

CHAPTER 7

Blowing the Whistle

Chapter Summary

This chapter examines how employees who find evidence of unethical conduct in their companies go about bringing that information to the attention of the companies' senior management or the appropriate regulatory authorities. This chapter explores ethical and unethical means of whistle-blowing. Whistle blowing came to its height in 2002 with the Sarbanes-Oxley Act. Further, it explores an individual's duty to respond as well as the risks they face by making the choice to act.

Learning Objectives

After studying this chapter, the student should be able to:

1. Explain the term whistle-blower.
2. Explain the difference between internal and external whistle-blowing.
3. Understand the different motivations of a whistle-blower.
4. Evaluate the possible consequences of ignoring the concerns of a whistle-blower.
5. Recommend how to build internal policies to address the needs of whistle-blowers.
6. Analyze the possible risks to oneself in becoming a whistle-blower.

Extended Chapter Outline

Objective 1: Explain the term whistle-blower.

- 1.1 The opening *Frontline Focus* case shows how a tire sales agent faces an ethical decision with a new product his company is pushing to sell.
 - 1.1.1. The term **whistle-blower** refers to an employee who discovers corporate misconduct and chooses to bring it to the attention of others.

Objective 2: Explain the difference between internal and external whistle-blowing.

- 2.1 After an employee decides to become a whistle-blower, they must then assess what channel of exposure they feel is most beneficial to solving the dilemma.
 - 2.1.1 **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.
 - 2.1.2 **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.
- 2.2 Whistle-blowers have been said to give an invaluable service to their organization as well as the general public.
 - 2.2.1 Discovering illegal activity before the media finds out could save a company millions of dollars in fines and lost revenues.

- 2.2.2 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.

Objective 3: Ethical Theories

- 3.1 Many believe whistle-blowing can be motivated by both appropriate and illegitimate reasons.
 - 3.1.1. Whistle-blowing is considered ethical under five conditions:
 - 3.1.1.1 When the company will cause serious harm to the public
 - 3.1.1.2 When the employee identifies a serious threat of harm he or she should report it and state his or her moral concern
 - 3.1.1.3 When the employees' immediate supervisor does not act the employee should exhaust the internal procedures and chain of command
 - 3.1.1.4 The employee must have documented evidence that is convincing that the practice, product or policy seriously puts the public in danger
 - 3.1.1.5 The employee must have valid reasons to believe that revealing the wrongdoing to the public will result in changed necessary to remedy the situation
 - 3.1.2 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.
 - 3.1.3. While internal-whistle blowing is hard to track, external whistle-blowing has become a 20th century phenomenon. The term started in 1963 and reached a peak in 2002.

Objective 4: Evaluate the possible consequences of ignoring the concerns of a whistle-blower

- 4.1 Whatever the motive of the whistle-blower, the fact remains employees are increasingly more willing to respond to any questionable behavior they observe.
 - 4.1.1. Employers face two choices in these situations:
 - 4.1.1.1 They can ignore the warnings and risk public embarrassment or extreme financial penalties or:
 - 4.1.1.2 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.
- 4.2 Prior to 2002, safeguards against retaliation were not part of the legal protection for whistle-blowers.
 - 4.2.1 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).
 - 4.2.2. The Sarbanes-Oxley Act of 2002 (SOX) not only prohibited retaliation against whistle-blowers, but also encouraged the act of whistle-blowing.

- 4.2.2.1. 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.
- 4.2.2.2. SOX does not protect employee complaints to the news media because under SOX these do not constitute whistle-blowing.
- 4.3 Employees who prevail in whistle-blower cases are entitled to damages which may include:
 - 1. Reinstatement to the same seniority status that the employee would have had but for the adverse employment action
 - 2. Back Pay
 - 3. Interest
 - 4. All compensatory damages to make the employee whole
 - 5. "Special Damages," including litigation costs, reasonable attorney fees and costs, expert witness fees, and "all relief necessary to make the employee whole."

Objective 5: Recommend how to build internal policies to address the need of whistle-blowers.

- 5.1 By putting the following mechanisms in place employers can safeguard themselves from breaking SOX
 - 5.1.1. A well defined process to document how such complaints are handled. i.e. a contact person, clearly identified authority to respond to complaints, firm assurance of confidentiality, and nonretaliation against the employee.
 - 5.1.2. An employee hotline to file complaints with assurance of confidentiality and nonretaliation.
 - 5.1.3. A prompt and thorough investigation of all complaints.
 - 5.1.4. A detailed report of all investigations, documenting all corporate officers involved and all action taken.
- 5.2 Employers must be committed to follow through with all reports. Trust must be established for the mechanisms to work.
- 5.3 To earn the employees trust in the system the employer must follow through with the investigation whole heartedly.

Objective 6: Analyze the possible risks to oneself in becoming a whistle-blower.

- 6.1 The act of whistle-blowing often gets such positive attention that it masks the risks to ones own career and financial stability.
- 6.2 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.
- 6.3 Going public should be the last resort.
 - 6.3.1. 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.
- 6.4 Regrettably, many still choose a third option of burying the truth, hiring a legal gunslinger, or putting the employee in a position of becoming in severe financial risk to keep their mouths shut.

- 6.5 The average whistle blower is a man in his 40's with a strong conscious and high morals.
- 6.6 In a survey of 233 people, 90% of whistle-blowers are fired or demoted, 27% faced lawsuits, 26% had to seek psychiatric or physical care, 25% suffered alcohol abuse, 17% lost their homes, 15% got divorced, 10% attempted suicide, 8% were bankrupted
- 6.7 Despite these repercussions, only 16% said they wouldn't have blown the whistle again.

Key Terms

External Whistle-Blowing: When an employee discovers corporate misconduct and chooses to bring it to the attention of law-enforcement agencies and/or the media.

Internal Whistle-Blowing: 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.

Whistle-Blower: An employee who discovers corporate misconduct and chooses to bring it to the attention of others.