The Morality of Whistle-blowing

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When Should an Employee Blow the Whistle?

Last July was the fifth year anniversary of the enactment of the Dodd-Frank Financial Reform Act, which has transformed the legal landscape for whistleblowers. The law owes its impact to strong anti-retaliation provisions, effective financial incentives to employees who come forward and federal agencies that have embraced their roles as whistleblower advocates.

It seems a good time to evaluate whether the program is a good idea. After all, some have criticized the award of 10%-30% as a “bounty hunter’s fee.” Harsh words for a program that is designed to protect investors and creditors from the kinds of financial frauds that littered the landscape in the early 2000s.

Dodd-Frank expanded the Sarbanes-Oxley’s Act anti-retaliation provision. In 2002, SOX was passed in response to corporate scandals, and it included an anti-retaliation provision to protect the likes of Enron Corp. whistleblower Sherron Watkins. The statute also doubled the time period for initiating a claim from 90 days to 180 days. Dodd-Frank further bolstered SOX’s anti-retaliation provisions by barring mandatory pre-dispute arbitration of SOX claims. Finally, Dodd-Frank provides a jury trial to plaintiffs bringing SOX retaliation claims in federal court.

Let’s look at the ethics of whistle-blowing. A broad view of whistle-blowing is the disclosure by organization members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action. This definition includes whistle-blowers who use internal channels (e.g., a hot line or ombudsperson) or external channels (e.g., the external auditors or the SEC) to blow the whistle.

There are four elements of the whistle-blowing process: the whistleblower, the whistle-blowing act or complaint, the party to whom the complaint is made, and the organization against which the complaint is lodged. The act might be labeled as one of “dissidence,” somewhat analogous to civil disobedience. It may be seen as disloyal by some but in the public interest by others.

Given that the act of whistle-blowing is a personal choice, the key to whether an individual will blow the whistle on wrongdoing is whether the whistle-blower perceives organizational policies are designed to encourage moral autonomy, individual responsibility, and organizational support for whistle-blowers.

Whistle-blowers are a rare breed. Most shy away from going out on a limb given the potential retaliatory dangers at the end of the tunnel. Who can blame them? Corporations more often than not do not support whistle-blowers and the stigma in the workplace is real. The 2013 National Business Ethics Survey found that 46 percent of employees did not blow the whistle for fear of retaliation while 21 percent that reported misconduct said they faced some form of retribution.
Looking at whistle-blowing from a philosophical point of view, researchers have posed the question of whether workplace whistle-blowing is a right, and thus allows for responsible behavior, or whether it is an imposed corporate duty thus resulting in liability of workers. If an organization institutes an internal whistle-blowing policy it is because it perceives moral autonomy to be weak. When businesses then implement the policy, it leads to the conclusion that moral autonomy is strong, and employees are expected to blow the whistle. Therefore, if employees do not blow the whistle in accordance with corporate policy they then become liable for not doing so, rendering the policy a tool that controls employee behavior. Responsibility for misdeeds then shifts from the organization to the individual and employees are further stripped of the right to moral autonomy.

The morality of whistle-blowing might be viewed from the perspective that corporations have a moral obligation not to harm. De George identifies five criteria when whistle-blowing is morally permitted. Briefly, (1) the firm's actions will do serious and considerable harm to others; (2) the whistle-blowing act is justifiable once the employee reports it to her immediate supervisor and makes her moral concerns known; (3) absent any action by the supervisor, the employee should take the matter all the way up to the board, if necessary; (4) documented evidence must exist that would convince a reasonable and impartial observer that one's views of the situation is correct and that serious harm may occur; and (5) the employee must reasonably believe that going public will create the necessary change to protect the public and is worth the risk to oneself.

De George’s criteria establish the foundation for moral behavior to occur when contemplating whistle-blowing. He rejects the position that external whistle-blowing is always morally justifiable, and also rejects the position that external whistle-blowing is never morally justifiable. Basically his position is that the whistleblower should have a moral motivation to engage in the act (i.e., to expose unnecessary harm, and illegal or immoral actions).

What whistleblowers hope and believe their speaking out will achieve, is the correction of what they perceive as an organizational wrongdoing (e.g., fraudulent financial statements). Not everyone who perceives a wrongdoing, acts upon that perception. In fact, only 42 percent stated they were ready to blow the whistle.

Ethics and morality go hand in hand. If you face an ethical crisis in the workplace, consider first whether real harm may be done to others if you don’t do everything in your power to correct the situation. Then, commit to acting ethically. No one is obligated to take actions that might harm one’s own interests. However, our moral obligation to society does obligate us to right a wrong when we see one that has occurred.

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