

Internal Whistleblowing and Sarbanes-Oxley Section 806: Balancing the Interests of the Employee and Employer

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Summary:

Section 806 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) protects employees against retaliation by employers for alleging ethical violations within public companies. The author of this article argues that Section 806 does not properly address issues faced by all involved stakeholders, proposing instead that the section be amended to “encourage internal whistleblowing by requiring employees to pursue internal reporting unless the employee has a reasonable belief that the employer would not make a good faith effort to address the problem.”

Key Points:

- Encouraging internal reporting creates an opportunity for the situation to be rectified without unnecessary negative press or large financial expenses incurred as a result of investigation defense.
- Section 806 does not provide protection for reports made to the media, so reporting internally may be safer for the employee in terms of retaliation protection.
- Because Sarbanes-Oxley allows reporting if someone has a “reasonable” belief that wrongdoing has occurred, internal reporting allows for clarification in the situation where there is simply a misunderstanding and no actual wrongdoing has occurred.
- Case law exists in the arena of sexual harassment suits which affirms the importance of internal reporting as a first action, stating that the “victim has a duty to use such means as are reasonable under the circumstances to avoid or minimize the damages.” This logic can be reasonably applied to ethical violations as well.
- If employees are required to report internally as a first resort, this would force organizations to develop effective reporting procedures in order that problems could be corrected internally without external investigations

Conclusion:

The author of this article states that, “the primary goal of section 806 should be to encourage early recognition and correction of wrongdoing, rather than to punish the wrongdoers themselves.” In keeping with this idea, external reporting as a first resort should be allowed only in situations of emergency, reasonable belief of retaliation, or reasonable belief that the employer will not take appropriate action. This system protects both the organization and the reporter of alleged misconduct from unnecessary harm and allows for maximum care to be taken in the correction of any wrongdoing.

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