



TEXAS VETERINARY MEDICAL FOUNDATION Whistleblower Policy Addendum

IRS Form 990, the annual return form filed by Section 501(c)(3) organizations with annual gross receipts of \$200,000 or more, asks nonprofit organizations to state whether the organization has adopted a whistleblower policy.

Although a nonprofit organization is not required to have a whistleblower policy in order to be tax-exempt, the IRS considers having such a policy a good governance practice that helps ensure that the organization's assets will be used consistently with its exempt purposes.

WHAT IS A WHISTLEBLOWER POLICY

A whistleblower policy protects individuals who risk their careers to report unethical or unlawful practices within an organization.

Such a policy improves governance and accountability by giving the organization's management and board of trustees opportunities to learn of unethical or unlawful practices directly from their employees and volunteers (rather than from the media, law enforcers or a regulatory agency) and to respond with prompt corrective action.

Every tax-exempt organization should strongly consider establishing a written whistleblower policy for at least three reasons.

1. Establishing a whistleblower policy is a proactive response to the IRS's increased interest in good governance policies.
2. Protecting whistleblowers is an essential component of an ethical and open work environment.
3. A written whistleblower policy that is vigorously enforced sends a message to the organization's board members, managers, employees and volunteers as well as to the IRS and the public that the organization will not tolerate misconduct.

COMPONENTS OF AN EFFECTIVE WHISTLEBLOWER POLICY

A whistleblower policy should:

- Encourage staff and volunteers to come forward with credible information on illegal practices or violations of adopted policies of the organization,



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- Specify that the organization will protect such individuals from retaliation; and
- Identify those staff or board members or outside parties to whom such information can be reported.

Encourage Employees and Volunteers to Become Whistleblowers

Every organization should encourage staff and volunteers to report suspected wrongdoing within the organization. The range of suspected wrongdoing covered by a whistleblower policy should be broad enough to include any action that is illegal or violates an adopted policy of the organization. Examples include:

- Violations of the organization's client protection policies
- Theft or financial reporting that is intentionally misleading
- Improper or undocumented financial transactions
- Improper destruction of records
- Improper use of assets
- Violations of the organization's conflict-of-interest policy

Information about the organization's whistleblower policy should be:

- In writing
- Widely distributed to the organization's staff and volunteers
- Incorporated into orientation programs, handbooks and ongoing training programs for employees and volunteers

In determining how to publicize a whistleblower policy, an organization should keep in mind that employees and volunteers are most likely to perceive a policy as credible when senior management and board members are vocal about its importance.

Protect Whistleblowers from Retaliation

Every organization must ensure that no punishment is inflicted on an employee or volunteer who, in good faith, raises concerns about practices that are illegal or that violate the organization's policies.

So long as the employee or volunteer has acted in good faith—without malice towards the organization or any individual within the organization and without having good reason to believe that the claim is false—the organization should not punish an employee or volunteer even if his or her claims are determined to be unfounded. Moreover, the organization should not punish anyone who, in good faith, cooperates in the investigation of a reported violation.

Examples of the types of punishment from which employees and volunteers must be



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protected include firing, demotion, suspension, harassment, failure to consider the employee for promotion, or any other discrimination.

A policy of non-retaliation is advisable with respect to all categories of concerns about unethical or illegal activity. Moreover, the Sarbanes-Oxley Act of 2002 prohibits a charitable organization from retaliating against a whistleblower who provides information on certain financial crimes delineated under federal law. A violation of the Sarbanes-Oxley prohibition on retaliation will subject an organization and any individual within the organization who is responsible for the retaliation to civil and criminal sanctions.

An organization can protect itself against claims of retaliation made by employees or volunteers by:

- Adopting a written policy of non-retaliation
- Educating managers and board members on whistleblower protections
- Identifying the managers or board members to whom complaints of whistleblower retaliation should be addressed
- Taking disciplinary action against any individual who engages in retaliation
- Maintaining well-documented personnel files, including thorough records of termination or other disciplinary actions.

Establish Reporting and Investigation Procedures

All whistleblower policies should specify the individual or individuals to whom the employee or volunteer should address his or her concerns. To ensure that whistleblowers are as comfortable as possible in reporting wrongdoing, an organization should consider adopting the practice of designating at least one senior employee and at least one board member to whom concerns should be addressed.

In addition to specifying individuals within the organization to whom concerns should be addressed, all whistleblower policies should establish a confidential and anonymous procedure through which employees and volunteers may raise their concerns. This provides employees and volunteers who report wrongful acts with an extra layer of protection against retaliation.

Large organizations should consider establishing a whistleblower hotline or an intranet site to facilitate anonymous reporting. As a simpler alternative, smaller organizations can establish confidential and anonymous reporting procedures by designating an external advisor, such as the independent accountant or outside attorney, to whom concerns should be addressed and by instructing that external advisor to contact the board of directors if there is a report.



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In addition to establishing reporting procedures, all whistleblower policies should establish a procedure for handling whistleblower complaints. An organization must ensure that every concern raised by a whistleblower becomes the subject of a comprehensive and objective investigation.

The investigation can be conducted by the organization's Audit or other Board committee or by management personnel who have sufficient independence and authority to conduct a thorough and objective review. In the case of the senior members of management, it is generally considered a best practice to have the Board investigate any complaint.

After the investigation has been completed, the organization should not consider the whistleblower issue closed until either all problems revealed by the investigation have been addressed or the organization can explain to the affected stakeholders why corrective action is not necessary.