



Activate the Asset of the Whistleblower Process!

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Abstract

It is only natural that whistle-blowing is ripe with personal risks (for the whistleblower) and ethical dilemmas (for the company) because it is where the high-minded Public Good and Ethics collide with trade secrets, individual and corporate egos and greed. However, it is possible to turn the trauma involved in the process into a positive outcome for everyone.

On August 1, 2007, a major interstate bridge in Minneapolis, Minnesota – the city where I work and live – collapsed and fell into the Mississippi River during the evening rush hour.

This tragedy resulted in 13 deaths and injured over 100 motorists (many still recovering). Two months later, Minnesota bridge inspector and union official, Bart Andersen, told US Congress that the state lacked the staff and funding to adequately inspect its bridges and guarantee public safety. Minnesota Department of Transportation officials immediately tried to discredit Andersen's testimony as "inaccurate". They then attacked his personal integrity and accused him of being "a union troublemaker." So much for trying to do the right thing! It seemed to be the kind of situation to which German philosopher Goethe was referring to when he said, "No good deed goes unpunished."

This is just an example of the trauma whistleblowing can stir up from the employee's perspective. And, from the *employer's* perspective, nothing instills more fear into management circles than the rumor a whistleblower is surfacing. Whistleblowing, from both sides of the aisle, is fraught with problems in the workplace today.

It does not need to be this way. In fact, the entire process of whistleblowing, how it is addressed and handled, *can* result in nothing but a positive outcome for all. It is really an *opportunity* to build and maintain The Ethical Workplace – a win for everyone. This takes diligence on both sides of the aisle, however.

The Whistleblower's Challenges

The term "whistleblower" has become a catch-all description for an employee who learns of any illegal, disruptive, unethical or incompetent activity—and reports it. Speaking up may be the right – and even heroic – thing to do; however, it can often have a negative effect on the whistleblower's career. Whistle-blowing involves taking on an enormous risk – to both one's reputation and livelihood. And, one finds oneself asking, *is doing the right thing always the right thing to do?*

Risks for the Whistleblower

The mere act of "coming forward" can put into play a series of events that are almost impossible to fully anticipate. Your job, family and even health may be drawn into the whirlwind. On the flipside, turning a blind eye may cause tremendous guilt and remorse. It's a difficult choice for anyone to make. You must carefully

consider the decision to act, and ensure that your family (and attorney) are fully engaged in the decision. As much as I want to encourage you to speak up whenever something amiss is observed in the workplace, I also want you to keep yourself financially and professionally safe.

The job security risk is acute for an employee who does not have much clout or power within the organization, but who is sitting on a time-bomb of technical information, inside knowledge or the “dirty truth” about a particular situation. Ironically, it’s often the people at the bottom who find themselves with a bird’s-eye view of office shenanigans, illegality, gross waste, mismanagement, abuse of authority or “substantial and specific danger” to public health or safety.

According to the US Equal Employment Opportunity Commission, employer “retaliation” became the leading category of complaints filed by workers in 2011. Of the nearly 100,000 complaints filed with the agency that year, more than 36,000 involved employers retaliating against workers who had spoken up about some perceived wrong at their company. That fact, in itself, would stop most potential whistleblowers from pursuing such action.

Retaliation can take many forms: harassment, discrimination, pay cuts, reassignment to bureaucratic Siberia, being buried in paperwork, demotion, declines of all requests for time off; the list goes on and on. Once you blow the whistle, you may be marked as a “troublemaker” and/or “not a team player” – and you may even have to watch your back. That old expression comes to mind, “Whistleblowers are as welcome as a skunk at the company picnic.”

As a result, I am inclined to encourage one to seek less destructive or “nuclear” options, as long as they accomplish the same goal.

Cautions to Consider

Make certain your motives are above reproach. If you are due for a poor performance review, are competing for a promotion, or are about to receive your final bad-conduct notice, your self-

interests compromise your ethical stance. Honestly – is your conscience clear? Expect to be asked if you have participated in conduct similar to what you are complaining about, and to be quizzed on whether you have an axe to grind because of a promotion recently denied or pending allegations against you. Expect to be challenged with the charge that you are filing a false claim.

A publicly-known hero of mine is Coleen Rowley – the FBI whistleblower who I am proud to say worked in my home city of Minneapolis. Attorney and long-respected agent, Rowley reported on the FBI’s failure to act upon agents’ pre-existing information and investigation of terrorist suspect, Zacarias Moussaoui, before 9/11. Rowley’s memo (to this effect) directed to the US FBI Director Mueller in May 2002 – followed by her blunt Congressional testimony to the Senate Judiciary Committee – captivated my nation. Based on her experience, Rowley suggests there are three steps to consider when thinking about whether or not to blow the whistle.

Step 1: Discern what the right thing to do is. This is relatively easy when a contemplated action is clearly criminal (e.g. illegal drugs), violates a clear ethical mandate (e.g. lying), or when the action is right because it’s legal and beneficial (e.g. helping others or following the Golden Rule). However, there is a gray area between right and wrong where competing interests sometimes result in “ethical dilemmas” (such as problems involving moral relativism). Rowley believes we should be willing to devote enough thought and reflection, if need be, in consultation with other authorities to make the gray area of moral relativism as thin a line as possible.

Step 2: Act to do the right thing. This takes courage because you may have to buck peer or familial pressure—such as when Unabomber Ted Kaczynski’s brother contacted US law enforcement. However, despite its difficulty, these actions ultimately result in the best outcome for everyone.

Step 3: Act openly in a constructive manner. Seize any and all opportunities for constructive action and “teachable moments” in a transparent manner. For example, in the midst of an expensive mistake in a food company (resulting in a product recall) ask the question, “What have we learned here?” This memorializes the lessons learned while getting people to stop the blame game and then encourages them to start focusing on the future instead.

“Tattle-taling” versus “Whistle-blowing”

To avoid the accusation of simply being a “tattle tale” (versus a whistle-blower), you need to consider these four criteria to distinguish the difference:

- *Your issue must be significant.* A classmate telling on another classmate about a stolen pencil may not be an ethical imperative, but a Columbine-type situation of overhearing a classmate threaten to bring weapons to school certainly is.
- *Your statement must be truthful and essentially right,* despite the fact that in many cases there is no way of anyone having perfect intelligence or completely objective knowledge of all of the pertinent facts.
- *Your motivation must not be to promote self interest,* but to promote the interest (safety, etc.) of others or the public. For example, writing and promoting a book on the subject would not be acceptable.
- *The action you take must be done in the most constructive, positive way* for all involved. No personal vendettas or attacks. If the matter can be resolved without anyone taking a serious fall, then that’s all the better.

How to Proceed

Protection for whistleblowers is sketchy in the best of circumstances; consequently, just being *right* is not enough these days. Sadly, there are no guarantees you will prevail, or assurances that you will not suffer reprisals.

These are my suggestions if you decide to move forward:

- Exhaust *all* reasonable possibilities of working within the system. If you are successful in this effort, you have solved the problem for all involved.
- Obtain legal opinions from attorneys specifically trained in this new sub-specialty of employment law.
- Before taking any irreversible steps, talk to your family and/or close friends about your decision (without revealing specific details about your situation).
- Be alert and discreetly attempt to learn of any other witnesses who are upset about the wrongdoing.
- Develop a plan – such as the strategically timed release of information to government agencies – so your employer is reacting to *you*, instead of vice-versa.
- Maintain good relations with administration and staff.
- Keep a careful record of events as they unfold. Try to construct a straightforward, factual log of the relevant activities and events on the job, keeping in mind that your employer will have access to your diary if there is a lawsuit.
- Identify and copy all necessary supporting records beforehand.
- Don’t become isolated. Seek a support network of potential allies, such as elected officials, journalists and activists.
- Do not embellish your charges.
- Engage in whistleblowing initiatives on your own time and with your own resources.
- Don’t wear your cynicism on your sleeve when working with authorities.
- Recruit others to help you fight the good fight whenever you can.
- If you experience retaliation, do not delay to make a claim, as some of the laws protecting

you have time limits as short as 30 days (your attorney will know specifics here).

Sounds like going into battle, right? That is an accurate frame of mind to adapt with concentration, however, on one goal: *doing the right thing for the right reasons*. I believe we must persistently advocate for a more ethical workplace if for any other reason that doing the right thing is its own reward – and, that may be all the reward you need.

Management's Challenges

The Problems

An alarming statistic from results of a 2010 US National Whistleblowers Center study found that 89.7% of employees who eventually filed whistleblower lawsuits *initially reported their concerns internally, either to supervisors or compliance officers*. Similarly, the US Ethics Resource Center survey found that more than 90% of employees who blew the whistle went to someone inside the company; only 4% went outside the organization itself.

Paraphrased, the Good News is that most whistleblowers have their companies' best interests in mind and try to solve their problems internally. The Bad News is that their companies failed them in the process.

More distressing news is that hotlines (usually anonymous) do not appear to be working – or, at least that is the perception. The Ethics Resource Center survey found that only 3% of all reports of wrongdoing come through hotlines. The reasons could be many-employees don't trust they are being taken seriously and/or, because it is anonymous reporting, they are not privy to follow-up which creates the perception nothing is being done (even when the opposite may be true). Thus, Conventional Wisdom is that all such complaints fall into a black hole.

The Solution

Historically, management has considered whistleblowers as a threat and one that should be dispatched with swiftly. Whereby, management,

instead, should take a proactive stance and view the whistleblower as an *asset*. This individual has come forward to help the company identify and address a problem heading for disaster. Who would *not* want to head off a possible train wreck?

Employers today should be concentrating on developing positive employee relationships with their employees so they feel motivated and comfortable coming forward to *them* with problems or concerns as opposed to going elsewhere for help. Bottom line: management should *embrace* the potential whistleblower with a "You just might have a point" attitude.

The TV series, *Undercover Boss*, gets it right. Principals from a company infiltrate the workplace and bosses go undercover to find ways to increase efficiency, improve product and make a company more profitable. Results are always positive in that potential, serious problems surface and, consequently, disasters are avoided. The additional plus is that employees are rewarded for their (heretofore unnoticed) sterling contributions. Everyone wins!

We're All in this Together

Bishop Sheen once said: "It's easy to be an iceberg if you live in the frigid zone." It's easy to be ethical if everyone around you adapts the philosophy of creating and maintaining the ethical environment. However, you have problems if you are not united in this creed.

The Ethical Workplace may be defined as *a culture that fosters mutual respect, trust and honest communication among co-workers, management, customers and vendors*. Simply put: it's a climate of integrity! But, it needs to be grounded by these three chief characteristics (my "Three C's"):

- A *CORPORATE CONSCIENCE*, which is a shared understanding about the standards for acceptable and unacceptable behavior. This is established and conveyed in your Code of Ethics, Code of Conduct and/or Mission Statement – and throughout your employee and management training.

- A *COMMITMENT* to hold yourself and each other personally responsible and accountable for the company's standards – and,
- An *ongoing discussion of honest COMMUNICATION* about ethical issues.

I'm happy to report that ethical cultures have gone "live" in workplaces everywhere today. Why? Because the Ethical Office has proven to be a significant competitive advantage. Management and employees realize that the double or triple bottom line (as ethics are sometimes referred to) relates directly to healthy profits.

Thus, employers should:

- Incorporate a Whistleblowing Policy within your employee handbook. Provide clear steps on how (and whom) to report one's concerns. Include verbiage on non-retaliation.
- Encourage employees to come forward with their concerns and welcome them when they do so.
- Communicate to employees it is *safe* to report wrongdoing of any kind through established, internal channels.
- Train your managers to welcome whistleblower concerns and follow procedures accordingly. Care should be taken to instill in managers a respectful and non-judgmental attitude so they can listen objectively, take each complaint seriously and treat it confidentially.

Whistleblowers are here to stay and, we should be glad they are. They are the *conscience* of the Ethical Workplace. In my mind, whistleblowers - acting in good faith – and with the right motivations – are the heroes of today. These are the people who see sins of omission or commission and feel the accountability and have the courage to take action by speaking up to protect their companies' reputations. Isn't this the heart and soul of the Ethical Workplace?

I will always share US President Abraham Lincoln's belief in the "better angels of our nature." *We all*

want to do the right thing – and, it's easier when we work in a supportive culture.

"Bridges in America should not fall down."

Minnesota's US Senator Amy Klobuchar

About the Author

*Ms. Nan DeMars is based in the USA and is an internationally-recognized thought leader and practitioner in the area of workplace ethics. In addition to being an author, columnist and media talk-show guest, Nan's energizing, interactive workshops and keynote addresses have trained thousands of employees at all levels of responsibility and in all types of industries. She is author of the first-ever 'bible' on workplace ethics, *You Want Me To Do WHAT? When, Where and How to Draw the Line at Work* (Simon & Schuster) and the newly-released book, *You've GOT To Be Kidding! How to Keep Your Job Without Losing Your Integrity* (John Wiley & Sons).*

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