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It takes a village to raise a whistleblower

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Since *Time* magazine proclaimed three whistleblowers as the “Person of the Year” in 2002, the issue of whistleblowing encouragement and protection gained considerable attention from governments, corporations, and media. G20 leaders acknowledged whistleblowing as a key element of global anti-corruption strategy, which resulted in significant advancements in the regulatory landscape. Recently Italy took an important step towards whistleblower protection by adopting a new piece of legislation with comprehensive provisions. I take this opportunity to reflect on the fear of retaliation as one of the key constraints of reporting a wrongdoing and come to the conclusion that legal protection alone is not sufficient. Its positive effect is enhanced by another important influence: a company’s ethical climate.

Ethical dilemma

Whistleblowing has been recognized as a complex phenomenon, incorporating a tough choice between raising a voice and suffering the potential consequences, or keeping silent and ignoring the wrongdoing. In other words, a whistleblower is faced with an ethical dilemma of conflicting loyalties: loyalty to the organization on one hand, and moral and social obligations to do the right thing on the other. The latter may be considered as a loyalty to society at large.

The dilemma, therefore, appears to be a zero-sum game: No matter which course of action is chosen, it would lead to some negative consequences. When the loyalty to organization prevails and the employee decides to overlook the wrongdoing, it may lead to harmful consequences for other employees/external parties and the general public. On the contrary, whistleblowing may cause a negative attitude from colleagues and management for being a disloyal troublemaker; therefore, the relationships would be jeopardized. Moreover, because of a deep-seated fear of retaliation, employees are generally reluctant to speak up, and the compliance hotlines often remain silent. The fear may arise automatically, even from a mere consideration of blowing a whistle on the discovered misconduct.

Fear of retaliation

Research confirms that employees perceive raising the voice as a personal risk.^[1] This risk is not imaginary. Unfortunately, the whistleblowers regularly get penalized (formally or informally) for reporting unethical conduct.^[2] Retaliation coming from management or coworkers can take many forms, ranging in severity from downgrading jobs or increasing workloads, to termination of employment. These measures seriously deter the reporting of unethical conduct. When making up their minds about whistleblowing, employees are likely to evaluate potential costs and benefits, assessing not only the probability of retaliation, but also its potential strength and severity. Not surprisingly, the fear of being fired appears to be the strongest deterrent.^[3]

Legal protection

Therefore, whistleblower legislation is an important facilitator of speak-up culture. It offers whistleblowers protection from potential retaliatory measures, which fosters a psychologically safe environment that is open for discussion of ethically charged situations. The introduction of whistleblower protection laws, together with the creation of awareness about their availability, has a profound effect on the perception of whistleblowing, thereby encouraging employees to raise their voices.^[4]

Therefore, in the last decades, the importance of whistleblowing gained considerable recognition and support from policymakers around the world. In 2014, Transparency International released a study summarizing strengths and weaknesses of the existing whistleblower mechanisms in G20 countries.^[5] According to the report, the legislation varied substantially from one jurisdiction to another, offering a more comprehensive protection from retaliatory actions for whistleblowers in the public sector. In terms of the access to civil/employment remedies for those who suffered from retaliation, such as rights for compensation or injunctive relief, only three countries out of 20 received a top score.

Since 2014, progress has clearly been made and has whistleblowing maintained its prominent position on the international agenda. A recent example is the new Italian Law No. 179/2017 of November 30, 2017 that came into effect at the end of 2017.^[6] The law aims to strengthen protection for whistleblowers in the public sector and add new protections for those in the private sector. With its adoption, the Italian regulatory framework on whistleblower protection has been significantly amended.

The Italian law provides that a *public* employee who reports illegal conduct in the interest of public administration's integrity shall not be retaliated against due to the report, through any sanctions, dismissal, demotion, transfers to other offices, or other measures that have a negative effect on the working conditions. When faced with a whistleblower's claim for retaliation, it is now the company's burden to prove that the actions taken against the whistleblower were not connected with the act of whistleblowing. If it is established that the employee was dismissed for reasons related to the whistleblower complaint, he or she is entitled to reinstatement, compensation for damage caused, and payment of social security contributions due for the period between the dismissal and reinstatement.

Depending on the nature of the complaint, public employees may report a violation either to the internal officer responsible for bribery prevention and transparency, or to the National Anti-Corruption Authority (Italy), or directly to an accounting authority or the judiciary. Notably, the law reinforces the provisions aimed at protecting the whistleblower's anonymity.

In terms of the *private* sector, previously whistleblower protections were limited to specific areas, mostly covering finance and banking. The Italian law takes a more general perspective and provides for an important amendment of Legislative Decree No. 231/2001 from June 8, 2001 on the criminal liability of corporations.^[7] The law requires private companies that have already introduced compliance programs to set up a reporting system for whistleblowers, including:

- one or more channels that allow employees to internally report illegal conduct or violations, in the interest of the protection of the entity's integrity;
- at least one alternative reporting channel that would guarantee the confidentiality of the whistleblower's identity; and
- appropriate measures to protect the whistleblower's identity and to maintain the confidentiality of information in any context subsequent to reporting, to the extent that anonymity and confidentiality are legally enforceable.

Again, the new law provides for a prohibition of direct or indirect retaliatory and discriminatory measures against private-sector whistleblowers for reasons connected directly or indirectly to the complaint.

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