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by Keith Read

Retaliation: The reality

- » Retaliation occurs in many companies all over the world, despite the anti-retaliation policies most organizations have in place.
- » Retaliation can take many forms and can take place at organisational, managerial, and peer level, and it can involve both “hard” and “soft” retaliation.
- » Organisations invariably find it a challenge to implement effective Key Performance Indicators (KPI’s) for their compliance programmes, and even more challenging when it is related to retaliation.
- » Whatever form the retaliation takes, it certainly impacts the individual and means that other people will inevitably think twice about whistleblowing.
- » A simple analysis of an organisation’s core HR data can be turned into an effective, real-time compliance tool, such that organisations might genuinely have no incidents of retaliation—and be able to prove it.

Most organizations have anti-retaliation policies, but is yours working, and how would you know? In any case, *“Retaliation wouldn’t really happen here”*—or would it?

Despite all these anti-retaliation policies, it takes just moments to find appalling cases



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of retaliation involving some very high-profile and household-name organizations on both sides of the Atlantic and elsewhere. Retaliation can take many forms. It can take place at the organizational, managerial, and colleague level, and involve both “hard” and “soft” retaliation, ranging from discipline, dismissal, and

harassment, right through to the “soft” loss of a whistleblower’s career, including advancement, overtime, and other opportunities.

Organizations invariably find it a challenge to implement effective Key Performance Indicators (KPIs) for their compliance programme, and measures of retaliation become even more challenging. But crucially, what this article shows is that simple analysis

can indicate the reality of retaliation in your organization by linking whistleblower data (where it is available) to data that could be indicators of retaliation. For me, after a simple analysis, it became obvious within minutes that retaliation was clearly going on; not everywhere and not affecting every whistleblower, but it was there.

A simple analysis of an organisation’s core HR data (e.g., annual performance review markings, pay rises, bonuses, disciplinary actions, overtime awards, recognition, career progression) can be turned into an effective, real-time compliance tool, such that organisations might genuinely be able to prevent incidents of retaliation.

Anti-retaliation policies

The vast majority of organisations have an Anti-Retaliation or a No Retaliation policy for whistleblowers and, without question, it is clearly the right thing to do. However, most policies are just that—policies. They sit on the shelf and often have little impact on what happens in reality, day to day in an

organisation. Indeed, particularly in the case of anti-retaliation, policy communication is relatively poor, often because of a misplaced perception that *“Retaliation wouldn’t really happen here.”*

What can happen to whistleblowers?

Two widely-reported examples show what whistleblowers may face:

- ▶ In the UK, two of the people who tried to blow the whistle on what was going on at the Stafford Hospital suffered

disdain and disbelief—nurse Helen Donnelly¹ and campaigner Julie Bailey. Bailey’s mother died from alleged neglect there, and she has been subject to a campaign of continued harassment and abuse. Her mother’s grave has been vandalized.²

- ▶ In the U.S., in June of 2015, a Homeland Security Senior Special Agent testified along with several other whistleblowers about how they had been retaliated against for speaking out against wrongdoings. Taylor Johnson said that when an adoption social worker tried to verify her employment, she was told that she had been terminated for a criminal offence. She nearly lost her 1-year-old child.³

Whatever form the retaliation takes, it certainly impacts the individual and means that other people will inevitably think twice about whistle blowing.

Retaliation data

I decided to try to look at the whistleblower data (who the whistleblowers were, where that information was available) and then link those individuals to data that could be indicators of retaliation. This data included their subsequent annual performance review markings, pay rises, bonuses, disciplinary actions, and career progression against their peers. I did not have a full or exhaustive set of data, but a subset that I could work with manually to get an indication of whether my concerns were real or imagined.

It became obvious within minutes that retaliation was clearly going on—not everywhere, and not affecting every whistleblower—but it was there. Moreover, some divisions, departments, and locations had a noticeably greater propensity for retaliation than others and,

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I suspected, some of that was linked to certain managers and senior managers, but confirming that issue was largely beyond manual analysis, given the frequent movement of individuals and organizational change.

Some individuals had clearly been high performers prior to blowing the whistle; after that event (at least if you believed the performance review markings), their performance had declined sharply and, in some cases, had never recovered—a loss to them and a loss to the organisation.

Retaliation: The reality

Armed with this analysis, it at least enabled me to raise the issue of the reality

of retaliation and to get the message out there that it was being monitored, however simply and crudely. I would like to think (and there was some evidence to this effect) that retaliation lessened to a degree once that message had “done the rounds,” but it can clearly take years for a pattern to emerge.

Five years on, at almost every compliance event that I attend now, the question of whistleblowing comes up, which usually leads quickly to the subject of retaliation and anti-retaliation policies. I invariably ask how compliance officers know that their policy is working. Without exception, people say they don't, but that they do have a policy. I talk to them about my rudimentary analysis and, almost without exception, it proves to be a “light bulb moment.” People start to discuss what simple analysis they could undertake within their own organisations.

Anti-retaliation systems

Going forward, organizations will be able to integrate their compliance-related systems (e.g., whistleblower hotline, case management, policy communications, and training) with their core HR data (e.g., annual performance review markings, pay rises, bonuses, disciplinary actions, overtime awards, recognition, career progression) to enable my simple analysis to be turned into an effective real-time compliance tool, such that organisations might genuinely have no retaliation incidents—and be able to prove it. *

1. Sarah Calkin: “Whistleblowing Mid Staffs nurse too scared to walk to her car after shift” *Nursing Times*, October 17, 2011. Available at <http://bit.ly/nurse-scared>
2. Tim Adams: “Mid Staffs whistleblower Julie Bailey: ‘I don’t go out here on my own any more’” *The Guardian*, October 26, 2013. Available at <http://bit.ly/Julie-Bailey>
3. Chuck Ross: “DHS Agent Says She Was Stripped Of Gun, Nearly Lost Daughter After Blowing Whistle On Immigration Visa Program” *The Daily Caller*, June 11, 2015. Available at <http://bit.ly/DHS-Agent>

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