

Whistleblowers: how to best manage them

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Recently, I had a conversation with an executive coaching client of mine who aired concerns about a whistleblower on his manufacturing staff. As described to me, the complaints of this whistleblower focused on relatively trivial quality and procedural inconsistencies. Because the person had chosen to complain outside the organization first, his concerns had found the willing ear of a Federal agent. Those concerns quickly escalated to an audit and a set of findings once the government agency became involved.

Not having experienced this kind of situation before, I was shocked at the power of a whistleblower and of Federal agencies that can, effectively, block companies from launching new products for months. I became intrigued by the whistleblower phenomenon. Why was there so much support for whistleblower claims, whether or not they were immediately substantiated? Why did Federal agencies approach companies in such an adversarial posture when investigating alleged problems?

Let's start with a simple definition: a whistleblower is someone who tells the public or a person in authority about perceived dishonest or illegal activities occurring in an organization. The alleged misconduct might be a violation of a law or regulation, and it might represent a direct threat to public or customer safety. Whistleblowers frequently faced reprisal, either at the hands of the organization or group they accused, from related organizations, or from the law.

A brief history. Whistleblowing legislation goes back many years in the US. One of the first laws that protected whistleblowers was, in fact, the 1863 United States False Claims Act, which took aim at fraud by suppliers of the US government during the Civil War. For nearly a century afterward, this law was the primary one protecting whistleblowers.

Then, in 1978, the Civil Service Reform Act was passed to protect the rights of government employees who reported wrongdoing. The 1989 Whistleblower Protection Act extended safeguards to include disclosure of information and a government employee's refusal to participate in wrongful work activities. With the enactment of the Sarbanes-Oxley Corporate Reform Act of 2002, internal and external whistleblower protection was extended to employees in publicly traded companies.

Who are they? Most whistleblowers are *internal* ones who report to appropriate people within their organization the misconduct of fellow employees, as well as quality and other operational problems. There is some evidence to conclude that people are more likely to report problem behaviors or procedures to others in their organization, if there are complaint systems that offer a *choice* of options and promise confidentiality.

External whistleblowers, on the other hand, first report misconduct to persons or entities outside their organizations. This was the situation with the executive I was coaching. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, various media, law enforcement, watchdog groups, or local, state, or federal agencies.

The data indicate that most whistleblowers first try to fix the perceived problems by talking to superiors, filing an internal complaint, or both, but their complaints are often ignored, dismissed as unfounded, or met with demands to just follow orders. To be considered whistleblowers, employees must have reason to believe their employer has violated some law, rule or regulation, and then either initiate a legal proceeding on the matter, or simply refuse to act in violation of the law.

Although whistleblowers are often protected under law from employer retaliation, there have been many cases where punishment such as termination, suspension, demotion, wage garnishment, and/or harsh mistreatment by other employees has occurred. Many whistleblowers report a widespread "shoot the messenger" mentality by corporations or government agencies accused of misconduct. It is not uncommon for whistleblowers to be ostracized by their co-workers, discriminated against by potential employers, or fired. The average legal case lasts almost five years, and whistleblowers report financial difficulties, personal hardships, and stress-related health problems.

What motivates them? Whistleblowers are often viewed as selfless martyrs and heroes, though some see them as fabricators pursuing personal fame and recognition. Their real motivations are seldom clear. It is likely many people never consider blowing the whistle, out of fear of retaliation, or of losing their relationships at work. Though we cannot know what is in heart of whistleblowers, they are likely motivated by one or more of these factors:

Strong ethics. Many whistleblowers cite ethical reasons for pursuing their complaints. They are motivated by the need to seek justice, to do the right thing or to act on behalf of public safety, for example.

Financial reward. For some whistleblowers, the promise of a hefty reward spurs them on. Initiating a class-action suit, contacting the IRS or SEC, or calling various law firms can result in a monetary reward. Books that promise to tell "how to collect millions by reporting fraud" draw people in.

Sense of belonging. There are blogs, websites, and other virtual organizations that cater to whistleblowers and provide a sense of community. Sites like whistleblower.org, whistleblowers.org, and whistleblowing.org help people feel like they are part of an important group.

Sense of celebrity. We are familiar with the names Erin Brockovich, Julian Assange, Karen Silkwood, Daniel Ellsberg, and others because they blew the whistle on a powerful corporation, political party, or government. A recent movie (2010), *The Whistleblower*, further glorifies the importance of such a role in real life.

Feeling of power. Once a complaint is filed with a government agency, agents from that entity must follow up on the alleged crime or misconduct. Wheels are set in motion that cannot be stopped until a full investigation reveals the truth. This powerful response starts with the simple act of expressing a concern.

Minimizing external whistleblowing. The key to limiting the possibility of disparaging headlines and scrutiny by Federal agencies is to develop an internal program that encourages people to work through the system to fix problems. Start by developing a culture that:

- Encourages employees to bring concerns and possible violations to an internal authority to be resolved quickly and fully
- Communicates to employees that the organization is serious about adherence to codes of conduct, quality, etc.

Create a policy. A policy about reporting illegal or unethical practices should include:

- Specific, formal mechanisms for reporting violations
- Clear chain of command, ombudsman, or a human resources professional to contact
- Clear message about protection from retaliation

Get senior management buy-in. Top management must demonstrate a clear commitment to encourage whistleblowing. Line managers must communicate this message at all levels, and be trained to establish an open-door policy for employee complaints.

Regularly communicate the policy. To nurture a culture of openness and honesty, employees must hear about the policy regularly. Memos, newsletters, and speeches to employees should address the commitment to ethical behavior. Publicly acknowledging and rewarding employees who illuminate issues, for example, sends the message that management is serious about addressing issues.

Investigate and follow up. Managers should be required to investigate all allegations promptly and thoroughly, and report their findings to more senior management.

The goal, bottom line, is to encourage *internal* whistle blowing through your organization's words and actions, so that you minimize the probability that employees contact *external* organizations to record their complaints. Take all concerns seriously, thank employees for their courage in coming forward, and reward their behavior when the complaint is legitimate. Use whatever mechanisms that exists or can be created inside your organization to tap into the whistleblower's need function with high integrity, be rewarded financially, feel a sense of belonging and celebrity for their actions, and recognize the power they already have as one voice within the company.