They can then anonymize the information and raise it themselves by citing concerns they hear from their members. They can also help build solidarity among coworkers to have a stronger case without you having to do the groundwork and expose yourself. In this case, it is still important to talk through the case with them and ensure you both are on the same page with how to proceed.

Some unions may also provide tangible support like referring you to a lawyer or even paying for legal costs.

NOTES

- "[Some] unions are so closely aligned with management that they would be reluctant to challenge your employer. Still others may support you in principle but may make a strategic decision not to push on the ethical issues you raise because they are in a protracted battle with management over pay, benefits, or other issues of higher priority." **Devine & Maassarani** (2011), p. 151
- "It is easier to organize around a given issue once the information is public and in the press." **Meredith Whittaker**, Faculty Director of the AI Now Institute at New York University
- "You may be faced with the decision to trade statutory rights against retaliation with those available in a union collective bargaining agreement. In the latter context, the union is the official party and controls the case, not you." **Devine & Maassarani** (2011), p. 152
- "Utilizing a union remedy may result in the waiver of an employee's right to obtain relief under other whistleblower protection laws, and damages available in grievance or arbitration proceedings are limited." **Stephen Martin Kohn**, *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (2017), p. 64

What to know about working with civil society

"Deciding what to tell and to who can be paralyzing, and whistleblowers should not have to navigate these decisions in a vacuum. You need someone you can trust, who can connect you to resources, and who can help navigate through the legal, ethical, and personal issues associated with whistleblowing. I wish The Signals Network existed back in 2014."

- **Tyler Shultz**, Theranos whistleblower



Building a Team and Solidarity

Keep in mind

The civil society organizations that work with whistleblowers are some of the most experienced advocates you can have. They have both the institutional knowledge and the networks to ensure you receive protection and that your case elicits the change you seek, although nothing is ever guaranteed. Once you have an organization working on your behalf, it also sends a strong message to your employer that you have their support, which can help prevent some cases of retaliation.

"When I worked with a whistleblower from an Artificial Intelligence company, for example, we could decide to publish a blog with an NGO to discuss her disclosure. That way the company knows they had to go through the NGO, and they might be less aggressive."

- **Ben Wizner**, Director of the ACLU Speech, Privacy, and Technology Project

A civil society organization can also reveal information on your behalf so your identity is further protected. The Dodd Frank Act created a category called "Analyst" whereby civil society organizations may reveal information to regulators on a whistleblower's behalf without the whistleblower being involved in the process with the government. They have to be registered as an "Analyst" organization, so make sure they have the proper designation before pursuing this pathway.

NOTES

- **CIVIL SOCIETY ORGANIZATIONS** may have their own agenda that can be different from yours, which can negatively affect the impact you're able to have.
- **INEXPERIENCED ORGANIZATIONS** could release information that gives away your identity.

"Choosing to go public through a frustrated, powerless citizen organization may be signing your professional death warrant. By contrast, solidarity from a coalition whose combined membership numbers in the tens of millions can be more valuable than conventional legal rights"

- **Devine & Maassarani** (2011), p. 88

"Depending on the type of wrongdoing, and if you want the case to be public, you will have to spend significant amounts of time working with NGOs, journalists, and other groups to explain the technical issues behind the wrongdoing and how the company operated."

- **Tom Devine**, Legal Director of the Government Accountability Project

RELEVANT LINKS

- [Building a Team Template](#)



Building a Team and Solidarity

4.4 Working with the Press

“An aggressive phone query from 60 Minutes can be more effective at nipping retaliation than 100 hours from a top lawyer billing \$500 per hour.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 88

While speaking to a reporter can trigger certain source protections, the way in which you do it may cause legal issues. That is why it is important to discuss your case with a lawyer first to help mitigate any risks.

Reporters have a different incentive structure than you. While you may both be interested in creating change, reporters operate on a principle of revealing information. Be sure that you both are in agreement about the terminology below and the implications of these definitions for what you share and how. Reporters should respect your timeline for disclosure, including an embargo. There are many high-quality reporters who work off of their reputation of keeping their sources safe, and have experience doing so.

Many reporters abide by the Associated Press Stylebook (hyperlink: <https://www.apstylebook.com/>) for guidance on grammar, punctuation, and media practices. Its full name is The Associated Press Stylebook and Briefing on Media Law and it can be helpful to familiarize yourself with parts of it if you are working in depth with journalists as it can help you communicate in a common language.

“

If you’re going to talk with a reporter anyway, make sure you do it the right way.”

STEVE KOHN, WHISTLEBLOWING LAWYER AND
FOUNDING PARTNER OF KOHN, KOHN & COLAPINTO

REPORTERS’ GLOSSARY

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 only 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.

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 before agreeing to provide information. Tell the journalist that your information is “under embargo until this day at this time. You cannot publish before then.”



Building a Team and Solidarity

Exclusive

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

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 seeking your identity in court?

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).

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.

ProtonMail

An encrypted, free email service. Use it.

Recording

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

Signal messenger app

Signal is an end-to-end encrypted messaging 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.



Building a Team and Solidarity

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 rather than reveal a source upon court order. 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, first ask what they will agree to do to protect your anonymity.

HELPFUL INFO

- Nothing is off the record unless the journalist confirms it is off the record.
- When picking a journalist to work with, look at their record of stories, including how fair you think they are and whether they have any industry loyalties.
- You have the information journalists want, so you can ask them to agree not to release the story until a certain date or not include certain information as a condition. If you have good information, they can wait and agree to your conditions.
- Journalists have to run your information by the company for verification and comment. If they do this too soon it can be dangerous and disrupt your timeline. Ask the journalist when they will send questions to your company and to alert you when they do so. They generally do so at the end of their own investigation.
- Be clear regarding the detailed information the journalist can publish, can use to ask questions of colleagues and/or to your company, can use to describe you in the article (e.g., “According to a former employee”), etc. Repeat the detailed information regularly to the journalist to make sure the story published does not implicitly reveal your identity. Good and trustworthy journalists respect such commitment.
- Be mindful before mentioning other people’s names to a journalist as the journalist could speak to them and reveal your identity. Even if journalists don’t mention your name, they could ask questions about information only you know, thus allowing others to infer your identity. Ensure they know which kinds of questions or calls they make to other people might give away your identity. This will help them protect you. Other people who are contacted by the journalist may also get upset and seek their own counsel or tell their own version of events to the journalist.
- Bear in mind that having the journalist speak to others can have positive effects, too. If the journalist talks to colleagues or other people from your company/sector, it will help them understand the larger picture, find corroborating details and help camouflage your own contact with the journalist and the information you provided. Other people the journalist contacts through LinkedIn, email, Signal, Twitter, etc., could give such information to the journalist.



Building a Team and Solidarity

- Make sure you are communicating in a secure way, such as Signal. You can find a list of different media outlets' [SecureDrop contacts here](#).
- There will be at least one journalist who takes the side of the tech company. You need to make it clear it's about the information and not you. Don't be defensive.

There is a coalition of public-interest journalism organizations working with The Signals Network to facilitate whistleblowers' revelations of wrongdoing and ensure their stories are told effectively. They have a global audience of more than 150 million people in six languages (Danish, English, French, German, Italian, and Spanish). You can [find more information about working with them here](#).

RELEVANT LINKS

- [Note Taking and Record Keeping](#)

4.5 Working with the US Congress or UK Parliament

If you believe a federal law may have been violated by your company's practice, there may be reason to involve Congress. While members of congress can be some of your most powerful allies, working with them can be a confusing process with long delays and high stakes, so the information below is meant to provide insight if you are considering this route.

Keep in mind

Congressional offices can help highlight information to the press on your behalf and help push the story along through hearings and other actions.

You can bring information to Congress while simultaneously pursuing a reward through a regulator. Congress can also press regulators to keep your case moving forward and getting attention.

Since Congress creates the laws that federal agencies implement, forming a relationship with a Congressional office could help lead to regulatory changes, but this would be much further down the line.

If the company knows that you are working with Congress and have their backing, it can reduce the risk of strong retaliation against you.



Building a Team and Solidarity

NOTES

- **THE HOUSE OF REPRESENTATIVES** passed a rule in the 2021–22 Congress that they must protect the identity of whistleblowers. Congress may request a Government Accountability Office (GAO) investigation of companies that receive federal funds, the results of a federal agency's implementation of an activity, or a federal agency's handling of an whistleblower's claims. The GAO provides authoritative accounts to lawmakers and will keep your identity protected.
- **THE SENATE** has not passed a rule in the 2021–22 Congress that they must protect the identity of whistleblowers. If you work with an office that has a good reputation of working with whistleblowers they will still try to keep your identity a secret, but there is no guarantee.

Many congressional offices are overwhelmed and may not be the best first point of contact when revealing information because of the lack of official processes in place and the time commitment associated with making sense of new information.

Working with the UK Parliament

Parliamentary Privilege in the United Kingdom

- The UK has a concept of “parliamentary privilege,” which states that Members of Parliament (MPs) can't be sued (for example, for defamation) or prosecuted for anything they say in the Chamber, Westminster Hall or a committee of the House. This allows them to speak up on behalf of constituents, express an opinion, or condemn corruption, malpractice or even criminal activity without fear of legal action, as long as they do so in proceedings of the House. This protection extends to written proceedings: for example, written and oral questions, motions, early day motions, and amendments tabled to bills and motions.
- Anyone [officially] giving evidence to a committee of the House also has this protection, which is a safeguard for witnesses and also ensures that select committees are not obstructed in their inquiries by threats of legal action, or any other kind of threat against witnesses.
- A similar protection applies to any document published by order of the House, or under its authority. This includes select committee reports and written evidence, certain reports made under statutory authority and reports published in reply to a ‘motion for an unopposed return’.
- The protection extends to Hansard (the Official Report), but if you circulate an extract from Hansard (for example, a speech) on its own, the protection may be more limited. The protection for published documents is provided by the Parliamentary Papers Act 1840.
- Privilege doesn't necessarily apply to the repetition outside Parliament of things said in proceedings.

Source: *MPs' Guide to Procedure*



Building a Team and Solidarity

Considerations for working with MPs

- It helps to have a supportive intermediary, like a civil society organization or a reporter when bringing your case to a MP.
- It can often be easier to get in touch with a MP than with a US Member of Congress.
- The US Congress will often pay attention to the issues raised by MPs and UK Parliamentary Committees when there is a US nexus.
- MPs will care about any issue that affects UK citizens or users of a service who are based in the UK. This can include issues such as promoting harm to UK users, affecting UK user data/privacy, interfering with UK elections, business practices of tech companies in the UK, etc.
- Bringing information to the UK Parliament can put pressure on tech companies through public statements, investigations, or MPs may bring the issues to the Information Commissioner's Office who can regulate the companies.
- The MP is under no statutory responsibility to keep a source's identity anonymous. It is likely that you will need to reveal your identity to the office, but you can request that they keep it confidential.
- Be intentional when picking an MP or a Parliamentary Committee to work with.

HELPFUL INFO

- When approaching Congress, it will help your information get more traction if you work with a lawyer first to identify which federal laws were possibly violated by the information you have and outline this in the initial information you provide.
- When approaching Congress, do it through an experienced organization or NGO, like the Government Accountability Project, that can help you put your pitch together.
- Keep initial disclosures brief and focused on the relevant point.
- Tell them where they can find more information and/or what else you can provide, but you don't have to dump it all at once.
- The initial interaction is to get their interest and then you can build a relationship.
- Position yourself as a concerned individual who can serve as a source of information.

"Congressional allies will be easier to find if your dissent is supported by a solid constituency base or promises opportunities for public visibility on an important political or public interest issue that matters to the voters."

- Devine & Maassarani, 2011, p. 115



Building a Team and Solidarity

"Find out not only if they have helped whistleblowers in the past but also if they followed up once the headlines faded. You can do this by researching their past work in back issues of newspapers, by talking with NGOs that have ongoing relationships with offices and staff, and by directly discussing those issues with the member's staff person."

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* (2011), p. 116

RELEVANT LINKS

- [Building a Team Template](#)
- [SecureDrop Directory](#)

4.6 Working with Regulators

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. The following section outlines important information and considerations when working with regulators.

NOTES

- **"IDENTIFY AGENCIES** that have genuine independence and integrity by investigating how extensively they have actually regulated your employer's industry and company."
- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* (2011), p. 112
- **"DISCUSS WHETHER THE INVESTIGATOR** can deliver on [their] commitments or needs further approvals to make them meaningful. Investigators can be overruled by their superiors." **Devine & Maassarani** (2011), p. 89
- **"A COMMITTED INVESTIGATOR** can prevent retaliation by alerting an employer that witness harassment will lead to further liability for witness tampering or obstruction of justice." **Devine & Maassarani** (2011), p. 89
- **"ASK FOR EXAMPLES** of incidents when the investigator and the agency effectively shielded a whistleblower from harassment." **Devine & Maassarani** (2011), p. 89



Building a Team and Solidarity

- **“DO NOT REVEAL** your cynicism when working with authorities . . . This is a key partnership with whoever is on the front lines of enforcing rules. It helps to at least maintain the demeanor of presuming good faith.” **Devine & Maassarani** (2011), pp. 79–80
- **“HOLD OFF** on even identifying issues until the ground rules are established to protect your own identity and any identifying information that could be traced back to you.” **Devine & Maassarani** (2011), p. 113
- **“DUE TO THEIR HIGH WORKLOAD,** many agency officials do not have the time to read more than a page of your [initial] complaint. If it is impossible to condense your letter to two pages or less, it is a good idea to prepare a one-page fact sheet or an executive summary. Enclose copies of only the most important supporting documents; do not send a large stack or the originals. At the end of your letter, make suggestions on where officials might go to pursue follow-up investigations or find further corroborating evidence.” **Devine & Maassarani** (2011), p. 113

RELEVANT LINKS

- [Whistleblowing Options Overview](#)
- [Key Steps in Whistleblower Reward Programs](#)



“Legally Speaking” What to Know About

5.1 Non-Disclosure Agreements (NDAs)

“Talking to a lawyer about private company matters is never a breach of your NDA. What you say to a lawyer, from your first words, is protected by the client-attorney privilege.”

- **Mary Inman**, Partner at Constantine Cannon LLP

“It is not always safe to communicate government misconduct to your lawyer. It is especially risky to reveal any information that is classified as intelligence information by the government to a lawyer, unless they have an appropriate government clearance. If you do approach a lawyer about concerns related to government business, it is important to pin down in advance what can and can't be lawfully disclosed, both to the lawyer and to third party audiences. Experienced organizations like GAP are good at deciphering these issues and are open to speaking about concerns relating to government business.”

- **Tom Devine**, Legal Director of the Government Accountability Project

“In cases where I represent employees, typically tech companies aren't suing employees for breach of NDAs. Rather, the employees are usually bringing claims against their employers.”

- **Peter Rukin**, Rukin Hyland Riggins LLP

Business Insider's review of 36 NDAs

“To understand how non-disclosure agreements have come to form the backbone of Silicon Valley's culture of secrecy, *Insider* reviewed 36 agreements shared by tech workers at companies ranging from Fortune 500 giants like Facebook, Google and Apple, to smaller startups ... The documents show how restrictive forced silence has become, both in employment agreements reached when an employee starts a job and in separation agreements ... Findings include:

- Non-disclosure agreements meant to protect confidential trade secrets are often so broad they cover information an employee learns outside work, such as personnel matters and information not necessarily marked as ‘confidential’ internally.
- Some NDAs say explicitly that the confidentiality provisions never sunset, effectively making them lifelong agreements.
- All the separation agreements reviewed by *Insider* also include non-disparagement clauses, many of which are so broad that employment lawyers say they could limit the employee from saying virtually anything about the company.
- More than two-thirds of workers who shared their agreements with *Insider* said they weren't exactly sure what the documents prevented them from saying — or whether even sharing them was a violation of the agreement itself.”

– **Matt Drange**, *Insider* (July 27, 2021)



“Legally Speaking” What to Know About

What is not enforceable in a NDA?

“NDA is a very broad term. Some clauses are legitimate and enforceable, like the ones related to the disclosure of proprietary business information. Others, like the ones more broadly related to your experience at work, may be less enforceable.”

- **Peter Rukin** at Rukin Hyland Riggan LLP

“Fraud is not a trade secret.”

- **Tyler Shultz**, Theranos whistleblower

Put plainly, NDAs are not binding when it comes to information that is related to a crime or information that is manifestly in the public interest.

Any language in a NDA that prevents you from going to the government with information on a violation of federal law or regulation is not enforceable. While this is subject to interpretation, a lawyer can help you assess the NDA language and the nature of the violation.

“The SEC has fined 10 companies for including in their various types of employment agreements language that seeks to undermine a whistleblower’s ability to communicate with the SEC about wrongdoing, thereby silencing or chilling whistleblowers’ speech. The SEC is incredibly proactive in protecting its whistleblowers.”

- **Mary Inman**, Partner at Constantine Cannon LLP

“The law prevents any employer from requiring employees to waive their rights to file whistleblower claims under the SEA and CEA qui tam laws. The SEC, by regulation, ensured that employers could not interfere with employee communications to the Commission: ‘No person may take any action to impede an individual from communicating directly with the Commission staff about a possible violation, including enforcing, or threatening to enforce, a confidentiality agreement . . .’ The Commodity Exchange Act has a similar rule, as does the amended version of the Sarbanes-Oxley Act. The commission has put teeth into these provisions and has sanctioned companies that required employees to sign restrictive non-disclosure agreements, including imposing monetary fines and penalties.”

- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself* (2017), p. 122

“Many of the agreements you see aren’t actually enforceable, but they never make it into court. Companies are able to enforce them through private means,” said Jodi Short, a professor at UC Hastings law school in San Francisco who has studied NDAs. Short said the threat of going to court is enough to silence most employees. And, of the few who pursue legal action, she said, many are able to bring claims only through mandatory arbitration, a process also shrouded in secrecy.”

- **Matt Drange**, Insider (July 27, 2021)



“Legally Speaking” What to Know About

“The threat is enough. It’s not the threat of actually losing in court that keeps people silent. It’s the threat of needing to hire a lawyer. Of maybe getting fired from your current job, not because of the legal dispute, exactly, but because you can’t show up for work because you are being deposed. Because you have to take off time that you don’t have when you need a babysitter to watch your kids . . . There’s so much more to lose than an actual court battle, and the companies understand that fully. Which is why they keep on using these agreements, even though portions of the agreements, as you wrote in your piece, they already know aren’t legal.”

- **Ifeoma Ozoma**, quoted in *Insider* (August 1, 2021)

“In a poll of users conducted [in 2020] by Blind, a popular anonymous message board, and published by the tech site Protocol, nearly 40% of tech workers who reported signing NDAs at their company felt the agreement prevented them from discussing ‘injustices in the workplace.’ But that’s not true in many states. In California, workplace misconduct is reported to the Department of Fair Employment and Housing. To ensure that whistleblowers aren’t improperly intimidated, the DFEH asks employees reporting incidents to the agency whether they were made to sign an NDA by their employer. If the DFEH reviews an NDA and finds it goes too far, agency staff will contact the employer.”

- **Matt Drange**, *Insider* (July 27, 2021)

NOTES

- **“IF YOU AREN’T GETTING** any compensation or benefits when you exit, don’t sign an NDA. If they are offering compensation or benefits, it’s up to you to decide if it’s worth it to sign.” - **Ifeoma Ozoma**, Pinterest whistleblower
- **“WHEN NEGOTIATING** your end-of-contract NDA, you can ask them to include names of people who aren’t allowed to speak poorly about you. This provides protection against disparaging you, while still allowing you to speak to regulators about the company’s wrongdoing, which is always a protected right even if you have an NDA.” - **Steve Kohn**, Whistleblowing Lawyer and Founding Partner of Kohn, Kohn and Colapinto

NDAs GLOSSARY

“Today, NDAs come in two flavors: non-disclosure and non-disparagement. A non-disclosure typically limits what someone can say about their work and to whom, while a non-disparagement restricts workers from describing their employer or business partners in a negative light — a tricky tightrope that’s hard to define.”

- **Matt Drange**, *Insider* (July 27, 2021)



“Legally Speaking” What to Know About

Defamation

Companies can also sue for defamation.

“Defamation can be written (libel) or spoken (slander) . . . A public figure must establish that a [whistleblower’s] false statement was made knowingly or with a reckless disregard for the truth. This requires proving the subjective state of mind. A defamation case by an individual who is not a public figure need only show that the whistleblower was at fault – usually negligent in making a false statement.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 100

Non-disparagement clause

Even if you can prove what you’re saying is not defamation, because it is true, your employer can still sue you for breach of contract if there is a non-disparagement clause in an agreement you signed. Non-disparagement clauses generally say that you cannot speak ill of the company (whether true or not). Just because they sue you doesn’t necessarily mean they will win the case. However, it could be costly for you to defend the suit, which is the goal. You can talk with your lawyer about your options and what the local laws say about strategic lawsuits against public participation (SLAPP) suits, which are just meant to intimidate you.

Pre-action letter

You might get a long pre-action letter where the company says they will take you to court if you don’t do “X.” It is usually really long and really scary, which is the goal. You can give it to your lawyer, who will pick it apart and reply.

Injunction

A company may go to a judge and ask them to issue an injunction. This can happen if you report internally or the company becomes suspicious you may speak out about wrongdoing. Violating an injunction can result in a finding that you are in “contempt of court,” which comes with civil and sometimes criminal consequences. This is something to keep in mind when deciding whether to report internally about wrongdoing. The company may make your life difficult and intimidate you during the injunction period to prevent you from speaking out after the injunction is lifted, so you want to avoid an injunction. It is easier to get an injunction in Europe than the US. They can try to get injunctions in EU courts vs. US courts if the issue affects European citizens as well. Unless you are ready with lawyers to fight the request for an injunction by showing that your information is in the public interest, it can be hard to avoid. Judges may say they are not permanently preventing you from speaking and it is just a delay. Companies will say they are working to correct the wrongdoing you revealed and they need time.



“Legally Speaking” What to Know About

RELEVANT LINKS

- [Working with Lawyers](#)
- [Working with the Press](#)

5.2 Whistleblowing Reward Programs

“There are some instances where a whistleblower could potentially receive a monetary reward from the government for exposing certain wrongdoing, usually a percentage of funds recovered by the government from the company, as mandated by federal and state laws.

These programs fall under various US federal and state agencies depending on the issue and the desired outcome. Each program has its own regulations and statutes of limitations, ranging from several months to several years from when the incident occurred, so it is best to speak with a lawyer as soon as you are able in order to understand your options and any potential deadlines.

“Rewards are based on the usefulness of the information. Whistleblowers can obtain compensation [only] if their allegations prove correct and support a government prosecution resulting in collection of a sanction from the wrongdoer.”

- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself*

“Realistically, the odds of cashing in on whistleblowing are akin to winning the lottery.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 63

“Becoming a whistleblower does not guarantee a large recovery. While some whistleblowers obtain bounties of millions of dollars, these recoveries are the exception, not the rule.”

- *I Think I Have a Whistleblower Lawsuit*, Constantine Cannon LLP website

“It can make it easier for the company and/or the press to smear a whistleblower if people find out they are getting a reward.”

- **Tom Devine**, Legal Director of the Government Accountability Project

What to know about the Commodity Futures Trading Commission and Securities and Exchange Commission

The mission of the Commodity Futures Trading Commission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. Relatedly, the Securities and Exchange Commission (SEC) is a government agency that protects investors and ensures fair and efficient capital markets by ensuring the following comply with US securities laws: investment brokers, stock exchanges, and other market participants.



“Legally Speaking” What to Know About

“Congress enacted two separate financial qui tam laws: one for securities and the other for commodities. [. . .] these laws were drafted by Congress in a virtually identical manner.”

- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself* (2017), p. 125

“Both pathways contain strong anti-retaliation provisions, prohibiting employers from firing employees who file qui tam actions or engage in other protected activities. Employees can file their retaliation claims directly in federal court.”

- **Kohn** (2017), p. 124

“Employees are permitted to file themselves or act through an attorney intermediary and provide their information to the government without ever having to reveal their names . . . At the very end of the proceeding . . . the government must verify the whistleblower’s eligibility as an original source before the check is placed in the mail. Even then, the disclosure of information on the whistleblower should remain strictly confidential and exempt from public release.”

- **Kohn** (2017), p. 125

“It makes no difference whether, for example, the claimant [whistleblower] was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the US securities law violation occurred entirely overseas.”

- **Kohn** (2017), p. 135, quoting from a SEC award decision from September 22, 2014: Release No. 73174

SEC Whistleblower Program

As of end of Fiscal Year 2020 (2010-2020)

- More than \$2.7b paid as result of whistleblower info
- More than \$562m paid out in awards to 106 whistleblowers

In 2020

- \$175m in awards to 39 whistleblowers
- More than 6,900 tips
- The awards made in FY 2020 represent 31% of the total dollars awarded to all whistleblowers ever and 37% of the individual award recipients since the beginning of the program

In 2019

- \$60m to 8 whistleblowers
- More than 5,200 tips



“Legally Speaking” What to Know About

- Unlike rewards programs through other government agencies, whistleblowers using the SEC route cannot continue to pursue their claim as a private citizen privately if the SEC declines to initiate an enforcement action based on the whistleblower’s original claim.
- Many cases brought to the SEC don’t get their full and urgent attention due to a variety of situational factors. If you feel like your case is not being reviewed properly, you can work with people on your team like journalists and Congress to put more attention on your case. This should be done cooperatively and in good faith so as to not create tension between you and the regulator. You also cannot reveal any information given to you by the regulator or that would disrupt a case, as this could be obstruction of justice. You can work with your lawyer and civil society organizations to find the most appropriate route.

What to know about the False Claims Act

“Always ask: Is the taxpayer, directly or indirectly, on the hook for any of the costs associated with your disclosure? Do your concerns touch upon federal spending, procurement, or contracting? If you answer “yes,” you may be protected under the most effective whistleblower law in the United States: the False Claims Act (FCA).”

- Kohn (2017), p. 89

“If government monies are in any manner involved in your whistleblowing allegations, you may be protected under the federal FCA or similar state and local laws.”

- Kohn (2017), p. 95

“If a whistleblower is discriminated against or fired for raising allegations of contract fraud, he or she has the right to include retaliation claims as part of the False Claims Act lawsuit . . . The statute of limitations for the retaliation claim is three years.”

- Kohn (2017), p. 104

If the government decides to pursue action after an investigation triggered by a whistleblower, the government will take control of the case.

“This . . . does not leave the whistleblower out in the cold. The whistleblower has the right to fully participate in the civil proceeding, conduct discovery, file briefs and motions, question witnesses at trial, and otherwise be fully included in every aspect of the case. The [whistleblower] also must be informed of any settlement agreement and has an opportunity to oppose court approval of a settlement.”

- Kohn (2017), p. 105

If the [United States federal] government declines to pursue action after an investigation triggered by a whistleblower, the whistleblower can still bring the case in court, although this route has a lower success rate.



“Legally Speaking” What to Know About

“No matter how strong you may think your case is, if the United States declines to intervene, it is absolutely imperative that you stop and take a hard look at your claim. You must evaluate why the United States declined to intervene. You must evaluate the costs and risks of going forward. You must evaluate the realistic likelihood of success, especially in light of the controlling case law, how much money is at stake, the facts you actually have at your disposal, whether your complaint can withstand a motion to dismiss, and the various defenses the corporation will aggressively raise.”

- **Kohn** (2017), p. 106

If you want to get a reward and remain anonymous under the False Claims Act, you have to hire an attorney. The attorney has to confirm your identity and make a good-faith effort to ensure that the complaint filed has a sound basis in law and fact.

“The lawyer has to personally sign the charge filed with the government under oath.”

- **Kohn** (2017), p. 28

Carefully document post-filing activities, especially ones that you conduct to get more information if you are still at the company. These can be used to update regulators and your claim.

“Whistleblowers can and should continue to investigate and collect additional information that backs up their claims. Sometimes this can be done by the employee working on his own (without ever disclosing the existence of the FCA claim to anyone) and sometimes this occurs in conjunction with the government investigation.”

- **Kohn** (2017), p. 102

12 Steps for Filing a Successful False Claims Act Case

1. Don't go public
 2. Try to qualify as an “original source”
 3. Confidentially file allegations with the government
 4. Be the first person to file
 5. Choose the venue for filing your claim where you will have the greatest advantage
 6. Prepare a detailed “disclosure statement”
 7. File the complaint “under seal” and keep it confidential
 8. The complaint filed in court must be detailed
 9. Keep investigating the claim after the complaint is filed
 10. Determine whether state funds were involved
 11. Prepare for a retaliation case
 12. Decide whether to proceed with a civil case if the government decides not to intervene
- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (2017)



“Legally Speaking” What to Know About

What to know about the IRS

“The tax whistleblower law is not limited to tax fraud. It covers any underpayment of taxes, fraudulent or not.”

- Kohn (2017), p. 113

“Any person can file an IRS whistleblower claim. The applicant for the reward does not have to be an employee . . . He or she can be an outside contractor, a banker . . . or any other person who is able to obtain credible information of a major tax fraud or underpayment.”

- Kohn (2017), p. 113

Unlike the FCA, you cannot continue to pursue the case as a private citizen or initiate legal proceedings on your own if the government does not take up your case after its investigation.

“Initial reward filings with the IRS Whistleblower Office are required to be signed by the whistleblower, under oath, and thus cannot be anonymous. But the rules governing IRS whistleblower claims require that the IRS keep the whistleblower’s information strictly confidential.”

- Kohn (2017), p. 28

“The tax, penalties, interest, additions to tax, and additional amounts in dispute must exceed in the aggregate \$2 million and, if the allegedly noncompliant person is an individual, the individual’s gross income must exceed \$200,000 for any taxable year at issue in a claim.”

- Kohn (2017), , p. 119

“Whistleblowers who participated in the fraud are entitled to a full reward,” but if they planned or initiated the fraud, “the IRS can reduce the reward owed to any such person based on the culpability of that person. The reward can be reduced to any level, including zero.”

- Kohn (2017), , p. 119

How to tell if you have an IRS whistleblower case

1. Did the whistleblower act “promptly to inform the IRS or the taxpayer of the tax noncompliance”?
2. Did the “information provided” identify an “issue or transaction of a type previously unknown to the IRS”?
3. Was the “information provided” “particularly difficult to detect through the IRS’s exercise of reasonable diligence”?
4. Did the whistleblower present his or her information “thoroughly” and present “factual details of tax noncompliance in a clear and organized manner”?
5. Did the whistleblower’s information save “IRS work and resources”?
6. Did the whistleblower provide “exceptional cooperation and assistance during the pendency of the action(s)”?



“Legally Speaking” What to Know About

7. Whether “the information provided identified assets of the taxpayer that could be used to pay liabilities, particularly if the assets were not otherwise known to the IRS.”
 8. Whether “the information provided identified connections between transactions, or parties to transactions, that enabled the IRS to understand tax implications that might not otherwise have been understood by the IRS.”
 9. Whether “the information provided had an impact on the behavior of the taxpayer, for example by causing the taxpayer to promptly correct a previously-reported improper position.”
- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself* (2017)

RELEVANT LINKS

- [Whistleblowing Options Overview](#)
- [Key Steps in Whistleblower Reward Programs](#)
- [Partners, Websites, and Books](#)

5.3 Reporting Internally & Being Retaliated Against at Work

HELPFUL INFO

- Safely test how issues are perceived internally, which is covered in the “[Working with Colleagues](#)” section.
- Be cautious of company lawyers.

“The attorney was picked by the company, is paid for by the company, and knows where his or her next (very large) paycheck is coming from.”

- **Stephen Martin Kohn**, *The New Whistleblower’s Handbook: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself* (2017), p. 244
- Traditionally, the best practice is to build relationships with the team who can effect the change and then approach them in a constructive manner, as outlined in the “[Working with Colleagues](#)” section. Bringing a thoughtful case to the attention of the relevant manager in a constructive way can often have a bigger impact.
- If you do not have a positive relationship with the relevant team or if they have refused to accept your case, then reporting to a centralized hotline or office can serve as the next option. Getting a case on the record may help if you do end up bringing a case to a regulator, but it is by no means necessary.



“Legally Speaking” What to Know About

- The centralized reporting channel at a company usually isn't the best place to send information if you want to effect tangible change. Internal reporting offices are traditionally primarily equipped to process and refer cases, and not initiate changes to company practices themselves.
- As stated previously, if your company has a union, you can bring the information to the attention of union leadership. They can then anonymize the information and raise it themselves by citing concerns they hear from their members. In this case, it is still important to talk through the case with them and ensure you both are on the same page with how to proceed.

Retaliation and/or confrontation by your company

- If you have made information public while still working at the company and they come to discuss it with you, past experience shows that it helps to be honest and not interfere with any investigation that might be taking place.
- At this point, you can say that you have been advised by counsel not to discuss any information with the company as it may be considered obstruction of justice.
- Your lawyer will not discuss the case with the company either, as anything they reveal to the company could also be an obstruction of justice and a violation of your attorney–client privilege.

RELEVANT LINKS

- [Working with Colleagues, Unions, and Civil Society](#)

5.4 Documenting Evidence

What to know about documenting evidence

“Your ability to make a difference is your ability to prove it.”

- **Tom Devine**, Legal Director of the Government Accountability Project

“The better your evidence, the greater the probability that the Justice Department will join your team and join in your False Claims Act case, significantly increasing the likelihood that you will win the claim.”

- **Stephen Martin Kohn**, *The New Whistleblower's Handbook: A Step-by-Step Guide to Doing What's Right and Protecting Yourself* (2017), p. 272

“Courts that have sanctioned employees for copying confidential documents have noted that if an employee can demonstrate that the copied materials would have been ‘destroyed,’ and their conduct was undertaken to ‘preserve evidence,’ its decision may have been different.”

- **Kohn** (2017), p. 262



“Legally Speaking” What to Know About

“You can access documents that are a part of your job responsibilities, but you can’t go on ‘fishing expeditions’. Be targeted. Use a scalpel, not a hatchet. One client downloaded an entire database and they got in trouble. Only take the information that is relevant to your case. Don’t go out of your way to document other misconduct in the company. One client faced criminal charges for stealing his boss’ password to access damaging information.”

- **Mary Inman**, Partner at Constantine Cannon LLP

STATEMENTS FROM GOOGLE ABOUT THE FIRING OF EMPLOYEES

“We dismissed four individuals who were engaged in intentional and often repeated violations of our longstanding data security policies, including systematically accessing and disseminating other employees’ materials and work. No one has been dismissed for raising concerns or debating the company’s activities.”

- **Makena Kelly**, *Verge* (December 9, 2019)

“Margaret Mitchell, the other co-leader of the Ethical AI team and a prominent researcher in her own right, was among the hardest hit by [Timnit] Gebru’s ouster. The two had been a professional and emotional tag team, building up their group – which was one of several that worked on what Google called “responsible AI” – while parrying the sexist and racist tendencies they saw at large in the company’s culture. Confident that those same forces had played a role in Gebru’s downfall, Mitchell wrote an automated script to retrieve notes she’d kept in her corporate Gmail account that documented allegedly discriminatory incidents, according to sources inside Google. On January 20, Google said Mitchell had triggered an internal security system and had been suspended. On February 19, she was fired, with Google stating that it had found ‘multiple violations of our code of conduct, as well as of our security policies, which included exfiltration of confidential, business-sensitive documents.’”

- **Tom Simonite**, *Wired* (June 8, 2021)



“Legally Speaking” What to Know About

HELPFUL INFO

- Make sure you have detailed evidence. Both lawyers and reporters will ask for evidence so having detailed and organized records will make the whole process easier for you.
- Make your own detailed notes. Make sure to take notes in the moment instead of trying to recreate memories later. Useful pieces of evidence include:
 - Dates
 - Of illicit activity
 - Of any internal attempts you made to address the issue
 - Of any retaliatory behavior from the company
 - Patient ID numbers (if applicable)
 - Training records
 - Standard operating procedures (SOPs)
 - Internal policies
 - Violations of regulatory codes
 - Employment documentation
 - Past complaints you've made

Tips for documenting evidence

1. Companies can tell when you take a screenshot, so taking a picture on a non-company device, or even a pseudonymous device, is better than documenting anything on the computer itself.
2. Use a small tablet with Wi-Fi turned off instead of a phone; this way there will be no location information stored as metadata in the photos. Make sure to remove any metadata from the pictures if possible.
3. Make sure the photos don't have any identifying information in them; this could be your hand, your reflection on the computer screen, images of your office, or other identifying information or marks on your computer screen.
4. Using a shared account to log in to gather info can help protect you, but be aware of any blame you may be passing along to others.
5. “Backflushing” a document, meaning sending it legitimately to others in the company, such as attached to a regular and relevant report, is another way to reduce targeted suspicion on you by increasing the amount of people who would have credible access to the information.
6. You can convert Word and other text files to PDFs, then export each page as a JPEG image. Once you've done that, you can use an image editor to draw black boxes over sensitive data



“Legally Speaking” What to Know About

that may cause undue risk to you or others. If you try to redact the documents from within the PDF, it will be done in layers, leaving the actual data underneath the black boxes. JPEG does not have layers. Once complete, you can share the pictures as a set. You can do this with actual images as well.

- **Tim Schwartz**, *A Public Service: Whistleblowing, Disclosure and Anonymity* (2019)

“If you go to a whistleblower lawyer, they will ask you to take contemporaneous notes, much like a diary, to document the wrongdoing as it is occurring. Those notes are arguably protected because they were made at your attorney’s direction. Notes that you take in the ordinary course of your job in order to perform your job, however, are not likely to be protected.”

- **Mary Inman**, Partner at Constantine Cannon LLP

“Be extremely careful with documents that the target may claim are protected by its attorney–client privilege. While you may be entitled to have copies of those documents in your possession, refrain from providing them to your attorneys or any member of the government enforcement team. Doing so may taint both your attorneys and the government team and require that they recuse themselves from the case. If you have questions about which documents are privileged, tell your attorneys and they can hire a taint attorney to screen the documents and only provide your attorneys with those they have cleared as not privileged.”

- **Mary Inman**, Partner at Constantine Cannon LLP

“Information stored with your attorney may be protected from search and seizure through attorney-client privilege.”

- **Schwartz** (2019), p. 186

Recording conversations may help, but there are specific laws for what is allowed in each state and if you need all parties or just one party to consent to being recorded. This [document](#) and this [website](#) give general guidance on whether a state is a “one party” or “all party” state. To be sure of the law in a particular state, speak with a lawyer.

“Don’t delete any evidence, including documents that present you in a negative light. Tampering with evidence is illegal and creates legal exposure for yourself. Heed the old adage: The cover-up is worse than the crime.”

- **Mary Inman**, Partner at Constantine Cannon LLP

If you take a computer or open files without permission it could be a cyber crime or civil violation.

If you take the files themselves, if it is printed, it could be a theft of intellectual property. Companies can record who prints and from where, so be careful.



“Legally Speaking” What to Know About

Misuse of computer systems by you or by the parties committing the wrongdoing may be reported to the FBI.

There are state-specific laws about misuse of computers so it is best to talk with a lawyer about what you may do on a computer to gather evidence.

“Be careful that any e-mails you maintain in a personal account do not include the company’s proprietary information such as intellectual property and trade secrets, or privileged information such as communications between the company and its attorneys.”

- **Tom Devine & Tarek F. Maassarani**, *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth* (2011), p. 76

Don’t use company tech resources for gathering information. Using a company’s device could invalidate any attorney-client privilege for that information, which could include your identity.

Be prepared to be locked out at any moment if someone is aware you are collecting information.

“To prevent companies from destroying evidence, it is a good practice to compile a detailed list of materials that should be subpoenaed while still working.”

- **Kohn** (2017), p. 285

If you have enough information to initiate a government investigation, the government can then issue subpoenas for anything else they need.

Communicate on Signal, ProtonMail, Tor, etc. For example, you can take a picture with your personal phone and send the pictures over ProtonMail.

Balancing Test

1. In evaluating how to deal with improper document removals, courts apply a “balancing test.” In past decisions, the below questions have been applied, so it is good to think through the answers when assessing what evidence to gather. Steve Kohn’s book lays out “six factors that should be considered when weighing this balance:” **Kohn** (2017), p. 123
 - a. How were the documents obtained? Did the employee have proper access to the documents, or did the employee obtain them in an innocent manner? Did the employee rifle through company files and surreptitiously copy the material?
 - b. To whom did the employee show the documents? Were they shown to coworkers and friends, or were the documents just provided to government investigators?
 - c. What was in the documents? Was the information the type that should be kept strictly confidential and that clearly should not have been copied?
 - d. Why were the documents obtained and why were they produced?



“Legally Speaking” What to Know About

- e. What was the employer’s privacy or confidentiality policy?
 - f. Could the employee have obtained the material in a manner that did not violate company policy?
- **Stephen Martin Kohn**, *The New Whistleblowing, A Step-By-Step Guide to Doing What’s Right and Protecting Yourself* (2017)



Resources

6.1 Glossary

— 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 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



Resources

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.

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



Resources

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.”

- Working with the Press

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?



Resources

“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, etc. 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 –

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



Resources

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?

- [Working with the Press](#)

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.



Resources

— 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.

- Working with the Press

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.

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 handbook 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



Resources

– 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 –

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](#)).



Resources

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];
10. a decision to order psychiatric testing or examination;
11. the implementation or enforcement of any nondisclosure policy, form, or agreement; and
12. any other significant change in duties, responsibilities, or working conditions.

- **Stephen Martin Kohn**, *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself* (2017)

Reward: Whistleblowing Reward Programs

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.



Resources

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

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.

— T —

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



Resources

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](#)

– 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.



Resources

6.2 Whistleblowing Options Overview

This tool is meant to give a brief overview of the most common pathways available to whistleblowers and provide basic answers to common questions for each pathway. Each circumstance is unique and you should speak to a lawyer about your case.

This tool is meant to give a brief overview of the most common pathways available to whistleblowers and provide basic answers to common questions for each pathway. Each circumstance is unique and you should speak to a lawyer about your case.

The Signals Network does not request, encourage or counsel potential whistleblowers to act unlawfully. This section covers some key information to be aware of based on the experience of other whistleblowers who have been through this before and the people who helped them. This section doesn't offer legal advice, and potential whistleblowers are encouraged to consult with counsel about their particular situation.

	Securities and Exchange Commission (SEC) Whistleblower
What kinds of wrongdoing can you report?	<ul style="list-style-type: none"> • Fraudulent or unregistered offer or sale of securities, including things like: Ponzi schemes, pyramid schemes, high-yield investment programs; • Theft or misappropriation of funds or securities; • Manipulation of a security's price or volume; • Insider trading; • False or misleading statements about a company (including false or misleading SEC reports or financial statements); • Failure to file required reports with the SEC; • Bribery of, or improper payments to, foreign officials; and • Fraudulent conduct associated with municipal securities transactions or public pension plans.
How long is the average legal process?	3-10 years
Will your anonymity be protected by this agency?	Most likely yes. The SEC vigorously protects whistleblowers' anonymity. However, if the SEC enters litigation or an administrative proceeding, the SEC may need to disclose your identity as a potential witness. When making awards, the SEC's policy is not to disclose a whistleblower's identity.
Is it possible to get a financial reward?	Yes. The SEC has awarded approximately \$812m to whistleblowers since 2012. Whistleblower awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed \$1 million. However, it is still rare to successfully receive a reward.
Will you have to appear in court?	Most likely not. You do not file a lawsuit when you report to the SEC. However, if the SEC enters litigation or an administrative proceeding involving your information, you may need to appear as a witness.
Is there protection from being sued?	The SEC whistleblower program does not protect you from all lawsuits. However, the SEC has an "anti-gag" rule that prohibits companies from using confidentiality agreements to prevent whistleblowers from speaking with the SEC.
Is it a breach of a non-disclosure agreement to give information?	No. The SEC has an "anti-gag" rule and has fined companies for attempting to use NDAs to prevent employees from reporting to the SEC.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	Maybe. The SEC whistleblower program does not prohibit speaking with the media. However, doing so could interfere with the SEC's investigation and make the agency less likely to work with you to investigate your allegations. It could also violate your NDA.



Resources

	Securities and Exchange Commission (SEC) Whistleblower
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	The SEC program prohibits companies from retaliating against their employees—i.e., terminating employment, demoting employees—for reporting violations to the SEC. HOWEVER, these protections may not apply to you if you do not work in the United States.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is typically LOW to MEDIUM LOW. The whistleblower invests time working with their attorney on the front-end to prepare their whistleblower tip to submit to the SEC. If the SEC is interested in the tip, the agency will typically reach out within a few months of receiving the whistleblower tip to interview the whistleblower. This may be the only interview. However, for more complex cases, the agency may repeatedly interview the whistleblower over a period of years as it investigates the whistleblower's tip. If the SEC declines to act on the whistleblower's information, the whistleblower has no right to separately bring an action in court.

	Commodity Futures Trading Commission (CFTC) Whistleblower
What kinds of wrongdoing can you report?	Wrongdoing includes information about a potential violation of the Commodity Exchange Act. Examples range from a corporate officer or insider, to a trader or market observer, to an investor or fraud victim.
How long is the average legal process?	3-10 years
Will your anonymity be protected by this agency?	Most likely yes. The CFTC vigorously protects whistleblowers' anonymity. However, if the CFTC enters litigation or an administrative proceeding, the CFTC may need to disclose your identity as a potential witness. Your identity may also be disclosed if you receive an award from the CFTC.
Is it possible to get a financial reward?	Yes. The CFTC has awarded approximately \$123 million to whistleblowers since 2014. Whistleblower awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed \$1 million.
Will you have to appear in court?	Most likely not. You do not file a lawsuit when you report to the CFTC. However, if the CFTC enters litigation or an administrative proceeding involving your information, you may need to appear as a witness.
Is there protection from being sued?	The CFTC whistleblower program does not protect you from all lawsuits. However, the CFTC has an "anti-gag" rule that prohibits companies from using confidentiality agreements to prevent whistleblowers from speaking with the CFTC.
Is it a breach of a non-disclosure agreement to give information?	No. The CFTC has an "anti-gag" rule and has fined companies for attempting to use NDAs to prevent employees from reporting to the CFTC.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	Maybe. The CFTC whistleblower program does not prohibit speaking with the media. However, doing so could interfere with the CFTC's investigation and make the agency less likely to work with you to investigate your allegations. It could also violate your NDA.
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	The CFTC program prohibits companies from retaliating against their employees--i.e., terminating employment, demoting employees--for reporting violations to the CFTC. HOWEVER, these protections may not apply to you if you do not work in the United States.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is typically LOW to MEDIUM LOW. The whistleblower invests time working with their attorney on the front-end to prepare their whistleblower tip to submit to the CFTC. If the CFTC is interested in the tip, the agency will typically reach out within a few months of receiving the whistleblower tip to interview the whistleblower. This may be the only interview. However, for more complex cases, the agency may repeatedly interview the whistleblower over a period of years as it investigates the whistleblower's tip. If the CFTC declines to act on the whistleblower's information, the whistleblower has no right to separately bring an action in court.



Resources

	The Federal False Claims Act (Department of Justice)
What kinds of wrongdoing can you report?	<p>The cornerstone of a whistleblower case under the False Claims Act is evidence that fraud or misconduct caused the federal government to suffer a loss. The false claim can take many forms:</p> <ul style="list-style-type: none"> • Overcharging the government for a product or service. • Providing the government with a product or service that is substandard or otherwise different from what the government agreed to pay for. • Underpaying the government or avoiding an obligation to pay the government (for obligations other than taxes). • Keeping an overpayment received from the government. <p>To be a violation of the FCA, a defendant's wrongful actions must be "knowing." Deliberate ignorance or reckless disregard of the truth of the claim is sufficient to show knowing conduct.</p>
How long is the average legal process?	3-7 years
Will your anonymity be protected by this agency?	No. The False Claims Act does not guarantee anonymity. However, your case will be filed "under seal" meaning the defendants likely will not know your identity for several years.
Is it possible to get a financial reward?	Yes. A whistleblower can receive between 15 and 30 percent of the money recovered by the DOJ.
Will you have to appear in court?	Possibly. Unless DOJ settles your case before litigation begins, or you choose not to proceed with a case once DOJ declines to act, you will need to appear in court as a witness.
Is there protection from being sued?	The False Claims Act does not protect you from all lawsuits. However, courts have dismissed some lawsuits brought by employers against whistleblowers for disclosing company information. The courts have found that the public policy (public interest) embodied by the False Claims Act defeats these lawsuits.
Is it a breach of a non-disclosure agreement to give information?	Probably not. Courts have dismissed some lawsuits brought by employers against whistleblowers for disclosing company information. The courts by found that the public policy (public interest) embodied by the False Claims Act defeats these lawsuits.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	No. Once you have filed the False Claims Act case, the matter is under seal and you can only discuss the matter with your attorneys and the government. If you violate the seal, you can be sanctioned.
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	The False Claims Act prohibits companies from retaliating against employees who report to the government, report internally, or try to stop the fraud. The anti-retaliation protection is broader than the CFTC and SEC programs.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is typically MEDIUM to HIGH. A whistleblower invests significant time on the front-end working with their attorney to prepare a whistleblower complaint, which is filed in federal court, and a disclosure statement listing all evidence the whistleblower possesses, which is given directly to the Department of Justice. The DOJ will then schedule an interview with the whistleblower typically within 3 months. The DOJ may then work with the whistleblower and their attorneys for the entire course of investigation—possibly years—interviewing the whistleblower multiple times, asking for the whistleblower's help reviewing documents obtained in the investigation, and seeking the whistleblower's input on relevant witnesses. If the DOJ takes the case to litigation, the whistleblower and their attorney will likely support the DOJ's litigation efforts. If the DOJ declines to proceed with a lawsuit based on the whistleblower's information, the whistleblower has the legal right to proceed in court on their own.



Resources

	Internal Revenue Service (IRS)
What kinds of wrongdoing can you report?	Wrongdoing includes any tax noncompliance.
How long is the average legal process?	5-10 years
Will your anonymity be protected by this agency?	Most likely yes. Although IRS whistleblowers must disclose their identities to the IRS when submitting a tip, the tip may be submitted secretly. The IRS has a strong policy to protect the whistleblower's identity. The agency has generally taken steps to ensure that the whistleblower's target does not learn that there is a whistleblower, much less that person's identity. However, if the IRS decides to pursue the case in court or an administrative proceeding, the IRS may need to disclose your identity as a potential witness. Your identity may also be disclosed if you receive an award from the IRS.
Is it possible to get a financial reward?	Yes. The whistleblower receives between 15 percent and 30 percent of the money recovered if the recovery exceeds \$2 million.
Will you have to appear in court?	Most likely not. You do not file a lawsuit when you report to the IRS. However, if the IRS enters litigation or an administrative proceeding involving your information, you may need to appear as a witness.
Is there protection from being sued?	The IRS whistleblower program does not protect you from all lawsuits.
Is it a breach of a non-disclosure agreement to give information?	Probably not. However, the program needs to be developed further.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	Maybe. But the optics might not be good for your case.
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	Whistleblowers are generally entitled to protection from retaliation by their employers based on their reporting of tax violations.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is LOW and all not the front-end, i.e., preparing the whistleblower tip to send to the IRS. Typically, the IRS will interview the whistleblower only once, if at all. Tax privacy laws prevent the IRS from disclosing actions taken on a whistleblower submission or the status of any investigation. The IRS will disclose only if the case is still open or is closed. If it is closed and the whistleblower will receive an award, the IRS contacts the whistleblower. If the IRS declines to act on the whistleblower's information, the whistleblower has no right to separately bring an action in court.



Resources

	National Highway Traffic Safety Administration (NHTSA)
What kinds of wrongdoing can you report?	Wrongdoing includes potential vehicle safety defects, noncompliance with the Federal Motor Vehicle Safety Standards, and violations of the Vehicle Safety Act. NHTSA investigators consider information provided by whistleblowers, which may lead to formal actions like an investigation, recall, or civil penalty enforcement action. NHTSA protects the confidentiality of whistleblowers.
How long is the average legal process?	Unclear. The program was created in 2015 by the Motor Vehicle Safety Whistleblower Act, but NHTSA has not yet made rules to establish the program.
Will your anonymity be protected by this agency?	Most likely yes.
Is it possible to get a financial reward?	Yes. Awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed \$1 million. There has been only one award to date associated with this program.
Will you have to appear in court?	Most likely not. You do not file a lawsuit when you report to NHTSA. It is likely that, once the program is further developed, you might be disclosed as a witness if NHTSA enters litigation or an administrative proceeding involving your information.
Is there protection from being sued?	No. The NHTSA program does not protect you from all lawsuits. The program needs to be developed further.
Is it a breach of a non-disclosure agreement to give information?	Probably not. However, the program needs to be developed further.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	Maybe. The program needs to be developed further.
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	Federal laws prevent retaliation against employees who work for motor vehicle manufacturers, part suppliers, and dealerships who report auto safety issues or refuse to participate in misconduct.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is LOW and all on the the front-end, i.e., preparing the whistleblower tip to send to NHTSA. Because NHTSA has yet to fully activate this program, the time commitment may increase going forward. If NHTSA declines to act on the whistleblower's information, the whistleblower has no right to separately bring an action in court.



Resources

	Anti-Money Laundering Whistleblower Program (Department of Treasury)
What kinds of wrongdoing can you report?	A whistleblower may submit information about any possible violation of the Bank Secrecy Act and its regulations that has occurred, is ongoing, or is about to occur. Violations may take the form of: <ul style="list-style-type: none"> • The failure of a covered financial institution to have an effective overall compliance program; • Failures with respect to specific compliance program components or “pillars”; • Systemic and recurring noncompliance with BSA requirements.
How long is the average legal process?	Unknown; the program is new in 2021.
Will your anonymity be protected by this agency?	Most likely yes. Whistleblowers may supply information anonymously, as long as they are represented by an attorney. The program is brand new in 2021 so it is unclear how vigorously a whistleblower’s identity will be protected.
Is it possible to get a financial reward?	Yes. A whistleblower can receive a reward of up to 30 percent of monetary sanctions over 1\$ million the government imposes based on the information the whistleblower provides.
Will you have to appear in court?	Most likely not. You do not file a lawsuit when you report money laundering violations. It is likely that, once the program is further developed, you might be disclosed as a witness if the Department of Treasury enters litigation or an administrative proceeding involving your information.
Is there protection from being sued?	No. The program does not protect you from all lawsuits. The program needs to be developed further.
Is it a breach of a non-disclosure agreement to give information?	Probably not. However, the program needs to be developed further.
Who should you have on your legal team?	An attorney familiar with whistleblower reward programs. Possibly an employment attorney.
Can you speak to a journalist simultaneously?	Maybe. The program needs to be developed further.
Can you use this route if you’ve already spoken to a journalist?	Yes.
What other protections are available?	The Anti-Money Laundering Act bars employers from discharging, demoting, threatening or harassing employees who provide information relating to money laundering and violations of the Bank Secrecy Act (BSA) to their employer, or to the attorney general, secretary of the treasury, regulators and others.
Timing Considerations/ Whistleblower Time Commitment	The program is too new to assess, but a whistleblower will need to invest time up front putting together their information to provide to the agency.



Resources

41 U.S. Code § 4712 (US Government Contractors)	
What kinds of wrongdoing can you report?	<p>The laws protect disclosures that involve wrongdoing related to federal contracting or grantmaking. Specifically, the laws protect covered employees when they make a disclosure with a reasonable belief that the information evidences:</p> <ul style="list-style-type: none"> • Gross mismanagement of a federal contract or grant • A gross waste of federal funds • An abuse of authority relating to a federal contract or grant • A substantial and specific danger to public health or safety • A violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant
Is there protection from being sued?	<p>To be protected, disclosures can be made to any of the following audiences:</p> <ul style="list-style-type: none"> • A Member of Congress or a representative of a committee of Congress • An Inspector General • The Government Accountability Office • A Federal employee responsible for contract or grant oversight or management at the relevant agency involved • An authorized official of the Department of Justice or other law enforcement agency • A court or grand jury • A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct <p>Employees are also protected if they make their disclosures as part of a judicial or administrative proceeding regarding waste, fraud, or abuse of a federal contract or grant.</p> <p>If a whistleblower believes they are facing unlawful retaliation because of a protected disclosure, they may file a claim with the inspector general (IG) of the agency that awarded the contract or grant. That filing triggers a time-bound administrative process involving an investigation and subsequent decision on the whistleblower’s claim. Whistleblowers who do not have a favorable outcome through this administrative process, or do not receive a decision within 210 days, may seek relief in federal district court. There is a three-year statute of limitations from the date of the alleged retaliation for whistleblowers to file their IG claim.</p>
Is it a breach of a non-disclosure agreement to give information?	<p>Contractors and grantees cannot gag their employees from making lawful disclosures through policy, order, or agreement. Any kind of restriction on employee speech must contain verbatim the clause in 5 U.S.C. § 2302(b)(13) that declares the supremacy of whistleblower rights in the event of a conflict. (See: Pub. L. 116-93 § 743).</p>



Resources

10 U.S. Code § 2409 (US Government Contractors for the Department of Defense (DoD) and the National Aeronautics and Space Administration (NASA))	
What kinds of wrongdoing can you report?	<p>The laws protect disclosures that involve wrongdoing related to federal contracting or grantmaking. Specifically, the laws protect covered employees when they make a disclosure with a reasonable belief that the information evidences:</p> <ul style="list-style-type: none"> • Gross mismanagement of a federal contract or grant • A gross waste of federal funds • An abuse of authority relating to a federal contract or grant • A substantial and specific danger to public health or safety • A violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant
Is there protection from being sued?	<p>To be protected, disclosures can be made to any of the following audiences:</p> <ul style="list-style-type: none"> • A Member of Congress or a representative of a committee of Congress • An Inspector General • The Government Accountability Office • A Federal employee responsible for contract or grant oversight or management at the relevant agency involved • An authorized official of the Department of Justice or other law enforcement agency • A court or grand jury • A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct <p>Employees are also protected if they make their disclosures as part of a judicial or administrative proceeding regarding waste, fraud, or abuse of a federal contract or grant.</p> <p>If a whistleblower believes they are facing unlawful retaliation because of a protected disclosure, they may file a claim with the inspector general (IG) of the agency that awarded the contract or grant. That filing triggers a time-bound administrative process involving an investigation and subsequent decision on the whistleblower’s claim. Whistleblowers who do not have a favorable outcome through this administrative process, or do not receive a decision within 210 days, may seek relief in federal district court. There is a three-year statute of limitations from the date of the alleged retaliation for whistleblowers to file their IG claim.</p>
Is it a breach of a non-disclosure agreement to give information?	<p>Contractors and grantees cannot gag their employees from making lawful disclosures through policy, order, or agreement. Any kind of restriction on employee speech must contain verbatim the clause in 5 U.S.C. § 2302(b)(13) that declares the supremacy of whistleblower rights in the event of a conflict. (See: Pub. L. 116-93 § 743).</p>



Resources

	Media
How long is the average legal process?	The process from a first conversation with a journalist to a publication date usually takes weeks or even months (getting to know each other, building trust, potentially other media, time for journalists to investigate, talk to other sources, question the company, regulator, etc.).
Will your anonymity be protected by this agency?	You decide what the journalist knows about you, what you allow him/her to publish. You decide what is on the record, off the record, on background. You decide how he/she can attribute the information to. Make sure you think of all small details that could help identify you (ex: number of pages in report you shared with him/her, etc).
Is it possible to get a financial reward?	No.
Will you have to appear in court?	No.
Is there protection from being sued?	No.
Is it a breach of a non-disclosure agreement to give information?	Usually yes.
Who should you have on your legal team?	An attorney with experience working with media, expertise on defamation.
Can you speak to a journalist simultaneously?	You can talk to many journalists simultaneously.
Can you use this route if you've already spoken to a journalist?	Yes.
Timing Considerations/ Whistleblower Time Commitment	Whistleblower time commitment is typically LOW to MEDIUM LOW. The whistleblower invests time working with the journalist on the front-end to get the investigation started, might have some follow ups interviews to go deeper in some aspects, then may invest time ahead of the publication.



Resources

	Civil Society
How long is the average legal process?	This depends entirely on the whistleblower's objectives. If it is just to get a piece of evidence into the right hands, the relationship may be a matter of days to weeks. If it is litigation, those generally multi-year schedules control. If it is to challenge an ingrained policy or major government project, the relationships could last for years, or as long as the whistleblower has stamina and something to contribute.
Will your anonymity be protected by this agency?	Not necessarily. The Civil Society Organization does not have a personal commitment to you and may decide to sacrifice your rights for the cause. Further, unless the organization represents you, it does not have the attorney client shield to shield you. Representation can work, if the CSO's retainer agrees in the event of a conflict to shield anything you do not want to release. Alternatively, communicate with the CSO through counsel who can protect you at every stage.
Is it possible to get a financial reward?	Unless co-plaintiffs in False Claims Act litigation, partnerships with CSO's seldom do not lead to commercial benefit. As a rule, these are partnerships between kindred spirits operating from distinct perspectives to make a difference, rather than a profit. NDA's or other restraints.
Will you have to appear in court?	It depends on your objectives, but as a rule CSO's are an advocacy alternative or supplement to litigation. Witness or expert witness contribution to CSO litigation illustrate objective that require court.
Is there protection from being sued?	Working with a CSO will not shield you from liability under U.S. laws, beyond anti-gag provisions that prevent litigation grounded in an NDA or other restriction that conflicts with protected speech under the relevant whistleblower law. However, 23 of 47 national laws, and the EU Directive adding 14 more nations, have criminal and civil liability shields for whistleblowing. The latter provides an affirmative defense if the whistleblower reasonably believes disclosure was necessary, and no independent laws beyond accessing evidence are violated, such as breaking and entering.
Is it a breach of a non-disclosure agreement to give information?	No, as long as the information is protected speech under the relevant whistleblower law. However, about a third of early U.S. corporate whistleblower laws before 2002 did not have anti-gag protection, making the NDAs enforceable through litigation.
Who should you have on your legal team?	A trustworthy attorney with a track record that includes successful working relationships with the CSO, and a track record of successful representation. (See more detailed comments in text.)
Can you speak to a journalist simultaneously?	Yes, both are key actors in the legal campaigns necessary to turn the truth into power. However, it may be wise first to learn from the CSO which journalists are trustworthy and effective, based on prior experience. Additionally, there must be careful planning and coordination to control use and release of the information, or the two allies could cancel each other out or conflict with the whistleblower's goals.
Can you use this route if you've already spoken to a journalist?	Yes.
What other protections are available?	Government employees also have First Amendment protection under the constitution. If not covered by one of over 50 U.S. corporate whistleblower statutes, many of which overlap, private sector workers in 44 states also can file public policy exception tort suits for damages in state court.
Timing Considerations/ Whistleblower Time Commitment	It varies entirely on the whistleblower's goals, from a few hours to launder significant evidence through the CSO, to a full time job for the length of the advocacy campaign if the whistleblower is off work, such as becoming an expert witness.



Resources

6.3 Key steps in whistleblower reward programs

This tool from the Constantine Cannon LLP is meant to give a brief overview of the key steps and timeline for US Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), False Claims Act, and Internal Revenue Service (IRS) whistleblower reward programs.

Each circumstance is unique and you should speak to a lawyer about your case.

SEC Whistleblower Program		
Step		Time Frame
1	Find a whistleblower attorney.	Begin your search as soon as you become aware of the wrongdoing and are considering reporting it. If possible , contact the attorney before you report anything internally at your company. You may be advised to also find employment counsel.
2	Work with your attorney to draft a written whistleblower tip for the SEC.	This takes 2 weeks to several months. You will need to provide relevant documents to your attorney and give them any other relevant information to (1) assess your case and (2) put together a whistleblower tip. Your attorney will work with you to organize your evidence and write a compelling narrative. If your allegations are complex and you possess many documents, the process can take several months. If you need retaliation protection immediately, your attorney may help you draft a short "placeholder" tip.
3	Provide an interview to SEC attorneys.	This may happen between 1-4 months after submitting your tip to the SEC (caution : it may <i>never</i> happen if the SEC is not interested in pursuing your case). You will meet with your attorney at least once before the interview to prepare for it.
4	Wait.	A few weeks to several years. You may be contacted again by SEC attorneys to provide another interview. SEC attorneys may be gathering additional evidence they would like your assistance interpreting, or they may have additional questions about the information you already provided.
5	Additional SEC interviews.	These may occur regularly over the course of the SEC's investigation. If the investigation takes years, you may be asked to speak with the SEC several times each year.
6	Submit award application.	At least 3 years after submitting your whistleblower tip. If the SEC successfully recovers money related to your information, they will publicly post a "notice of covered action." You must apply in writing within 90 days of the notice to receive a portion of the money recovered.
Note:	It is possible, but very unlikely, that between steps 5 and 6 the SEC will take the case to court or an administrative proceeding and require your testimony as a witness.	



Resources

CFTC Whistleblower Program		
Step		Time Frame
1	Find a whistleblower attorney.	Begin your search as soon as you become aware of the wrongdoing and are considering reporting it. If possible , contact the attorney before you report anything internally at your company. You may be advised to also find employment counsel.
2	Work with your attorney to draft a written whistleblower tip for the CFTC.	This takes 2 weeks to several months. You will need to provide relevant documents to your attorney and give them any other relevant information to (1) assess your case and (2) put together a whistleblower tip. Your attorney will work with you to organize your evidence and write a compelling narrative. If your allegations are complex and you possess many documents, the process can take several months. If you need retaliation protection immediately, your attorney may help you draft a short "placeholder" tip.
3	Provide an interview to CFTC attorneys.	This may happen between 1-4 months after submitting your tip to the CFTC (caution : it may <i>never</i> happen if the CFTC is not interested in pursuing your case). You will meet with your attorney at least once before the interview to prepare for it.
4	Wait.	A few weeks to several years. You may be contacted again by the CFTC attorneys to provide another interview. CFTC attorneys may be gathering additional evidence they would like your assistance interpreting, or they may have additional questions about the information you already provided.
5	Additional CFTC interviews.	These may occur regularly over the course of the CFTC's investigation. If the investigation takes years, you may be asked to speak with the CFTC several times each year.
6	Submit award application.	At least 3 years after submitting your whistleblower tip. If the CFTC successfully recovers money related to your information, they will publicly post a "notice of covered action." You must apply in writing within 90 days of the notice to receive a portion of the money recovered.
Note:	It is possible, but very unlikely, that between steps 5 and 6 the CFTC will take the case to court or an administrative proceeding and require your testimony as a witness.	



Resources

Federal False Claims Act		
Step		Time Frame
1	Find a whistleblower attorney.	Begin your search as soon as you become aware of the wrongdoing and are considering reporting it. If possible , contact the attorney before you report anything internally at your company. You may be advised to also find employment counsel.
2	Work with your attorney to file a complaint in federal court and draft a disclosure statement for the government.	This takes 2 weeks to several months. You will need to provide all your relevant documents to your attorney and give them any other relevant information to (1) assess your case and (2) draft a complaint and disclosure statement. Your attorney will work with you to organize your evidence and write a compelling narrative. If your allegations are complex and you possess many documents, the process can take several months. If your attorney believes it is possible that someone else has filed a complaint related to your allegations, this process will occur as quickly as possible—you want to be the first person to file a relevant complaint to ensure you are eligible for a financial reward.
3	Provide an interview to Department of Justice attorneys.	This almost always happens between 1-4 months after filing your complaint. You will meet with your attorney at least once before the interview to prepare for it.
4	Assist the DOJ's investigation: help with document subpoenas.	1-6 months after filing, you may be asked to assist. If the government is very interested in your case, and you have good attorneys who have positioned you as a resource for the government, the government will seek your assistance drafting document subpoenas that they will issue to the defendants in your case. Your attorneys will take the lead, but will consult with you to get your thoughts and ideas.
5	Assist the DOJ's investigation: review documents and prepare witness interviews.	You may assist with this task for 1 to 5 years after filing. If the case is complicated, defendants may produce many thousands of documents (or more) to the government. The government has limited resources, and they will likely ask your attorneys for assistance reviewing the documents and preparing the government to interview witnesses. You will consult with your attorneys throughout this process to ensure your knowledge assists the investigation. This process can be "stop and go" depending on how quickly and consistently the government works. There may be periods of months where you do not speak with your attorney but the government is still investigating your case.
6	Settlement OR Litigation.	At least 3 years, but likely several more, after you file your case, the government will attempt to settle with the defendants OR will enter litigation in court against them. If a settlement occurs, you will have minimal involvement in the process; the claim belongs to the government, not to the whistleblower. If litigation occurs, your attorneys will likely work closely with the government to assist. You will be consulted throughout, and you may need to give testimony at a deposition or appear at trial. Note: if the government does <u>not</u> settle and chooses <u>not</u> to litigate, you have the option of litigating the case on your own. In this situation, your time commitment will increase.
7	Seek a "relator's share."	At least 3 years, but likely several more, after you file your case. If the government successfully obtains money from the defendants, you will request a portion of it. This can be simple or require motions practice in court. You will consult your attorneys as they take the lead on this process.
Note:	It is possible that, after step 3, you will not hear from the government again until receiving a notice of declination (several months after the interview), which means they are not proceeding with the case. At this point, you may also decide to litigate the case on your own.	
Note:	On occasion, the entire process (steps 1-7) can take as little as 2 years. This is rare, and may happen if someone else has filed a complaint before you and the government's investigation was open when you filed your complaint. You may still be eligible for a relator's share. The entire process (steps 1-7) may also take more than 10 years in limited circumstances.	



Resources

IRS Whistleblower Program		
Step		Time Frame
1	Find a whistleblower attorney.	Begin your search as soon as you become aware of the wrongdoing and are considering reporting it. If possible , contact the attorney before you report anything internally at your company. You may be advised to also find employment counsel.
2	Work with your attorney to draft a written whistleblower tip for the IRS.	This takes 2 weeks to several months. You will need to provide relevant documents to your attorney and give them any other relevant information to (1) assess your case and (2) put together a whistleblower tip. Your attorney will work with you to organize your evidence and write a compelling narrative. If your allegations are complex and you possess many documents, the process can take several months.
3	Provide an interview to IRS attorneys.	This may happen between 3 months to 2 years after submitting your tip. However, there is a good chance you will never be interviewed. (caution : it may <i>never</i> happen if the IRS is not interested in pursuing your case). You will meet with your attorney at least once before the interview to prepare for it.
4	Wait.	6-10 years. The IRS is now required to provide you with updates during the waiting period, but they offer little to no insight into what they may or may not be doing related to your tip.
5	Receive Preliminary Determination (or Rejection) of your Claim.	6-10 years. The Preliminary Determination of your claim may or may not provide you with a monetary award. You may contest the award, and the IRS will issue a Final Determination. If you disagree with the Final Determination, you can appeal to the Tax Court, which will take another 2-3 years.

National Highway Traffic Safety Administration (NHTSA)		
Step		Time Frame
1	Find a whistleblower attorney.	Begin your search as soon as you become aware of the wrongdoing and are considering reporting it. If possible , contact the attorney before you report anything internally at your company. You may be advised to also find employment counsel.
2	Work with your attorney to draft a written whistleblower tip for NHTSA.	This normally takes several months. You will need to provide relevant documents to your attorney and give them any other relevant information to (1) assess your case and (2) put together a whistleblower tip. Your attorney will work with you to organize your evidence and write a compelling narrative. If your allegations are complex and you possess many documents, the process can take several months.
3	Provide an interview to NHTSA.	This may happen between 1-6 months after submitting your tip to NHTSA (caution : it may <i>never</i> happen if NHTSA is not interested in pursuing your case). You will meet with your attorney at least once before the interview to prepare for it.
4	Wait.	Several years. This is an underdeveloped program. The Department of Transportation, which houses NHSTA, has not yet written regulations governing the program. It is likely that the Biden Administration will direct the Department of Transportation to do so and this program will develop more fully.



Resources

6.4 Partners, Websites, & Books

Tech Worker Handbook Partners

- **Government Accountability Project:** Government Accountability Project (GAP) is the US leader in whistleblower protection – from advocacy to litigation. GAP’s effective methodology uses whistleblower revelations to have a meaningful impact on civil society and governance and know how to win whistleblower cases in the court of law and public opinion. They conduct educational outreach, pursue legislative initiatives, litigate whistleblower cases, and investigate public and private corruption.

 - The organization’s website also hosts an extensive list of resources and a section on “Survival Tips” for potential whistleblowers.
 - GAP Legal Director Tom Devine is co-author of the book: *The Corporate Whistleblower’s Survival Guide: A Handbook for Committing the Truth*
- **Constantine Cannon LLP:** Founded in 1994 in New York City, Constantine Cannon has more than 65 attorneys working coast to coast – in New York, Washington, DC, San Francisco – and in London. Their global practice supports clients throughout Europe, the Middle East, Africa, and the Far East, across more than a dozen languages. The firm’s whistleblower attorneys help clients expose wrongdoing and have brought clients \$350 million in whistleblower rewards.

 - The firm’s website hosts a [blog](#) on whistleblowers as well as an [extensive Q&A section](#) for any potential whistleblowers who are thinking about speaking out and want to know more about their options and what to expect.
- **Kohn, Kohn & Colapinto Law Firm:** Founded in 1988, the whistleblower law firm Kohn, Kohn & Colapinto has won numerous landmark decisions for whistleblowers and the largest financial rewards in history. The whistleblower lawyers at Kohn, Kohn & Colapinto helped write key whistleblower protections into the Dodd–Frank Act, the Sarbanes–Oxley Act, and the Whistleblower Protection Enhancement Act, among other laws.

 - The website also hosts an [extensive Q&A section](#) on various whistleblower pathways and laws.
 - Firm co-founder Steve Kohn is author of the book: *The New Whistleblowing: A Step-by-Step Guide to Doing What’s Right and Protecting Yourself*.
- **Tim Schwartz, author of the book *A Public Service*:** This is a book for anyone who has thought about disclosing information, those who are interested in protecting their identity and researching anonymously, or people who just generally want to understand safe ways to stand up to power.



Resources

Websites

- **National Whistleblower Center**
- **Whistleblower Network News:** It provides information on important qui tam, anti-corruption, compliance, and whistleblower law developments. It focuses on the SEC, IRS, and Commodities whistleblower programs, qui tam and False Claims Act litigation, and anti-corruption programs.
- **Whistleblower and Source Protection Program (WHISPeR):** WHISPeR at ExposeFacts provides critical legal support for whistleblowers and media sources in the national security and human rights arena. This encompasses affordable legal protection, public advocacy, investigative journalism, and the latest in encryption technology. WHISPeR made history as the first project of a journalistic non-profit, ExposeFacts, to provide affordable legal representation to sources. Launched by the Institute for Public Accuracy in 2014, ExposeFacts promotes whistleblowing with a unique blend of independent journalism, methodical organizing, and public outreach, and houses an advisory board of the most prominent and courageous journalists and whistleblowers of our time.
- **Caught Between Conscience and Career (Project on Government Oversight):** Is it possible to fight wrongdoing from within without sacrificing your career? This survival guide, intended to help and empower conscientious government employees when they encounter wrongdoing in the workplace, covers why whistleblowing is important and professionally dangerous; how to blow the whistle anonymously; how best to protect your identity in the digital age; how to navigate the bureaucracy of making an official disclosure; how to work with the press; and the legal protections against retaliation and the limits of these protections.
- **Equal Employment Opportunity Commission (EEOC):** The EEOC has jurisdiction over the anti-retaliation laws governing traditional employment discrimination matters such as race, sex, or age. The website provides detailed instructions on filing complaints, analysis of legal rights, and the text of major employee protection laws.
- **Inspectors General:** The IGnet/Federal Inspectors General website contains a central point of contact for all 57 Offices of Inspector General and contact points for OIG oversight bodies. The Inspectors General have responsibility for investigating waste, fraud, and abuse in federal programs.
- **OSHA Whistleblower Programs:** The OSHA website contains information regarding worker complaints and resources under DOL-administered whistleblower statutes. OSHA has a special whistleblower rights web page published by the office of federal whistleblower laws for which OSHA is responsible, along with controlling regulations.
- **US Department of Labor Office of Administrative Law Judges (OALJ):** The OALJ conducts administrative adjudications under numerous federal whistleblower laws (including corporate and environmental). This site contains copies of DOL OALJ rulings, administrative procedures, and a periodic newsletter highlighting DOL whistleblower decisions. It is a key online resource for all whistleblower laws administered by the Department of Labor.



Resources

Reports and explainers that help interpret the laws

- The Ten Things Every Whistleblower Needs to Know – National Whistleblower Center
- SEC Whistleblower Program: Tips from SEC Whistleblower Attorneys to Maximize an SEC Whistleblower Award – Zuckerman Law Firm
- Sarbanes-Oxley Whistleblower Law: Robust Protection for Corporate Whistleblowers – Zuckerman Law Firm

More information

- Best Practices when Reporting Fraud Electronically – National Whistleblowers Center
- Frequently Asked Questions – National Whistleblowers Center
- Government Accountability Project Launches International Whistleblower Protection Law Map – Government Accountability Project
- How to Blow the Whistle Safely – Government Accountability Project
- A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records
- Electronic Privacy Information Center's Online Guide to Practical Privacy Tools
- Project on Government Oversight's Federal Contractor Misconduct Database
- IBM Investor Relations: A Guide to Reading Financial Statements in Annual Reports
- Jobs with Justice: A US Coalition for the Rights of Working People
- Tips on Digital Safety
- LawMall: Self-Help Publications for Dealing with Legal Problems
- National Security Archive of Government and Contractor Documents
- National Employment Lawyers Association
- US Department of Energy Hearings and Appeals: Administrative Whistleblower Decisions
- US Department of Labor: Administrative Whistleblower Decisions
- US General Services Administration Office of Inspector Data Gathering, Analysis, and Retrieval (EDGAR) System of Corporate Filings
- US Federal Government Online Resource for Recalls
- WhistleblowerLaws.com: Whistleblower Employee Protection
- Workplace Fairness: Information about Workplace Rights and Employment Issues

Books

- *A Public Service: Whistleblowing, Disclosure and Anonymity* by Tim Schwartz
 - A detailed, easy, and concrete look at best practices for whistleblowing anonymously and digital safety tips, among other issues.



Resources

- *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* by Tom Devine & Tarek F. Maassarani
 - This is a great book that has a plethora of real-world examples of previous whistleblowers from across various industries. It provides more of a “gut check” to potential whistleblowers to think through their decisions, but also helps them navigate the moral, personal, and practical aspects of the whistleblower journey once they do. It is especially useful in its “What to Know Before You Blow” chapter with 13 survival tips. The appendices also include many external resources.
- *The New Whistleblowing: A Step-By-Step Guide To Doing What's Right And Protecting Yourself* by Stephen Martin Kohn.
- This is a comprehensive handbook designed for employees who need to know the rules for whistleblowing, how to qualify for whistleblower rewards, and how to protect themselves from retaliation.



Toolkit

7.1 Personal Assessment

These are questions to consider when you are thinking about speaking out regarding wrongdoing at your company. Not all of them will apply in every case, and you shouldn't feel you need to answer positively to all of them before speaking out. These questions are helpful to assess where you are and what you are willing to go through in order to speak out.

General Considerations

"Whistleblowing is inherently trouble. Everyone has a different risk tolerance. If you are not able to speak out because of your personal situation, that is okay."

- **Ben Wizner**, Director of the ACLU Speech, Privacy, and Technology Project

"Not everyone has the same privilege and ability to speak out. However, when considering what to do when encountering wrongdoing, it's important to consider who will get hurt if this information is not out there. What are the stakes of this wrongdoing?"

- **Meredith Whittaker**, Faculty Director of the AI Now Institute at New York University

"No matter what we call it, all [risk assessments] share the same basic four components: identifying (1) who or what is a threat; (2) what you are trying to protect; (3) how that threat could manifest; and (4) its potential impacts. Then you can evaluate the possible scenarios, prioritize them, and make plans accordingly. Nobody can eliminate all the dangers, but you can certainly reduce your risks."

- **Tim Schwartz**, *A Public Service: Whistleblowing, Disclosure, and Anonymity* (2019), p. 78

“

This is the biggest financial, career, or personal decision you've made . . . If you quit in the middle, it would have just been better to keep quiet . . . The more ambitious your goals, the uglier the retaliation and the more strength, support, and stamina you will need to follow through."

TOM DEVINE, LEGAL DIRECTOR OF THE GOVERNMENT ACCOUNTABILITY PROJECT



Toolkit

My objectives

1. What do I hope to achieve by speaking out? What are my intentions? What impact do I want to have? How realistic is it that I will make this impact? What are the paths/leverages to achieving my goals?
2. What level of risk (professional, financial, legal, personal, etc.) am I willing to take to achieve my goals?
3. Would I be okay if the information I revealed didn't have the impact or achieve the objectives I wanted it to?

"One of the most important pieces of advice is that the world may not believe that the issue has the same significance that the whistleblower thinks it has."

- **Ben Wizner**, Director of the ACLU Speech, Privacy, and Technology Project

"Sometimes whistleblowers' valid objective is to do the right thing so they can live with themselves, regardless of the impact."

- **Tom Devine**, Legal Director of the Government Accountability Project

4. What would I like my life to look like after speaking out? What would I like to see happen to be at peace with my decision so that I can move on?
5. Why is speaking out externally the best option over an alternative solution (i.e., internal reporting, speaking with colleagues, talking to the board, etc.)?

Whistleblowing process

1. Is this objectively misconduct? Am I in a position to know that what I see as misconduct really is a misconduct? Does my job position provide sufficient insight to ensure my conclusions are not the mistaken product of tunnel vision, even if my information is accurate?
2. Will knowledgeable peers and colleagues support my concerns, and help to expand the record from my personal knowledge?
3. Have I read other accounts of whistleblowers to understand what the process can be like?
4. Am I willing to commit to a multi-year endeavor (one year, three years, five years, or more) and what support will I need to do so?
5. Am I willing to invest significant amounts of time working with lawyers, educating NGOs, government investigators, Congress, and the media?
6. Do I understand how to engage properly with the media?
7. How do I feel about repeated public speaking engagements?



Toolkit

Emotional support

1. Do I have an emotional support system? Who do I turn to for emotional support? (Partner, family, friends, religious mentor, professional mentor, therapist, etc.)
2. Are there other people at the company who would help me in this effort without getting me in trouble?
3. Do I have a plan for countering retaliation or negative things the company may say about me?
4. Can I remain sufficiently centered and detached to emotionally withstand inevitable smear campaigns?
5. Who are my allies and who are the people who would work against my effort?
6. Am I prepared for the potential trauma caused by whistleblowing?
7. Do I have a system of evaluating who I can trust with sensitive information?
8. Do I have pre-existing medical conditions that could be aggravated by stress?

Legal support

1. Do I know where to find legal support for my case? What type of lawyer do I need to reach out to (i.e., employment lawyer, whistleblower lawyer, healthcare fraud lawyer, etc.)?
2. Do I have a secure way of reaching out? Personal phone/computer? Signal Messenger app? Protonmail?
3. Do I have a way to pay for a lawyer if they do not work fully on contingency?
4. Do I have a friend or a family member who is a lawyer? To advise me? To find the right lawyer? To help read my lawyer engagement letter, etc?
5. Have I prepared a concise summary of my case, and a timeline of key events to have ready for initial interviews with prospective lawyers?

Employment

1. Will I try to find another job before revealing the information?
2. What is my exit plan for my current role? Should I resign? What happens if I get fired? What will happen to my immigration status (if applicable)?
3. What other kinds of jobs would I like to have?
4. Would I be okay not working in this industry again?
5. Would I be okay not working in a similar role again?



Toolkit

Finances

1. What benefits will I need to cover (health care, child care, education repayment, etc.) if I lose my job? What is my plan for paying for those? (See the Budget Template to help assess what costs you'll have coming up?)
2. How much savings do I have?

Considerations about staying anonymous

1. Will an anonymous internal disclosure effect change? Or will it give the wrongdoers an opportunity to cover up the problem?
2. Does the anonymous channel, such as a hotline, operate with credible, effective technology to prevent exposure?
3. Will remaining anonymous sustain my access to ongoing evidence and developments that the institution is trying to conceal?
4. Can I prove my allegations with information/documents that do not require my public explanation?
5. Can this information/documentation be traced back to me because only a small group of people have access to them or because my copies are uniquely marked? (Beware of trace-backs through printers' identifications or email trails.)
6. How likely is it that I will be the focus of suspicion because of my previous efforts to raise concerns?
7. Can I act nonchalantly when these documents are disclosed so as not to attract suspicion?
8. Do I feel comfortable and justified in being evasive or not telling the complete truth if confronted by my boss about the disclosure?
9. Am I prepared for the possibility that somehow my anonymity is broken without my consent?

“

Whichever path you choose – anonymity or public disclosure – be decisive. The worst approach you can take is to remain semi-anonymous.”

TOM DEVINE, LEGAL DIRECTOR OF THE GOVERNMENT ACCOUNTABILITY PROJECT

Considerations about going public

1. Are my family and I financially and mentally prepared for a protracted public fight with my employers and exposure to attacks to prove my allegations? And to try to retain a job?
2. Am I mentally ready to have my fellow workers and perhaps some friends turn against me because my public disclosures threaten the institution's health and their jobs?
3. Will going public cut off support from witnesses who would otherwise back my charges in official proceedings?



Toolkit

4. Will going public cut off the flow of evidence necessary to prove my charge or more effectively make a difference, and, if so, are the benefits from public solidarity more significant?
5. Am I ready for personal attacks against my character and to have any past indiscretions made public?
6. Do I have enough evidence to prove my charges without having to go back to my workplace?
7. Even if I can prove my initial allegations, would I be more valuable if I didn't go public and kept my access to new information?
8. Am I sure that my motivations are to expose the wrongdoing on behalf of the public interest and not just for revenge, a quest for financial gain, or public attention?
9. Am I financially and mentally ready to risk my career?
10. Am I ready to have the professional reputation of someone who attacked their employer?

RELEVANT LINKS

- [Building a Team and Solidarity: Introduction](#)
- [Whistleblowing Options Overview](#)
- [Budget Template](#)



Toolkit

7.2 Sample Budget Template

Budget Template Instructions

Take a step back and think about your financial situation overall.

Professional Costs

Do some research on the professional costs you may face. This can include looking up lawyer's fees online or asking lawyers for fee quotes and negotiating with them, asking lawyers about their daily expenses (separate of fees), thinking through what new online security tools you may need, and other costs you might have in the job search.

Once you have done your research you can enter the information into the budget template.

Units: For each budget line, enter the number of units you will need to pay for.

If you have more than one lawyer it may be useful to create a new budget line for each lawyer since they will likely have different costs.

The costs for lawyers vary dramatically based on the circumstances. One whistleblower told us they were able to get their legal support covered pro bono, while another lawyer told us that their legal expenses for just one month was \$192,000.

Months: For each budget line, enter the number of months for the 12-month period beginning when you expect to incur your first costs. If you are paying a lawyer for six months, put "6". If you have a one-off purchase like a phone, just put a "1".

Unit cost: For each budget line, enter the unit cost per month. If a lawyer is \$3,000 a month, enter "3,000". If a phone is \$750, enter "750".

If a lawyer charges by the hour, you can calculate the cost per month by multiplying the number of hours per month you will need their services by their cost per hour.

of hours per month x \$ per hour = unit cost per month.

Total: Once you have entered this information for a line, the total column should automatically calculate the total cost per budget line.

The cost per category will be automatically calculated in the "Professional costs subtotal in yellow.

Personal Costs

Think through what your personal costs will be for you and your dependents. What costs was work covering (if any) that you will now be responsible for? This can include health insurance, gas, phone bills, etc.

Repeat the steps for "Units", "Months", and "Unit cost" above, but for personal costs.

The cost per category will be automatically calculated in the "Personal costs subtotal in yellow.



Toolkit

Total Costs

The subtotals from Professional costs and Personal costs will be totaled automatically in the orange cell of the “Total costs” line.

Savings

This is where you can enter the amount of savings you have, or the amount of savings you would be willing to spend during your speaking out journey.

Since this is one lump sum, all you need to do is enter a “1” in the “Units” and “Months” columns and then enter the total savings you are willing to commit in the “Unit savings” column.

You can do this as one sum, or if your family has multiple accounts you may use new lines for each account.

The total savings will be automatically calculated and appear in the blue cell in the “Savings subtotal” budget line.

Potential Income

This section is to estimate what new income you might begin to earn in the coming months. It is difficult to estimate when you may find a new job, or when another source of income may appear, but if you have a goal or a fair idea of when you may earn an income you can use this section.

Units: You can use one line for each job, and you may add additional lines for additional sources of income like a second job, earnings from investments, etc.

For each source of income, enter a “1”.

Months: You can enter the number of months you expect to earn each source of income. For example, if you expect to find a job in six months, you can enter a “6” for how many months in a 12-month period you expect to work.

Unit Income: You can enter the amount you expect to take home each month here.

The total savings will be automatically calculated and appear in the blue cell in the “Potential income subtotal” budget line.

Total Revenue

The subtotals from Savings and Potential income will be totaled automatically in the green cell of the “Total revenue” line.

Total Funds After Speaking Out

The subtotals from Total costs and Total revenue will be totaled automatically in the pink cell of the “Total funds after speaking out” line.

This line is what you are planning/expect to have remaining after the first 12-month period of speaking out. The number may be above or below \$0 based on costs and revenue. While no number



Toolkit

is 100% certain, and your circumstances will likely change as the year progresses, updating this budget template will be a helpful indication of how you expect your financial situation to progress after speaking out. If the overall figure in “Total funds after speaking out” is too much of a risk for you to take, then you might want to think carefully about whether to speak out in the first place and other pathways to consider.

Year 2 and Year 3

By repeating the steps above for the year 2 and Year 3 charts, you can plan out your expenses and revenue further into the future. The totals for all three years will be automatically calculated in the “Overall total” column on the far right.

The pink cell in the “overall total” column and the “Total funds after speaking out” line shows the expected 36-month outcome of your journey.



Toolkit

Year 1				
COSTS	Units	Months	Unit Cost	Total
Professional Costs				
Lawyer 1 fees (EXAMPLE)	1	6	\$2,000	\$12,000
	<i>One lawyer</i>	<i>For six months</i>	<i>Costs \$2,000 per month</i>	<i>Total = \$12,000 for that lawyer for year 1</i>

Year 1				
COSTS	Units	Months	Unit Cost	Total
Professional Costs				
Lawyer 1 fees (First lawyer working pro bono)	1	0	\$0	\$0
Lawyer 2 fees (Second lawyer very expensive)	1	1	\$192,000	\$192,000
Lawyer 3 fees (If applicable)				\$0
Lawyer 4 fees (If applicable)				
Transport to meetings				\$0
New phone (for working w/ lawyer)	1	1	\$60	\$60
New computer/VPN/ password manager				\$0
Delete Me (Security)				\$0
X				\$0
X				\$0
Professional Costs Subtotal				\$192,060

COSTS	Units	Months	Unit Cost	Total
Personal Costs				
Rent	1	5	\$1,050	\$5,250
Food	1	5	\$600	\$3,000
Child care				\$0
Health insurance (COBRA?)				\$0
Gas				\$0
Counselor	1	8	\$260	\$2,080
X				\$0
Personal Costs Subtotal				\$10,330

Total Costs				\$202,390
--------------------	--	--	--	------------------

Savings	Units	Months	Unit savings	Total
Savings	1	1	\$18,000	\$18,000
Savings Subtotal				\$18,000

Potential Income	Units	Months	Unit income	Total
Job 1	1	5	\$4,000	\$20,000
Job 2				
Potential Income Subtotal				\$20,000

Total Revenue				\$38,000
----------------------	--	--	--	-----------------

Total Funds after Whistleblowing				-\$164,390
---	--	--	--	-------------------



Toolkit

Year 2				
COSTS	Units	Months	Unit Cost	Total
Professional Costs				
Lawyer 1 fees (First lawyer working pro bono)	1	0	\$0	\$0
Lawyer 2 fees (If applicable)				\$0
Lawyer 3 fees (If applicable)				\$0
Lawyer 4 fees (If applicable)				
Transport to meetings				\$0
Password software				\$0
X				\$0
Professional Costs Subtotal				\$0
Personal Costs				
Rent	1	12	\$1,050	\$12,600
Food	1	12	\$600	\$7,200
Child care				\$0
Health insurance				\$0
Gas				\$0
Counselor	1	12	\$260	\$3,120
X				\$0
Personal Costs Subtotal				\$22,920
Total Costs				\$22,920
Savings				
Savings				
Savings Subtotal				\$0
Potential Income				
Job 1	1	12	\$4,500	\$54,000
Job 2				
Potential Income Subtotal				\$54,000
Total Potential Income				\$54,000
Total Funds after Whistleblowing				\$31,080



Toolkit

COSTS	Year 3			
	Units	Months	Unit Cost	Total
Professional Costs				
	1	2	\$4,000	\$8,000
Lawyer 2 fees (If applicable)				\$0
Lawyer 3 fees (If applicable)				\$0
Lawyer 4 fees (If applicable)				
Transport to meetings				\$0
Password software				\$0
X				\$0
Professional Costs Subtotal				\$8,000

Personal Costs	Year 3			
	Units	Months	Unit Cost	Total
Rent	1	12	\$1,000	\$12,000
Food	1	12	\$2,500	\$30,000
Child care	1	9	\$1,000	\$9,000
Health insurance				\$0
Gas				\$0
Counselor	1	12	\$260	\$3,120
X				\$0
Personal Costs Subtotal				\$54,120

Total Costs				\$62,120
--------------------	--	--	--	-----------------

Savings	Units	Months	Unit savings	Total
Savings				
Savings Subtotal				\$0

Potential Income	Units	Months	Unit income	Total
Job 1	1	12	\$5,000	\$60,000
Job 2				
Potential Income Subtotal				\$60,000

Total Potential Income				\$60,000
-------------------------------	--	--	--	-----------------

Total Funds after Whistleblowing				-\$2,120
---	--	--	--	-----------------

Overall Total
COSTS
Professional Costs
\$8,000
\$192,000
\$0
\$0
\$0
\$0
\$60
\$0
\$0
\$0
\$0
\$200,060

Personal Costs
\$29,850
\$40,200
\$9,000
\$0
\$0
\$8,320
\$0
\$0
\$0
\$0
\$87,370

\$287,430

Savings
\$18,000
\$18,000

Potential Income
\$134,000
\$0
\$134,000

\$152,000

-\$135,430



Toolkit

7.3 Building a Team Template

This tool is meant to provide a basic template for building a support team.

Each circumstance is unique and you should speak to a lawyer about your case.

"Assessing the strength, safety, and trust in your relationship with family and friends is crucial in whistleblowing. You'll need someone who can provide an objective perspective as well as a mechanism to de-stress and recuperate."

- **Erika Cheung**, Theranos whistleblower

"It is a real mistake to limit your support network to a legal team."

- **Devine & Maassarani, 2011, p. 85**

Family and Friends - Emotional support

Person 1: _____

- Supports with _____
- Limitations _____
- Contact _____

Person 2: _____

- Supports with _____
- Limitations _____
- Contact _____

Lawyers

Lawyer 1: _____

- Supports with _____
- Cost _____
- Contact _____

Lawyer 2: _____

- Supports with _____
- Cost _____
- Contact _____



Toolkit

Lawyer 3: _____

- Supports with _____
- Cost _____
- Contact _____

Press

Reporter 1: _____

- Media _____
- Contact _____
- What they know about me _____
- What they can publish about me _____
- Publication date _____

Reporter 2: _____

- Media _____
- Contact _____
- What they know about me _____
- What they can publish about me _____
- Publication date _____

Coworkers

Coworker 1: _____

- Do they share my concerns (y/n) _____
- What concerns do they have _____
- Would they be willing to speak out (y/n) _____
- Limit _____

Coworker 2: _____

- Do they share my concerns (y/n) _____
- What concerns do they have _____
- Would they be willing to speak out (y/n) _____
- Limit _____



Toolkit

Unions

Union Rep 1: _____

- Supports with (legal fees, speak on my behalf...) _____
- Limit (different agenda) _____
- Contact _____

Union Rep 2: _____

- Supports with (legal fees, speak on my behalf...) _____
- Limit (different agenda) _____
- Contact _____

Congress

House Representative 1: _____

- Supports with _____
- Limit _____
- Contact _____

House Representative 2: _____

- Supports with _____
- Limit _____
- Contact _____

Civil society

Civil Society Rep 1: _____

- Supports with _____
- Limit _____
- Contact _____

Civil Society Rep 2: _____

- Supports with _____
- Limit _____
- Contact _____



Toolkit

Regulators

Regulator 1: _____

- Supports with _____
- Limit _____
- Contact _____

Regulator 2: _____

- Supports with _____
- Limit _____
- Contact _____

Past whistleblowers

Past whistleblower 1: _____

- Supports with _____
- Limit _____
- Contact _____

Past whistleblower 2: _____

- Supports with _____
- Limit _____
- Contact _____



Toolkit

7.4 Note Taking and Record Keeping

This tool is meant to provide considerations and questions to facilitate note taking and record keeping.

Each circumstance is unique and you should speak to a lawyer about your case.

"You can access documents that are a part of your job responsibilities, but you can't go on 'fishing expeditions.' Be targeted. Use a scalpel, not a hatchet. One client downloaded an entire database and they got in trouble. Only take the information that is relevant to your case. Don't go out of your way to document other misconduct in the company. Another client faced criminal charges for stealing his boss' password to access damaging information."

- **Mary Inman**, Partner at Constantine Cannon LLP

"Not keeping close, contemporaneous records of harassment and other activities is one of the biggest mistakes that whistleblowers make . . . keep this diary as straightforward as possible, leaving out any speculations, personal opinions, or animosity you may have toward your fellow workers or your situation."

- **Tom Devine and Tarek F. Maassarani**, *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth* (2011), p. 73

"A skeletal chronology organized around dates can be a concise, easy-to-understand summary that highlights milestones in your story. The spotlight on dates is particularly useful to identify patterns or causal relationships. Reporters, congressional staff, and lawyers alike generally appreciate a timeline to help them organize the facts of your narrative. Prepare the timeline before your initial interview."

- **Devine & Maassarani**, (2011), p. 136

"If you go to a whistleblower lawyer, they will ask you to take contemporaneous notes, much like a diary, to document the wrongdoing as it is occurring. Those notes are arguably protected because they were made at your attorney's direction. Notes that you take in the ordinary course of your job in order to perform your job, however, are not likely to be protected."

- **Mary Inman**, Partner at Constantine Cannon LLP

"Be extremely careful with documents that the target may claim are protected by its attorney-client privilege. While you may be entitled to have copies of those documents in your possession, refrain from providing them to your attorneys or any member of the government enforcement team. Doing so may taint both your attorneys and the government team and require that they recuse themselves from the case. If you have questions about which documents are privileged, tell your attorneys and they can hire a taint attorney to screen the documents and only provide your attorneys with those they have cleared as not privileged."

- **Mary Inman**, Partner at Constantine Cannon LLP



Toolkit

Cell phone pictures and videos, as well as text conversations, can be useful sources of information, but again, don't use a company device to record or store the evidence.

"If you are unable to disclose records legally because they contain proprietary information or other intellectual property, make a list of all the documents for your attorney to seek in litigation discovery or for congressional or law enforcement investigators to subpoena for their investigations. You can discreetly "misfile" in a different folder those records that are likely to be destroyed by the company, or rename and hide computer files within the company's network. You can then act as the mapmaker or navigator to guide law enforcement raids."

- **Devine and Maassarani** (2011), p. 76

"Also, you should be aware of states' recording laws, as some states require all parties to consent to be recorded, and some states do not require permission."

- **Ben Wizner**, Director of the ACLU's Speech, Privacy, and Technology Project

- Recording Phone Calls and Conversations

“

The current best way to gather information is by taking pictures of documents or computer screens using a pseudonymous digital device.”

TIM SCHWARTZ, A PUBLIC SERVICE (2019), P. 175