



Chapter 7

BLOWING THE WHISTLE



CHAPTER OBJECTIVES

- After exploring this chapter, you will be able to:
 1. Explain the term *whistle-blower* and distinguish between internal and external whistle-blowing.
 2. Understand the different motivations of a whistle-blower.
 3. Evaluate the possible consequences of ignoring the concerns of a whistle-blower.
 4. Recommend how to build internal policies to address the needs of whistle-blowers.
 5. Analyze the possible risks involved in becoming a whistle-blower.



Explain the Term Whistle-Blower and Distinguish Between Internal and External Whistle-Blowing

- The term **whistle-blower** refers to an employee who discovers corporate misconduct and chooses to bring it to the attention of others.
 - After an employee decides to become a whistle-blower, s/he must then assess what channel of exposure s/he feels is most beneficial to solving the dilemma.
- **Internal whistle-blowing** is when an employee discovers corporate misconduct and brings it to the attention of his or her supervisor, who then follows established procedures to address the misconduct within the organization.
- **External whistle-blowing** is when an employee discovers corporate misconduct and chooses to bring it to the attention of law-enforcement agencies and/or the media

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Understand the Different Motivations of a Whistle-Blower

- Whistle-blowers have been said to give an invaluable service to their organization as well as the general public.
 - Discovering illegal activity before the media finds out could save a company millions of dollars in fines and lost revenues.
 - Discovering potential harm to consumers is an immeasurable benefit and thus one of the reasons why the media holds whistle-blowers to a standard of honor and integrity. Many believe whistle-blowing can be motivated by both appropriate and illegitimate reasons

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When is Whistle-Blowing Ethical?

Ethical whistle-blowing must meet 5 conditions:

1. When the company, through a product or decision, will cause serious and considerable harm to the public (as consumers or bystanders), or break existing laws, the employee should report the organization.
 2. When the employee identifies a serious threat of harm, he or she should report it and state his or her moral concern.
 3. When the employee's immediate supervisor does not act, the employee should exhaust the internal procedures and chain of command to the board of directors.
 4. The employee must have documented evidence that is convincing to a reasonable, impartial observer that his or her view of the situation is accurate, and evidence that the firm's practice, product or policy seriously threatens and puts in danger the public or product user.
 5. The employee must have valid reasons to believe that revealing the wrongdoing to the public will result in the changes necessary to remedy the situation.
- Whistle-blowing can be considered unethical if the employee is motivated by financial gain or media attention, or if they carry a vendetta against the company. In this case the legitimacy of their whistle-blowing must be questioned.
 - Key point – better be very sure of your facts and your evidence better be irrefutable before blowing the whistle

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Evaluate the Possible Consequences of Ignoring the Concerns of a Whistle-Blower (1 of 2)

- Whatever the motive of the whistle-blower, the fact remains employees are increasingly more willing to respond to any questionable behavior they observe.
 - Employers face two choices in these situations:
 - They can ignore the warnings and risk public embarrassment or extreme financial penalties.
 - They can create an internal system allowing whistle-blowers to be heard before the case is taken public. This option means hearing out the whistle-blower instead of firing them.
- Prior to 2002, safeguards against retaliation were not part of the legal protection for whistle-blowers.
- The Whistleblower Protection Act of 1989 addressed the issue of federal employees who brought accusations of unethical behavior and imposed deadlines in filing complaints and for settlement payments to the whistle blower (only in effect for federal employees).

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Evaluate the Possible Consequences of Ignoring the Concerns of a Whistle-Blower (2 of 2)

- The Sarbanes-Oxley Act of 2002 (SOX) not only prohibited retaliation against whistle-blowers, but also encouraged the act of whistle-blowing.
 - The Act requires that public companies adopt a code of ethics, set up an internal system to receive, review, and solicit employee reports of fraud and or ethical violations.
 - SOX does not protect employee complaints to the news media because under SOX these do not constitute whistle-blowing.
- Employees who prevail in whistle-blower cases are entitled to damages which may include:
 - Reinstatement to the same seniority status that the employee would have had but for the adverse employment action.
 - Back pay.
 - Interest.
 - All compensatory damages to make the employee whole.
 - “Special Damages,” including litigation costs, reasonable attorney fees and costs, expert witness fees, and “all relief necessary to make the employee whole.”

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Recommend How to Build Internal Policies to Address the Need of Whistle-Blowers

- It is wise for employers to address the needs of whistle-blowers and implement the following policies:
 - A well-defined process to document how such complaints are handled—a nominated contact person, clearly identified authority to respond to the complaints, firm assurances of confidentiality, and no retaliation against the employee.
 - An employee hotline to file complaints with assurance of confidentiality and no retaliation.
 - A prompt and thorough investigation of all complaints.
 - A detailed report of all investigations, documenting all corporate officers involved and all action taken.
- A **whistle-blower hotline** is a telephone line where employees can leave messages to alert a company of suspected misconduct without revealing their identity.
- Employers must be committed to follow through with all reports.
- Trust must be established for the mechanisms to work.

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Analyze the Possible Risks Involved in Becoming a Whistle-Blower (1 of 2)

- The act of whistle-blowing often gets such positive attention that it masks the risks to one's own career and financial stability.
 - If an employee is left with no other option than to go public than the organization has failed to address the situation internally for the long-term improvement of the cooperation and all of its stakeholders.
 - Going public should be the last resort.
 - The fallout of media attention and the often irreversible damage done to the company should be enough to pressure the executives to look deeper and fix what is broken.
 - Regrettably, many still choose to bury the truth, hire a legal gunslinger, or put the employee in a position of such severe financial risk that s/he decides not to speak out.

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Analyze the Possible Risks Involved in Becoming a Whistle-Blower (2 of 2)

- A study of 233 whistle-blowers by Donald Soeken of St. Elizabeth's Hospital in Washington, DC, found that the average whistle-blower was a man in his forties with a strong conscience and high moral values.
- The following statistics were also revealed about whistle-blowers:
 - About 90 percent of whistle-blowers are fired or demoted.
 - About 27 percent are faced lawsuits.
 - About 26 percent had to seek psychiatric or physical care.
 - About 25 percent suffered alcohol abuse.
 - About 17 percent lost their homes.
 - About 15 percent got divorced.
 - About 10 percent attempted suicide.
 - About 8 percent were bankrupted.
- Despite these repercussions, only 16 percent said they wouldn't blow the whistle again.

❖ **Review Questions:**

1. Define the term "whistleblower" and briefly discuss when is whistle-blowing ethical.
2. Briefly discuss the possible risks of whistleblowing on the employee (whistle-blower).

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