Ethics for Fraud Examiners



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DBA – Doctor of Business Administration
CPA - Certified Public Accountant
CFE – Certified Fraud Examiner
CrFA – Certified Forensic Accountant
CFF – Certified in Financial Forensics
CVA – Certified Valuation Analyst
MAFF – Master Analyst in Financial Forensics
CGMA – Charted Global Management Accountant
PI – Licensed Private Investigator

Objectives

Upon completing this class you will be able to:

- Identify basic ethical issues for fraud examiners

Definition of Ethics

The Merriam-Webster Dictionary defines ethics as the discipline dealing with what is good and bad with moral duty and obligation; a set of moral principles; a theory or system of moral values. Ethics is also defined as the principles of conduct governing an individual or group. This course will concentrate on the second definition as it relates to fraud examiners.

WHAT IS ETHICS

A system to determine personal behavior

A system to determine right from wrong

A system for determining good vs. evil

A system to baseline moral behavior

A system to gage professional behavior

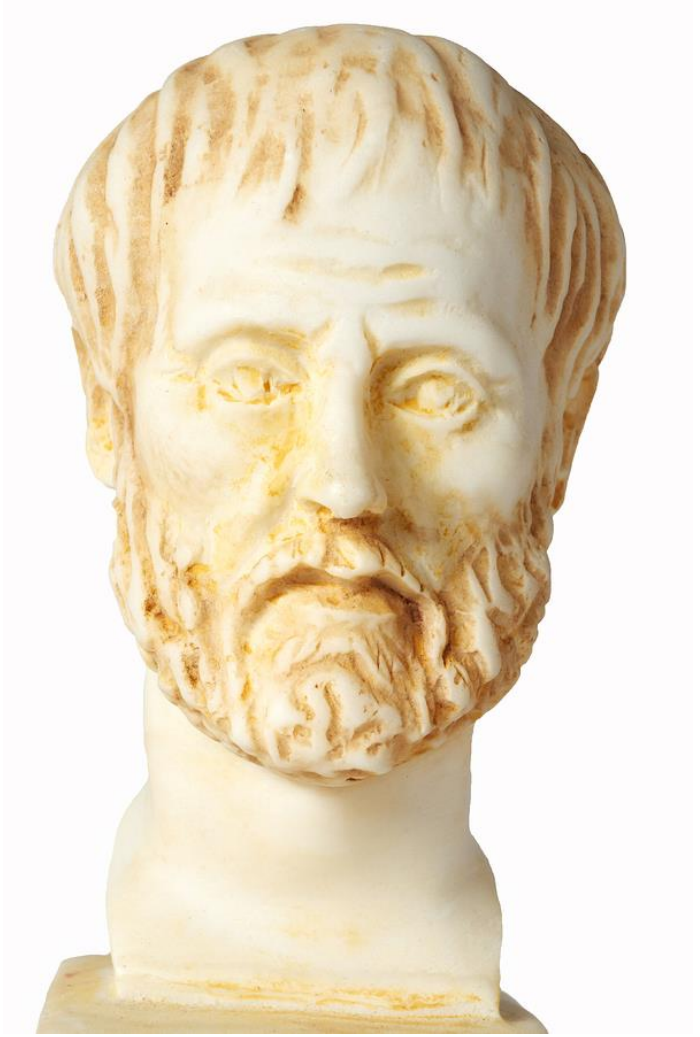
Rules to “live by”



Historical Ethical Theories

Aristotle

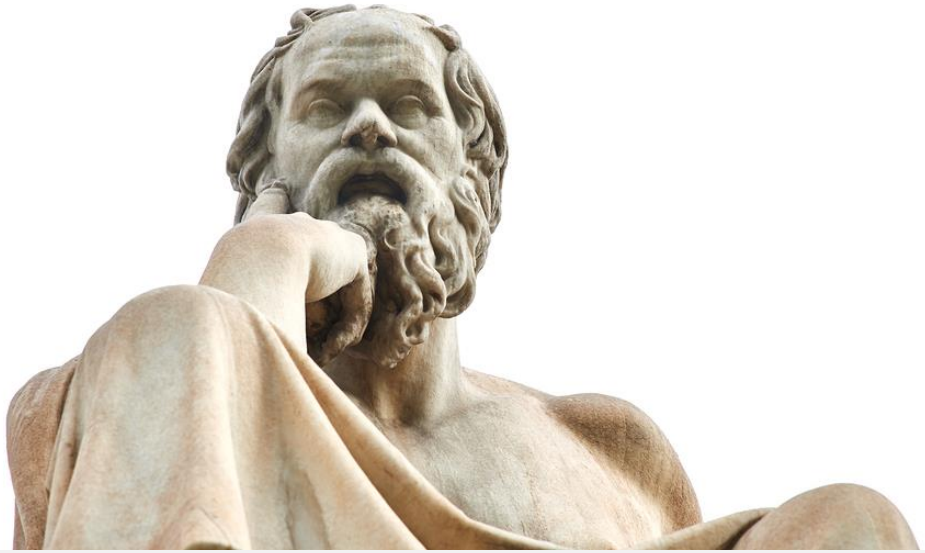
- Self-Realization
- Happiness is the ultimate goal
- Act in accordance with your inner nature



Historical Ethical Theories

Socrates

- Knowledge is a virtue
- Evil is the result of ignorance
- People will naturally do what is good if they know what is right



Historical Ethical Theories

Stoicism

- Developed by Epictetus
- The greatest good is contentment
- Obtaining peace of mind
- Self-mastery over inner desires
- Freedom from material attachments
- Control over anger

Historical Ethical Theories

Hedonism

- Maximize pleasure
- Minimize pain

Cyrenaic Hedonism

- Immediate gratification
- Eat, drink, and be merry, for tomorrow we die
- All desires should be indulged immediately
- No concern for the future

Historical Ethical Theories

State Consequentialism

- State is paramount
- Ethical actions benefit the state
- Individuals are not important
- Material wealth is evil

Polling Question #1

True or False

Aristotle believed happiness is the ultimate goal



Modern Ethical Theories

Consequentialism

- Consequences override intent
- The ends justify the means

Utilitarianism

- Maximize happiness

Modern Ethical Theories

Deontology

- Intent over consequences
- Do unto others as they have done unto you
- Act from a duty

Pragmatic Ethics

- Moral correctness evolves over time
- Priority should be on social reform

Modern Ethical Theories

Role Ethics

- Morality is based on community position
- Morality is fulfilling your role in the community

Situational Ethics

- Morality can change based on circumstances

Polling Question #2

Ethical or Unethical



Ethics can be Influenced by:

Laws

Regulations

Social Convention

Religious Beliefs

Peer Pressure

Professional Guidelines

Organizational “Code of Conduct”

Common ethical issues facing businesses in 2021:

1. Sexual Harassment
2. Diversity & Discrimination
3. Social Media
4. Health & Safety
5. Environmental Responsibility
6. Accounting Practices
7. Data Privacy
8. Nepotism



8 Common Ethical issues Facing Businesses in 2020 | Become

Ethics and the Law

Legal considerations for fraud examiners

Federal Laws

- Foreign Corrupt Practices Act
- Internal Revenue Code
- Sarbanes Oxley Act
- Securities Act & Securities Exchange Act
- Anti-money laundering laws
- Anti-fraud Laws
- Anti-trust laws
- Consumer protection laws
- Banking & lending laws



Professional Standards Review

ACFE
Association of Certified Fraud Examiners

Code of Professional Ethics

I. An ACFE Member shall, at all times, demonstrate a commitment to professionalism and diligence in the performance of his or her duties.

Code of Professional Ethics

II. An ACFE Member shall not engage in any illegal or unethical conduct, or any activity which would constitute a conflict of interest.

ACFE
Association of Certified Fraud Examiners

Code of Professional Ethics

III. An ACFE Member shall, at all times, exhibit the highest level of integrity in the performance of all professional assignments, and will accept only assignments for which there is reasonable expectation that the assignment will be completed with professional competence.

Code of Professional Ethics

IV. An ACFE Member will comply with the lawful orders of the courts, and will testify to matters truthfully and without bias or prejudice.

Code of Professional Ethics

V. An ACFE Member, in conducting examinations, will obtain evidence or other documentation to establish a reasonable basis for any opinion rendered. No opinion shall be expressed regarding the guilt or innocence of any person or party.

Code of Professional Ethics

VI. An ACFE Member shall not reveal any confidential information obtained during a professional engagement without proper authorization.

Code of Professional Ethics

VII. An ACFE Member shall reveal all material matters discovered during the course of an examination, which, if omitted, could cause a distortion of the facts.

Code of Professional Ethics

VIII. An ACFE Member shall continually strive to increase the competence and effectiveness of professional services performed under his or her direction.

Polling Question #4

Click

Or

Don't Click



Confidentiality Issues

- Keeping clients name's confidential
- Keeping victim's names confidential
- Keeping suspect's name's confidential
- Keeping witnesses' names confidential
- Keeping findings and evidence confidential

Acting Within the Law

- Gathering evidence
- Recording conversations
- Misrepresentations
- Trespassing
- Cyber crimes
- Destroying evidence



Categories of Bias

- There are two (2) categories of bias

  - Conscious Bias
  - Unconscious Bias (Implicit Bias)



Examples of Conscious Bias

- Family Relationships
- Personal Relationships
- Financial Relationships
- Work Relationships (Current or Former)
- Business Relationships (Vendors or Customers)
- Business Ownership
- Past Experiences
- Religious or Social Group Membership

Examples of Unconscious Bias

- Affinity Bias (Similar to you)
- Confirmation Bias (You are right)
- Bounded Awareness (Did not confirm)
- Priming (Influenced by other people or data)
- Anchoring (Auditor is convinced a number is correct)
- Availability Bias (Deciding based on most recent data)
- Group Think
- Rush to Solve (Must meet deadlines)

Examples of Unconscious Bias

- Negativity Bias (Extra weight to negative data)
- Ambiguity Effect (Just doesn't care)
- Blind Spot Bias (Don't recognize issues)
- Empathy Gap (Allowing emotions to control decisions)
- Focalism (Overreliance on first data collected)
- Framing (Different conclusions on the same data depending on who presents the data)
- Ostrich Effect (Ignoring data)

Conflicts of Interest

Conflicts can arise from

- Direct interests
- Indirect interests
- Financial interests
- Non-financial interests

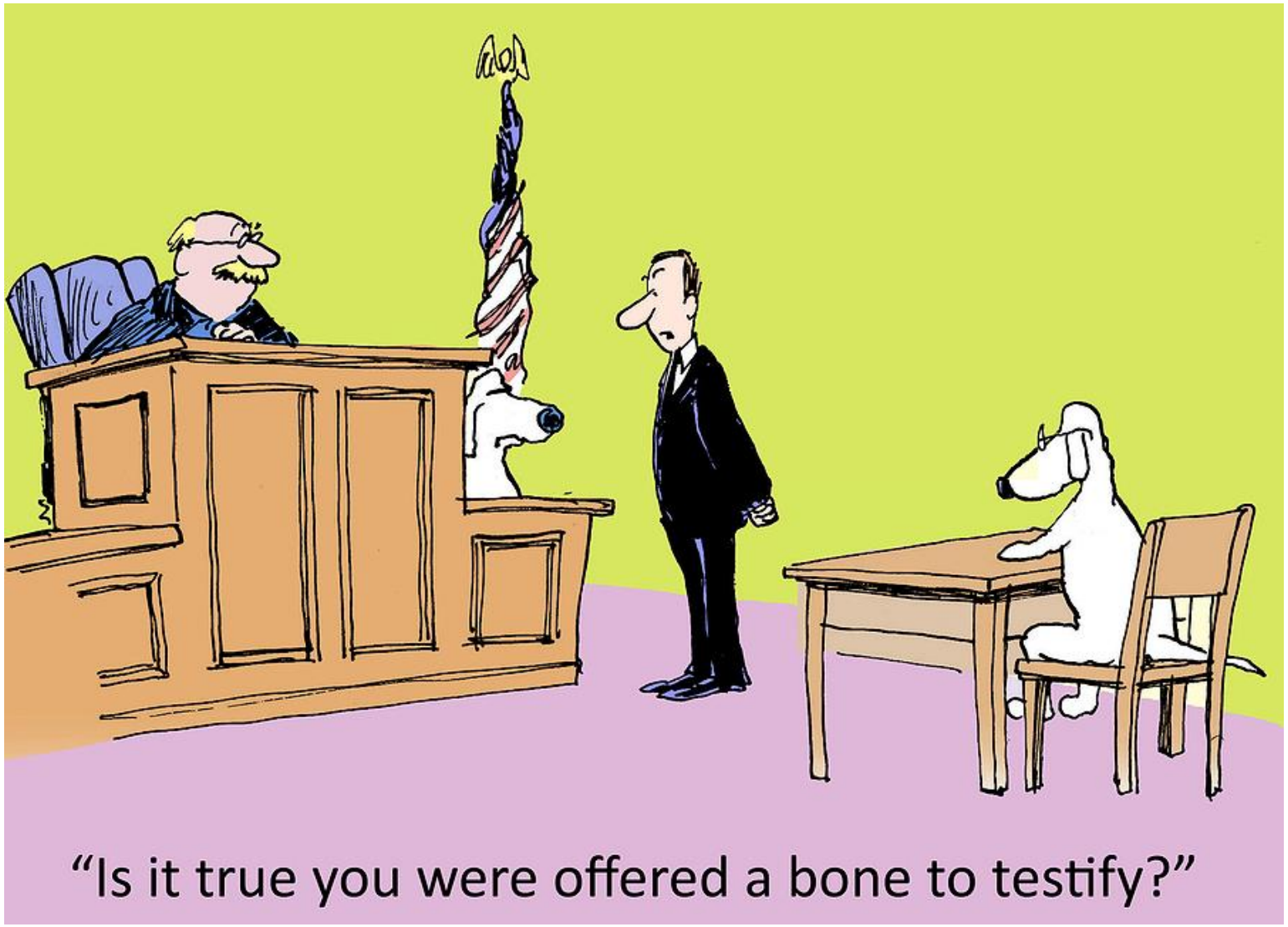


Polling Question #4

Conflict

Or

No Conflict



Conflicts of Interest

Reporting conflicts of interest

- Fellow employees
- Contractors
- Vendors
- Government contractors
- Customers



Dilemma

Reporting Conflicts of Interest
Versus
Confidentiality Agreements

Reporting Unethical Behavior

- Bribery
- Corruption
- Fraud
- False information
- Omitted information
- Extortion
- Bid rigging
- Favoritism
- Nepotism
- Pay-to-play
- Harassment
- Discrimination
- Exploitation
- Cover-ups
- Pressures
- Quid Pro Quo

Dilemma

Reporting Illegal Acts

Versus

Confidentiality Agreements

Dilemma

Reporting Illegal Acts

Versus

Maintaining Employment

Polling Question #5

True or False

There are no dilemmas to consider when reporting illegal or unethical acts



Corruption

Dishonest or fraudulent behavior by those in power.

- Includes unethical behavior
- Dishonesty or fraud
- For personal gain



Corruption

- Occupational Corruption
- Political Corruption
- Association Corruption
- Union Corruption
- Not-For-Profit Corruption
- Sports Corruption
- Academic Corruption
- Government Corruption



Most Corrupt Countries

According to the U.S. News & World Report the 10 most corrupt countries, ranked by perception are:

1. Nigeria
2. Iran
3. Pakistan
4. Colombia
5. Mexico
6. Ghana
7. Angola
8. Kenya
9. Brazil
10. Russia

https://www.usnews.com/news/best-countries/articles/10-most-corrupt-countries-ranked-by-perception

Corruption by Position

Purchasing	68%
Executives	50%
Finance	37%
Operations	36%
Sales	34%
Warehouse/Inventory	32%
Customer Service	25%
Accounting	21%



Association of Certified Fraud Examiners 2016 Report to the Nation on Occupational Fraud and Abuse

Corruption by Industry

1. Transportation & Warehousing
2. Oil & Gas
3. Manufacturing
4. Technology
5. Telecommunications
6. Governments
7. Banking & Finance
8. Construction
9. Retail
10. Education
11. Health Care
12. Religion & Charity
13. Services (Other)
14. Insurance
15. Professional Services

Association of Certified Fraud Examiners 2016 Report to the Nation on Occupational Fraud and Abuse

Petty Corruption

The exchange of small gifts or the use of personal connections in exchange for favors or speedy approvals of government actions



Bribery

Paying or receiving something of value in exchange for preferential treatment or favors

Bid Rigging

Kickbacks



Bribery

California Parents Agree to Plead Guilty in College Admissions Scandal

Prosecutors said Todd and Diane Blake paid $250,000 to fraudulently gain their daughter's admission to the University of Southern California as a volleyball recruit.

By MICHAEL LEVENSON



https://www.nytimes.com/topic/subject/bribery

Bribery

It Paid Doctors Kickbacks. Now, Novartis Will Pay a $678 Million Settlement.

The pharmaceutical company spent more than $100 million on lavish meals, fishing junkets, golf outings, sporting events and speaker fees to influence doctors to prescribe its drugs, federal prosecutors said.

By NEIL VIGDOR



https://www.nytimes.com/topic/subject/bribery

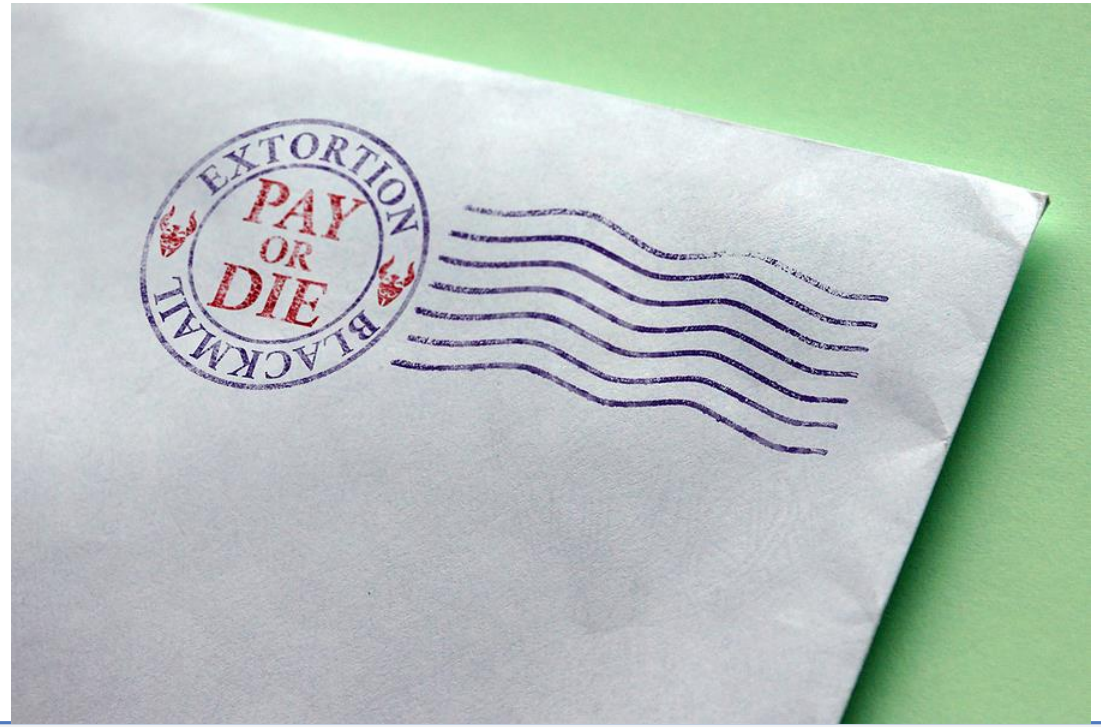
Illegal Gratuities

Providing a gift or something of value after favorable actions have been completed

Unlike a bribe there does not need to be intent to influence.

Extortion & Blackmail

Threats of action, including the disclosure of information and threats of violence, should the victim not follow instructions.



Abuse of Discretion

The misuse of an individuals power or authority.



Favoritism, Cronyism & Nepotism

Providing special treatment to friends, associates or family members



Graft

The use of a political office for personal gain.



The 4 P's

- Power
- Preference
- Payments
- Privilege



Corruption Payments

- Gifts
- Sexual Favors
- Free or discounted use of assets
- Loans
- Use of Credit Cards
- Debt Forgiveness



Corruption Payments

- Hidden Ownership Interests
- Hospitality
- Enhanced Commissions & Bonuses
- Cash
- Access to Decision Makers
- Keeping a Secret
- Crypto Currencies



Red Flags for Corruption

- Unusual relationships
- Acts outside scope of duties
- Declines promotion
- Insists on preferred vendors
- Failure to file conflict of interest forms
- No sick or vacation usage



Red Flags for Corruption

- Accepts inappropriate gifts
- Living beyond means
- Undisclosed outside business interests
- Related party issues
- Unexplainable wealth



Red Flags for Corruption

- Cash Payments
- Excessive meals & entertainment
- Has special influence
- Pays prices higher than market
- Transfer payments



1st Amendment Rights

The Supreme Court has not consistently ruled that the 1st Amendment protects whistleblowers or voids confidentiality or other agreements.

- Garcetti v Cemallos (No General Protection)
- Lane v Franks (Protection for Grand Jury Testimony)
- DHS v MacLean (Agency Regulations do not Override Whistleblower Laws)
- Digital Realty Trust v Somers (Protections for individuals who internally report securities law violations)

Whistleblower Protection Act of 1989

This law protects federal employees who are whistleblowers and report the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to public health and safety. A federal agency violates the Whistleblower Protection Act if agency authorities take, or threaten to take, retaliatory action against any employee or applicant who filed a report.

https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf

Whistleblower Protection Enhancement Act of 2012

The Whistleblower Protection Enhancement Act (WPEA) was signed into law in 2012. The law strengthened the protections for federal employees who disclose evidence of waste, fraud, or abuse. The WPEA also requires that any non-disclosure policy, form, or agreement include the statement copied below, and provides that any such policy, form or agreement executed without the language may be enforced as long as agencies give employees notice of the statement.

https://www.justice.gov/pardon/whistleblower-protection-enhancement-act

Whistleblower Complaints

- Whistleblower Protection Act Complaints should be sent to
  - U.S. Office of Special Counsel
    Complaints Examining Unit
    1730 M Street, NW, Suite 201
    Washington, DC 20036-4505
- The required Whistleblower complaint form is available online at www.osc.gov

https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf

Federal False Claims Act

Protects whistleblowers that report fraud in government contracts or billing.

Allows Qui Tam lawsuits

Whistleblowers can receive 15% to 30% of the amount recovered by the government.

The Federal Government recovers billions of dollars in fraud annually because of the Federal False Claims Act.

https://www.govinfo.gov/app/details/USCODE-2011-title31/USCODE-2011-title31-subtitleIII-chap37-subchapIII-sec3729

Polling Question #6

True or False

The Federal False Claims act allows individuals to file Qui Tam lawsuits on behalf of the Federal Government



IRS Whistleblower Rules

The IRS Whistleblower Office pays money to people who blow the whistle on persons who fail to pay the tax that they owe. If the IRS uses information provided by the whistleblower, it can award the whistleblower up to 30 percent of the additional tax, penalty and other amounts it collects.

The IRS may pay awards to people who provide specific and credible information to the IRS if the information results in the collection of taxes, penalties, interest or other amounts from the noncompliant taxpayer.

The IRS is looking for solid information, not an “educated guess” or unsupported speculation. We are also looking for a significant Federal tax issue - this is not a program for resolving personal problems or disputes about a business relationship.

www.irs.gov

IRS Code 2623

All whistleblower claims must be submitted under penalty of perjury.

Individuals must submit information on Form 211, Application for Award for Original Information.

Mail Form 211 to:

Internal Revenue Service
Whistleblower Office - ICE
1973 N. Rulon White Blvd.
M/S 4110
Ogden, UT 84404



www.irs.gov

Polling Question #7

True or False

The IRS has its own whistleblower program



Dodd-Frank Whistleblower Rules

SEC Office of the Whistleblower

The Commission is authorized by Congress to provide monetary awards to eligible individuals who come forward with high-quality original information that leads to a Commission enforcement action in which over $1,000,000 in sanctions is ordered. The range for awards is between 10% and 30% of the money collected.

Complaints can be mailed to:

SEC/OWB
14420 Albermarle Point Place
Suite 102
Chantilly, VA 20151-1750

https://www.govinfo.gov/app/details/USCODE-2011-title31/USCODE-2011-title31-subtitleIII-chap37-subchapIII-sec3729

OSHA Whistleblowers

You may file your whistleblower complaint using any of these filing options:

- Online - Use the Online Whistleblower Complaint Form to submit your complaint to OSHA. Complaints received online from employees located in States with OSHA-approved State Plans will be forwarded to the appropriate State Plan for response.
- Fax/Mail/Email – Fax, mail, or email a letter describing your complaint, or a printed copy of your completed Online Whistleblower Complaint Form to your local OSHA Regional or Area Office. Please make sure that your correspondence includes your name, mailing address, email address, and telephone or fax number so we can contact you to follow up.
- Telephone - Call your local OSHA Regional or Area Office. OSHA staff can discuss your complaint with you and respond to any questions you may have.
- In person – Visit your local OSHA Regional or Area Office. OSHA staff can accept your verbal or written complaint and provide information as needed.

https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf

Retaliation against Whistleblowers

Retaliation occurs when an employer (through a manager, supervisor, or administrator) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity.

An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.

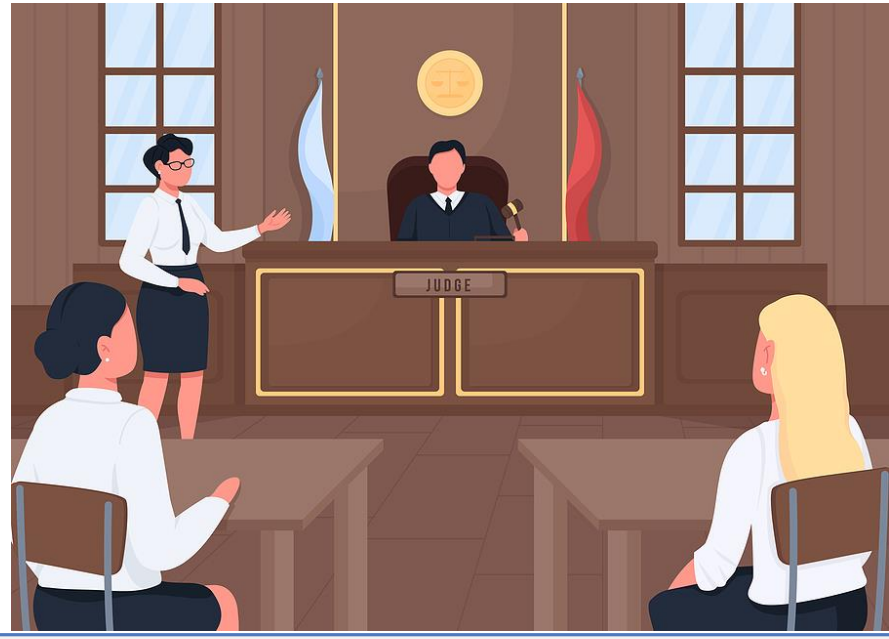
Because an adverse action can be subtle, it may not always be easy to spot.

https://www.whistleblowers.gov/

Retaliation against Whistleblowers

Examples of adverse actions include, but are not limited to:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation or harassment
- Making threats



https://www.whistleblowers.gov/

Retaliation against Whistleblowers

Examples of adverse actions include, but are not limited to:

- Reassignment to a less desirable position or actions affecting prospects for promotion (such as excluding an employee from training meetings)
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)

https://www.whistleblowers.gov/

Polling Question #8

True or False

It is illegal to retaliate against whistleblowers



Any Questions?