

Wolves in sheep's clothing: The importance of investigating malicious whistleblowing



Whistleblowing can be abused by those seeking to further their own ends or purposefully harm an individual or wider organisation. Furthermore, the protection afforded to whistleblowers by legislation such as the Protected Disclosures Act, 26 of 2000 (the PDA), provides certain whistleblowers with more confidence in their malicious pursuits.

As part of an investigation into whistleblowing (malicious or not), organisations must clearly understand their legislative obligations and what risks to keep an eye out for. In this article, we discuss the importance of working with expert private forensic investigators when navigating malicious reports. Malicious whistleblowing poses grave risks to a company's reputation if not appropriately dealt with. These include risks such as sanctions, financial loss (considering the cost of an investigation and employee resources), reputational harm, and compromised employee morale in the workplace. When faced with what may be a case of malicious whistleblowing, organisations are responsible for investigating reports to (i) help them meet all their regulatory reporting requirements, and (ii) mitigate against the risks posed by malicious whistleblowing.

Organisations commonly investigate allegations made by a whistleblower against specific employees despite suspecting these are malicious and meritless. In such instances, the most commercially sensible approach is to launch a multi-phased inquiry into the allegation despite having such a suspicion. Formally engaging experts such as Webber Wentzel to assist in the investigation as one of these steps is most advisable. This is an effective method to manage cases of suspected malicious whistleblowing because it

helps an organisation (i) establish whether allegations are unfounded, (ii) financially manage the expenditure on such an investigation, (iii) and determine what its regulatory reporting obligations are and how to best meet these.

When faced with suspicion of malicious whistleblowing leadership's first steps should be considering whether the report has sufficient information to be treated as substantial. Experts can advise on this aspect considering their enhanced experiences with similar matters.

Next, if there is sufficient information to warrant further investigating, an organisation must consider their reporting and other legislative obligations such as those prescribed by the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (as amended) (PRECCA), PDA and the Financial Intelligence Centre Act, 38 of 2001 (as amended) (FICA). Particularly because South Africa's legislative obligations are far in scope and reach. For instance, PRECCA obligates any person in a position of authority when she or he knows, or ought to have known or suspected, that another person has committed certain offences involving an amount of R100,000 or more) to report suspected or actual offences. These reports particularly relate to offences of corruption, fraud, theft, extortion, forgery, and/or the uttering of a forged document that meets or exceeds the monetary threshold.

Expert forensic professionals guide organisations on how comprehensive an investigation should be. While in some instances a speedy conclusion is feasible, and an expert can advise you as such, in other instances, a deeper dive and reporting obligations are required. However, depending on how soon an organisation determines this can influence the spend and damage on such matters.

Aside from helping an organisation determine what they are dealing with, and how to best respond to this, expert forensic professionals help an organisation determine the identity of a malicious whistleblower which enables it to take disciplinary action against the malicious whistleblower with the forensic professionals supporting the disciplinary process.

It is known that there are various considerations an organisation must make when managing a whistleblower's report. Working with experts when considering how to navigate the investigation of the whistleblower report is critical.

Malicious whistleblowers can cause significant internal and external instability if their reports are not adequately investigated. Organisations should work with experts to create an enabling environment that encourages legitimate whistleblowers to step forward while intensely pursuing false whistleblowing claims.

The best protection against malicious whistleblowing is ensuring that a robust and procedurally sound inquiry and investigation (if necessary) is undertaken. Given the legislative, procedural, and more common internal policy demands, as well as the complexities of a high-quality investigation, organisations are encouraged to engage the services of experienced and credible forensic professionals to manage the risks associated with whistleblowing.