

Water Cooler Talk: Whistleblowing Insights From ‘Dahmer’

WRITTEN BY

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Most savvy employers know all too well the dangers of ignoring whistleblowers. Financial and reputational penalties can be steep.

In fact, in fiscal year 2022, the U.S. Securities and Exchange Commission noted its second-highest year ever in whistleblower awards, both in the number of individuals awarded and the total dollar amounts of the award.[1]

The Occupational Safety and Health Administration also has seen a rising number of whistleblower complaints filed in recent years and recently kicked off a year-long pilot program to streamline the whistleblower intake process and discourage retaliation.

The popular Netflix show, “Dahmer – Monster: The Jeffrey Dahmer Story,” serves as yet another reminder, however extreme, of the perils of ignoring complaints. Key takeaways for employers include:

- Employees should be given several avenues to submit workplace complaints, such as management, human resources and an anonymous hotline.
- Training, and more training, is key.
- Parsing through multiple complaints, especially from a supposed serial complainer, to see which, if any, have merit, can be challenging.
- Employers should be cognizant of the effect of unconscious bias in the complaint and investigation process.
- It is important to follow up with corrective action where appropriate.

Q&A

We spoke with Josh Burnette, general counsel for North America at the multinational packaging company DS Smith PLC, about how “Monster” brings to light some ugly truths about workplace whistleblowing complaints.

Evan Gibbs: Today, we’re talking about whistleblower complaints in the context of a show that documents the life and crimes of serial killer Jeffrey Dahmer. Here’s a clip.

Glenda Cleveland: Can you send an officer to the Oxford Apartments?

Emergency Dispatcher: What’s the emergency?

Glenda Cleveland: Well, I think it’s a fight going on next door and somebody is either being hurt or killed.

Emergency Dispatcher: We’ll send a car over.

Glenda Cleveland: Wait, you’re not even going to ask me the apartment number?

Emergency Dispatcher: I said we’d send somebody.

Glenda Cleveland: Y’all always say you going to send somebody, and nobody ever shows. I done called y’all like 50 times.

Emergency Dispatcher: I need you to lower your voice, and if you keep calling us all the time, how are we going to know when it’s an emergency? 911 is a resource, okay.

Glenda Cleveland: I am saying somebody is being killed. Do you get that?

Evan: This clip highlights the issue of organizations ignoring complaints at their peril. What are some of the legal risks in a situation where an employee makes complaints and is ignored?

Tracey Diamond: If the employee brings a real concern to the company’s attention and the company doesn’t do anything about it, then there’s the risk of liability. There’s also a concern where the employee has a reasonable belief of a violation, even if there is no actual violation, and then experiences an adverse employment action — then they themselves could bring a whistleblower retaliation claim against the company.

Evan: Josh, typically in a large organization, there are many complaints bubbling up through the system to HR or frontline supervisors. I’m curious if you have had any experience with that.

Josh: With any large organization, you expect to have a baseline number of complaints come through your whistleblower channel. Even if many are not actionable or substantiated, we think it’s a healthy sign when employees are confident enough to trust that medium. I have experienced a bit of the detrimental impact that a failure to act promptly can have.

Tracey: Companies don’t always know what type of avenues they should be offering to employees.

Josh: It's very important to communicate what those are. Our hotline is the primary way our employees register their complaints. It's maintained and managed by a third party.

Evan: Going through a third party seems like a good way to make sure the company is receiving all complaints and handling them correctly.

Tracey: How do you filter through the noise — that is, complaints with no substance — to figure out what's a real complaint?

Evan: In the show, Dahmer's neighbor called the police so many times that they didn't take her seriously. And Dahmer really did end up killing the 14-year-old boy who almost escaped. It's horrible and it highlights a couple of things. It shows the problem with companies that don't thoroughly investigate complaints and don't respond timely or appropriately.

Josh: The confidence that employees and anybody accessing that conduit is going to have in that resource is directly impacted by the promptness with which the company responds.

Evan: I've seen a variety of reasons that complaints haven't been acted on appropriately. Oftentimes, it's when the complaint is directed at a high-performing salesperson or the founder of a company. What do you do in those situations?

Tracey: There are avenues of corrective action short of termination for that high-performing person who allegedly acted inappropriately or committed some form of misconduct. It can be a warning, training, a performance improvement plan, some kind of monitoring ...

Josh: You have to treat every complaint, regardless of the subject, with the utmost care, seriousness and integrity. Otherwise, the entire system fails. A failure to act or treat it with the seriousness that the allegation requires can ultimately result in an erosion within your employee base and the overall culture of your company.

Evan: And there's also the legal risk.

Tracey: So, then what can a company do about the serial complainer?

Josh: Train employees. There's a fine line in doing that because the last thing we want to do is suppress otherwise rightful complaints.

Tracey: We'll often get the call of, "We want to fire someone. This person is complaining all the time."

Josh: That is why, on the legal team, you have to be objective fact finders, to be as dispassionate about it as possible. And part of that is understanding the landscape that you're playing within. If it involves a serial complainer, you may, using your objectivity, determine that, after looking into the complaint to the extent you should, that it's just not worth further investigation.

Evan: Hopefully this doesn't happen often, but in serious complaints of sexual harassment, some people say, "I

know Jim and he would never do that.” What do you do in that situation?

Josh: It illustrates the inherent bias that can often be present with investigators. It’s critical for us to ensure that we are as objective and thorough as possible. Inherent biases can negatively impact the integrity of the entire process.

Evan: Yes, it is important to ferret out unconscious bias. I think we’ve said this on every podcast, but we can’t emphasize enough the value of training.

Conclusion

Employers must take all complaints seriously, investigate them thoroughly and determine quickly if they have merit. If they do, companies must move forward with corrective or rehabilitative action, as there is incredible risk — reputationally and legally — if nothing is done.

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[1] <https://www.sec.gov/news/press-release/2022-206>.

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