CORPORATE LOYALTY VERSUS WHISTLEBLOWING
– AN ETHICAL CHALLENGE IN HRM

Authors
Edit LUKACS*, Nicoleta CRISTACHE**, Maria NICOLAI***,
Michael STOICA****

Abstract: The research herein aims to discuss the issues pertaining to choice of appropriate behavior in case an employee becomes aware of, or accomplice in immoral and/or illegal acts within the organization. Whistle-blowing seems to involve a conflict between employee loyalty and protection of public interest. In the same time, whistle-blowing can have undesired consequences like seclusion by colleagues, dismissal, losing the possibilities of promotion, losing reputation and even, in some cases, risk of physical attacks or murder. Although whistleblowers are often protected by law against retaliation from the employer, there have been many cases in which they have suffered consequences. The best practice model of the European Parliament is meant to provide a helpful guide in approaching this subject.

Key words: corporate loyalty, morality, whistleblower, protection of whistle-blower, best practice model for whistle-blowing

1. Introduction

Employees’ responsibilities towards their employers are provided in the employment contracts according to laws in force as well as internal codes of conduct of various corporations. Beyond the legal frame though, there are certain moral duties of employees towards the companies they work for, duties which are sometimes subject to controversy.

*Ph.D. Associate Professor, "Dunărea de Jos" University from Galati, e-mail: editlukacs09@yahoo.com
**Ph.D. Associate Professor, "Dunărea de Jos" University from Galati, e-mail: nchihaia@yahoo.com
***Ph.D. Associate Professor, "Dunărea de Jos" University from Galati, e-mail: nicolaimaria9@yahoo.fr
****Ph.D. Professor, School of Business, Washburn University, USA, e-mail: michael.stoica@washburn.edu
One of these duties is loyalty to the firm. Many managers wish for loyalty on behalf of their employees. A loyal individual represents a great advantage to the organization whereas loyalty is the element that determines stability among staff. Loyalty is a feeling of trust and complete devotion to the organization. The lack of loyalty is a pointer of the fact that the human resources are prone to leaving the organization and those who feel disloyal but do not leave are prone to minimum effort, sabotage, theft, absenteeism.

By discussing the meaning of the concepts of loyalty, morality and whistle-blowing at the beginning of the paper, and then, presenting some real whistle-blowing cases with their consequences, we try to answer to the question: Does the employee’s loyalty compel oneself to keep quiet, or is it his/her moral duty to denounce the illegality in order not to endanger or cause prejudice to innocent individuals?

While it is accepted that society has an interest in requiring people to report serious wrongdoing, for example risks to life posed by terrorism or lapses in workplace safety systems, it must also be acknowledged that duties to disclose raise significant practical difficulties. (Lewis, 2011) For example, should people be punished if they make a report without having reasonable grounds to suspect wrongdoing?

Although whistle-blowing has been much discussed in the business ethics literature, specialists continue to hold widely varying views about it.

2. Corporate loyalty

According to Richard Steers (Steers, 1991), corporate loyalty is the relative power with which an individual gets involved with and identifies oneself with the organization. Loyalty is defined by the following three factors: (1) Strong confidence and acceptance of organizational values and goals; (2) Strong will to make considerable efforts for the benefit of the organization; (3) Strong will to maintain relationships with members of the organization. Defined in this way, loyalty is a synonym for organizational commitment.

Loyalty is structured upon the following components (Manea, Trandafir, 2005):

- the affectionate level, referring to the manifestation of certain emotions or feelings;
- the cognitive level, represented by the analysis of responsibilities and equality according to the costs/benefits ratio;
- attitudes and beliefs that reveal professional attachment, norms, group, unity, changes;
- behaviour represented by manifestation of congruent actions.
Loyalty is not generated by things that are usual or standard to everyone, because these things do not generate emotion and, consequently, loyalty. Employees are not loyal due to being paid well or due to having a fitness facility or a dining hall. Loyalty is much more profound, it speaks of personal values and aspirations and of personal accomplishment within the organization. In other words, what generates loyalty is exception, the fact that the employee is seen and appreciated as a person, the flexibility and interest shown to him/her by superiors, at least equal to the degree of interest required of him/her for the organization.

Loyalty is an emotional phenomenon that implies supplementary devotion, which exceeds the frame of usual cold reasoning. Loyalty is not the same as the fear of change that makes some employees stay in a company 20 years at a time. This type of “loyalty” is associated with inertia, lack of initiative, resistance to change and political opportunism. These “loyal” employees are the ones who always say what it is desired to be heard, quietly remain in their seats and do not cause any stirs. They do not bring any value, and when a change is desired, they even get in the way.

Companies justifiably expect loyalty on behalf of their employees. Keeping trade secrets, devotion to corporate priorities, abstaining from any acts that could harm the company, etc. are considered fundamental responsibilities of employees, who are themselves stakeholders of the company; though the conduct of the company itself is not always faultless.

3. Loyalty and morality

A company that offers security of employment, support and understanding in difficult moments for its employees has full right to expect a certain degree of loyalty on their behalf. The issue that we are debating here is: How far should this corporate loyalty go? What happens when behavior required at the workplace comes is contradiction with moral guidelines widely accepted in society or with the individual’s ethical standards? For instance, what does an employee have to do if asked by the superior to falsify a company report, threatening with dismissal in case he/she refuses? Is it morally permissible of an employee to denounce an illegality or does this represent an unacceptable breach of corporate loyalty?

As a rule of thumb, there are no valid arguments supporting the idea that business ethical standards should differ from those in one’s private life, so that work behavior based on norms other than those outside of work could be justifiable. If a company or its employees are behaving inappropriately by moral standards, it is very likely that the acts are inappropriate by business ethics as well. That is why those employees who come to work bringing along their moral principles may often find themselves in difficult situations (Crăciun, Morar, Macoviciuc, 2005). Workers are likely to have commitments also to their family, workgroup,
profession, consumers of their employers’ products or services, or to society in general, which may conflict, from time to time, with organizational loyalty. For example, an employee may be a member of a professional body that promotes the reporting of wrongdoing but belong to a workgroup that is opposed to whistle-blowing. Similarly, workers may feel torn between loyalty to an immediate superior who is suspected of wrongdoing and the organization itself. Given the obvious potential for different loyalties to clash, priorities will have to be established. Simply asserting that loyalty to the organization overrides all other obligations is unacceptable (Lewis, 2011).

It is obvious that the employee’s corporate loyalty cannot be absolute, regardless of what moral principles might be breached by this loyalty. Though, situations such as the employee’s vital dependency on the income received from the workplace may diminish his/her responsibility in the case of complicity in an act of fraud. The final decision regarding the employee’s culpability will also depend on the gravity of the immoral act requested of him/her. If it is serious acts such as covering up serious illegal activities inside the company or dangerous infringements of production standards, infringements that can be life-threatening to employees or consumers, not even personal risk of dismissal is grounds for diminished responsibility for the employee who accepted to take part in these acts. External denouncing of immoral acts can be regrettable only in the case of relatively minor contraventions, but it becomes compulsory in serious cases because the costs and risks associated with covering up the truth can become very big.

4. The whistleblower – altruistic martyr, disloyal weasel or model of integrity?

A descriptive definition of whistle-blowing, which manage to synthesize the most widely used definitions, was provided by Peter Jubb (Jubb, 1999):

“Whistle-blowing ia a deliberate non-obligatory disclosure, which gets onto public record and is made by a person who has or had privileged access to data or information of an organization, about non-trivial illegality or other wrongdoing whether actual, suspected or anticipated which implicates and is under control of that organization, to an external entity having potential to rectify the wrongdoing”.

The whistleblower draws attention upon an illegal or dishonest act that takes place in an organization, of which he/she is usually a member. The denounced infringements may be of various types such as violation of the law/code of conduct, direct threat to public interest, fraud, violation of health/security policies or corruption.
The term “whistleblower” comes from British police officers’ usual practice of blowing their whistles whenever they witness the occurrence of a crime. The whistle alerts the other police officers and warns the citizens with regard to danger (Wikipedia1).

Whistleblowers can bring their accusations at the internal level (for instance, against other individuals in the organization) or externally (to regulatory entities, law enforcement agencies, the mass-media or affected groups). Either of the two methods can be undertaken openly or anonymously.

In the case of internal whistle-blowing, the denunciation of the acts that infringe moral principles or legal provisions is addressed to the company’s manager or to an auditing authority within the organization. It is possible for the whistleblower to feel compelled to skip the usual steps of internal reporting either because his/her superior is not willing to discuss the issue, or because the latter does not seem to the whistleblower to be trustworthy or capable of handling the information. The pressure created by the feeling of complicity to illegal acts can determine the whistleblower to denounce the dishonest acts to the mass-media or law-enforcement authorities.

The reactions towards whistleblowers vary greatly. Whistleblowers are usually seen as altruistic martyrs dedicated to public interest; others consider them “weasels” or “snitches” who only pursue personal glory and fame. Some researchers consider that in the case of whistleblowers, there should be at least presumed that they take on the issues from an ethical standpoint; also, they consider that this practice is rather respectable in systems of governance in which there is basic education about virtue ethics (Faunce, T.A., 2004; Faunce & Jefferys S., 2007).

Due to the fact that most whistle-blowing cases draw little or no attention from the mass-media and most whistleblowers who report major infringements are usually subject to some type of danger or persecution, the idea that they would be looking for fame and glory becomes hardly credible.

Whistle-blowing is relatively rare in most organizations. Most people don’t even think of denouncing dishonest acts either because of fear of retaliation, or fear of damaging one’s relationships within and outside the workplace (Mit, Hms, Hin, 2009). This is also due to the fact that in order to blow the whistle, an employee has to:

• be aware of the illegal/immoral act within the organization and have sufficient proof to sustain the accusations;
• to consider the respective act as being serious from a moral standpoint or have serious consequences to others;
• to feel personally responsible for resolving the situation;
• to believe that there is a plausible way to act thereupon.
Even so, employees are usually afraid of the consequences if whistle-blowing, which can vary from seclusion by colleagues, dismissal, losing the possibilities of promotion, losing reputation and even, in some cases, risk of physical attacks or murder.

There are countless cases in which the whistleblower had to suffer as a consequence of his/her action. I have referenced some information found in articles on the Internet.

A Russian police officer, who denounced the corruption within the law-enforcement system by means of a video recording, shortly after the incident, was subject of a criminal investigation for abuse of authority. The policeman was blowing the whistle about the fact that he was coerced by superiors to solve imaginary crimes in order to improve activity statistics. Later, he was dismissed on grounds of “calumny” (http://www.bzi.ro/politist-rus-anchetat-dupa-denuntarea-coruptiei-sistemului-152418).

Marlene Garcia-Esperat was a Filipino whistleblower and investigating journalist who wrote a weekly anti-corruption article in local publications. As a former employee of the Philippines’ Department of Agriculture in Central Mindanao, Esperat unveiled violations relating to the use of the Department’s finances, violations in which the president of the Department was also involved. As a consequence of her anti-corruption activities, she was murdered in her home on the 24th of March, 2005. Two weeks after her assassination, her killers were caught and they admitted having been hired by two officials of the Department (Wikipedia2).

Cristoph Meili is a Swiss whistleblower who in 1997 worked as a nightshift security officer at Union Bank of Switzerland, in Zurich. He has discovered that officials of the bank were destroying documents regarding the wealth of orphans of Jews who died in the holocaust in order to convert the respective wealth into share capital for the bank. He took some files home and after a phone conversation with a local Jewish organization he handed the files over to them, who took them to the police and then to the press, who publicized the fact. Zurich authorities filed a criminal law suit against Meili, accusing him of breaching the law regarding the banking secret. After Meili received life threats, he left to the United States of America, along with his family, where he received political asylum (Wikipedia3).

Other cases of whistle-blowing did not have such a dramatic outcome. Sherron Watkins, former vice-president of Organizational Development at Enron Corporation is considered to be the whistleblower who helped solve the Enron scandal in 2001. In her case, it is worth noting that she tried blowing the whistle internally before going to the mass-media, informing Enron’s CEO Kenneth Lay about the existence of false financial reports that could draw Enron into a cascade of accounting scandals. Sherron Watkins’ memorandum addressed to Lay has not
been publicized for five months since conception. She has testified in front of the U.S. House of Representatives and the Senate, was praised in the mass-media for her courageous acts, and in 2002 was designated by Times magazine as one of the three “People of the year 2002”, alongside Cynthia Cooper and Coleen Rowley, whistleblowers of WorldCom and FBI, respectively. In recognition of her outstanding demonstration of ethics in the workplace, Ms. Watkins has received numerous honors, including the Court TV Scales of Justice Award and its Everyday Hero’s Award, the Women Mean Business Award from the Business and Professional Women/USA Organization, and the 2003 Woman of the Year Award by Houston Baptist University. In 2003, the National Academy of Management presented Ms. Watkins with their Distinguished Executive Award and the Women’s Economic Round Table honored her with the Rolfe Award for Educating the Public about Business and Finance (Personal webpage of Sharon Watkins http://www.sherronwatkins.com/sherronwatkins/Sherrons_Bio.html).

In an online article it is shown that the former Brussels correspondent of the German magazine “Stern”, Hans-Martin Tillack received the Award for Freedom and Future of Mass-Media in amount of 30.000 Euro on behalf of the Leipzig Sparkasse’s Media foundation. The award has been granted to him for his articles describing corruption and the violation of democratic principles within the institutions of the European Union. Tillack received the prize alongside American journalist Seymour M. Hersh, reporter for the German edition of “Financial Times” in Afghanistan. The Media foundation of Leipzig Sparkasse grants the Award for Freedom and Future of Mass-Media to journalists and media institutions that assume major risks and show great courage in defending the freedom of the press (http://www.9am.ro/stiri-revista-presei/2005-01-08/jurnalist-premiat-pentru-denuntarea-coruptiei-din-institutiile-ue.)

5. Protection of whistleblowers

Persecution of whistleblowers has become a serious problem in many parts of the world. Although whistleblowers are often protected by law against retaliation from the employer, there have been many cases in which they have suffered consequences such as: termination of employment contract, suspension of employment contract, demotion, wage cuts or aggressive harassment from other employees.

In the United States, most laws referring to the protection of whistleblowers, like Sarbenes-Oxley Act (2002), Whistle-blower Protection Act (1989), the Fraud Enforcement and Recovery Act (2009), the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010), provide for compensatory actions in cases in which harassment is proven. Even so, many whistleblowers claim that overall, inside corporations and government agencies there is an attitude of discontent
towards them and in some cases there have been law suits filed against them for their whistle-blowing actions (Wikipedia4).

As a consequence, in the Western world, many private organizations have established funds for financing the legal defense of whistleblowers and/or of support groups; one such example in the United Kingdom is Public Concern at Work – a charitable organization for protecting whistleblowers who act in public interest (http://www.pcaw.co.uk).

Lately, as ethical problems become increasingly important in the business field, many organizations changed their attitude towards whistle-blowing. It is no longer viewed as lack of loyalty or attempt to stand out; companies are now trying to make use of whistle blows as signals that alert of a situation in need of resolution. Making internal whistle-blowing more accessible and more efficient, these companies hope to discover and remedy problems before they become public and harm the company (Barnett, Cochran, 1991).

In the Republic of Moldova, protection of those who denounce acts of corruption is regulated since as early as 1998. Urgent protection measures that can be applied by the Center for Combating Economic Crimes and Corruption in the neighboring country are insuring personal surveillance, surveillance of the residence, of the home (http://www.capc.md/ro/radio/19.html).

In Romania, protection of public authorities’ personnel, public institutions and other entities that signal infringements of laws is regulated by Law No. 571/2004 as well as Law 682/2002 referring to protection of witnesses. The breaking of laws can also be reported through the Internet. Beginning with May 2008, the website www.avertizori.ro is made available by Transparency International (TI) Romania, the Concept Foundation and the Independent Center for Development of Environmental Resources. The website www.avertizori.ro shows what it means to be a whistleblower in service of integrity and how the law protects the latter when he/she reports illegalities in the institution he/she works for. The website represents a complex communication platform, meant to provide useful information regarding acts that may be subject of an integrity warning, means of forwarding complaints and protection mechanisms available to civil servants, hired personnel and other categories of the public administration (Cristea, 2008).

Romanian Law for whistle-blowing sets out the principle of responsibility according to which the whistleblower must sustain the complaint with information or evidence concerning the act committed. Romanian Law gives officials the right to have their identity withheld when denouncing a superior. It is also desirable to respect whistle-blowers’ confidentiality in other cases, if they request it. There are specific obligations in Romanian law to establish whistle-blowing procedures. However, this does not apply to the private sector.

Nevertheless, the European Commission’s Report on justice and the fight against local corruption shows that there is lack of initiative in detecting corruption and a relaxation of inspectors of healthcare services and regional
education, but furthermore involving fiscal authorities and their controlling divisions. The EC report shows that in 2008, only 15% of 837 existing complaints resolved by the disciplinary commission of the National Agency of Public Servants were made by citizens. Only 9 of them were anonymously signaled by individuals from within the institutions, or warners of integrity, as they are titled by the law. Laura Stefan, anti-corruption coordinator at the Academic Society of Romania, thinks that “the institution of the integrity Warner is not functioning because the risks that the respective individuals have to assume are too great in relationship to the actual protection offered in return. The law is in force, but unfortunately, in reality, the respective individuals are bound to suffer if they signal infringements of law in public institutions, although formally, they are protected… In a country such as Romania, having a communist background, it is very difficult to implement such a concept, that of the integrity Warner. In countries with a past in which informing was intensely used, such a system not only has to fight legal and institutional barriers, but with the social mentality that associates denunciations made by integrity warners with informing (Blajan, 2009).

6. The best practice model of European Parliament for whistle-blowing

In all European countries, there are systems that permit or even demand disclosures, and grant from time to time a certain level of protection. The downside is the fact that all of these systems are limited to certain parts of the workforce, certain types of disclosures, or do not explicitly provide for protection against reprisal.

In order to create a framework for national administrations to follow, the Directorate General Internal Policies of the European Parliament published in 2006 a comprehensive study: Whistle-blowing Rules: Best Practice; Assessment and Revision of Rules in EU Institutions (Rohde-Liebenau, 2006) The best practice model of the European Parliament has on its bases The Public Interest Disclosure Act (PIDA), adopted in the United Kingdom in 1998. This Act provides whistleblowers with statutory protection against dismissal and victimization. The Act applies to people at work raising genuine concern about crime, civil offences, miscarriage of justice, and danger to health and safety or the environment. It applies whether or not the information is confidential and extends to malpractice overseas.

Synthesizing the most relevant elements of the Best practice model of the European Parliament, in Table 1 we present the description of these elements.
<table>
<thead>
<tr>
<th>Elements</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awareness</td>
<td>Stakeholders should be aware of the benefits of risk communication within a framework of mutual responsibilities, clearly defined in Codes of Conduct</td>
</tr>
<tr>
<td>Who can be a Whistleblower?</td>
<td>Everyone who can possibly be a source of internal risk information.</td>
</tr>
<tr>
<td>On what sort of subject matter?</td>
<td>Generally, all risk relevant issues should be covered. The responsibility of potential whistleblowers to judge what sort of information would be relevant to the organization and/or the public interest should be left intact.</td>
</tr>
<tr>
<td>How should be effected?</td>
<td>The establishment of clear steps and procedures is a value in itself. Every stipulation should leave no doubt as to how the effect in a practical situation will be.</td>
</tr>
<tr>
<td>Only internally or also externally?</td>
<td>Risk information and the processes implied will be much more efficient if disclosures are made internally. Only in the cases in which internal disclosure seems ineffective or unreasonable, outside disclosure should be possible and equally protected.</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Confidentiality is necessary to protect legitimate interests. This clearly includes private data and intellectual property but not the fact of illegal activities. Since harassment of a whistleblower is illegal, the whistleblower deserves the confidentiality that it takes to protect him from harassment.</td>
</tr>
<tr>
<td>Anonymity</td>
<td>Anonymous disclosures are less effective, as long as the information is incomplete and communication with the provider is impossible. Electronic protection of risk communication will be a compromise.</td>
</tr>
<tr>
<td>Time scale</td>
<td>Risk communication and complaints of harassment should not be time-barred, although there may be statutes of limitation that reflect the gravity of harm.</td>
</tr>
<tr>
<td>Protection</td>
<td>There should be no retaliation or harassment against anyone under any circumstances.</td>
</tr>
<tr>
<td>Right to refusal</td>
<td>The system of regulations need to permit potential whistleblowers to refuse participation in illegal activities that could qualify for a disclosure.</td>
</tr>
<tr>
<td>The sanctioning system</td>
<td>There should be sanctions for blocking the information channels or stopping information that need to be further processed. There should be negative sanctions for harassment of whistleblowers.</td>
</tr>
<tr>
<td>Burden of proof</td>
<td>A sliding scale of the burden of proof, both in regard to the quality of risks and the amount of material, seems most adequate, similar to the model of the UK PIDA</td>
</tr>
<tr>
<td>Management follow-up</td>
<td>Each disclosure of risk information needs to be followed by an assessment and a decision-making procedure.</td>
</tr>
<tr>
<td>Whistleblower participation</td>
<td>The whistleblower can be an active contributor in the follow-up procedure.</td>
</tr>
</tbody>
</table>
Independent review

Confidence will also depend on an independent review system. There are two subjects that may need review: (1) what consequences to draw from disclosure; (2) whether harassment has taken place.

Support

It means invaluable support for the prospective whistle-blower if he is advised of previous experiences and routes of disclosure most likely to lead to success.

Staff buy-in

The entire risk communication system will profit from a higher degree of staff confidence if staff is allowed to participate in the original process of setting up the rules and structures.

Credibility

The system can only work in a manner that coincides both with the tone from the top and with the rules on Whistle-blowing and the practice in the organization. The management has to not to promise more openness or protection that can be kept.


These 18 elements can be used for benchmarking the rules on whistle-blowing.

7. Conclusions

Successful whistle-blowing, in terms of a healthy organizational culture is when concerns are raised internally with confidence about internal procedures and where the concern is properly investigated and, where necessary, addressed (Fisher, Schoenfeldt, Show, 1999).

An effective whistle-blowing policy should:

- be written;
- be well communicated to employees;
- allow employees to go someone other than their immediate supervisors (because a supervisor is often the one committing the problematic act);
- specify a formal investigation procedure, with feedback to the employee on the outcome of the investigation;
- forbid any form of retaliation against whistle-blowers;
- provide an appeal process if an employee is still not satisfied.

We should conclude that blowing the whistle where and then it is morally needful for the protection of a larger interest than that of the employer, does not mean lack of loyalty to the company. Being loyal to one’s employer is not incompatible with blowing the whistle about their wrongdoing, because employee loyalty and whistle-blowing serve the same goal, the moral good of the employer.
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