


The Kaplan eGuide to Ethics and the Legal Environment

Chapter 3

This mandatory weekly reading assignment is designed to supplement your online coursework and help you to understand the basic concepts behind ethics and philosophical arguments.

In This Chapter

eGuide to Ethics and the Legal Environment

Employees typically represent the single largest internal stakeholder of a business organization. However, the employee stakeholder interests often run into direct conflict with the interests of other stakeholders, specifically the owners and management. This is because the needs of the individual employee stakeholder are unique, both in fact and in law. The employee stakeholder often relies on the business organization for the income necessary to obtain shelter, clothing, and food. In other words, the business organization provides the employee stakeholder with the means to make a living, without which the employee potentially faces homelessness and hunger. In addition, the relationship between a business organization and the employee stakeholder is complicated by a complex set of laws that seek to level the playing field between management and employee and to safeguard the rights of the employee stakeholder.

Effective managers are aware of the unique needs of the employee stakeholder as well as the laws that govern the relationship between the organization and the employee stakeholder. Finally, the effective manager is aware that business decisions must be based on ethical principles and not mere legal compliance by asking, "Just because an action is legal, does that mean it is ethical?"

Case Study: Cambridge Engineering

Cambridge Engineering was founded in 1980 by 28-year-old Carl Fontane. Carl graduated from high school at age 15, received his bachelor's in engineering at MIT by age 18, completed his Ph.D. in engineering by age 21. For the seven years between the completion of his doctorate and starting his own company, Carl worked for a large manufacturing company, where he rose to the position of senior vice president of design and development.

When he started Cambridge Engineering, he had a vision for the company, substantial funding, national recognition, and patents for several of his designs. If there was one thing Carl lacked, however, it was the ability to work with and manage people. Although he was a brilliant scientist, he found it difficult to work with people who did not share his love of science or his gift of intellect.

To staff the growing company, Carl hired a large number of new employees—often engineers right out of graduate school—to work for him. They were often young and ambitious, but Carl's relentless drive and unreasonable demands often pushed many of them to resign after a year or two. When he received resignations, he would angrily tell the employee to pack up and not bother remaining for two additional weeks. Several employees felt this was unfair and a violation of a good faith understanding in the business; they felt they should receive the customary two week's pay they would have received from most engineering firms. Carl refused to work with or employ someone who "was on his way out."

Another issue at the company was the fact that white males comprised the entire workforce of the company of 52 employees. Carl always conducted employment interviews, even for receptionists

and administrative support staff. During the interview process, Carl would ask difficult questions, including the applicant's thoughts on controversial political topics or his or her knowledge of academic subject matter, which were all unrelated to the job. Carl defended his unusual interviewing practice by stating that he wanted only intelligent and articulate employees. He did not aim to exclude people of color or women, Carl maintained. He defended the lack of diversity in the organization by claiming that the only applicants who passed the interview were the white males he chose to hire.

In the late 1990s, a long time employee of Cambridge Engineering was involved in a car accident; the injuries sustained in the accident resulted in a partial amputation of the employee's left arm. When the employee returned to work, Carl reassigned the employee from the engineering drafting department to a job as the office manager and purchasing agent. The employee requested that he be allowed to continue working in drafting, and if he had a computer-assisted drafting mechanism, he could continue to produce the same quality designs as he had prior to the amputation. Carl was uncomfortable not only with the expense of the request, but also with the employee continuing in the drafting department. He wanted to keep the employee, but on his terms, and that was as office manager and purchasing agent.

In 2001, one of Carl's employees in the engineering lab was seriously injured in a chemical fire. Only the employee and Carl were in the lab at the time. Prior to the Occupational Safety and Health Administration (OSHA) investigation, Carl held a meeting with all lab employees in which he discussed the financial ramifications if OSHA found the company in violation of the law. He thanked them all for their diligent attention to OSHA safety regulations and then provided them all with bonuses that would be matched at the conclusion of the OSHA investigation if no fines were levied against the corporation. Several employees felt that Carl was trying to "buy their statements" to the OSHA investigators. Carl maintained that he was merely trying to educate his young workforce on the dangers inherent in such a lab and the continued need for constant attention to safety regulations.

In 2002, one of Carl's employees filed for Family and Medical Leave Act (FLMA) leave for 12 weeks to care for his sick mother. The employee returned to work in six weeks, stating that his mother had died. Many of the company employees attended the funeral. Carl did not. Later that same year, the employee again requested six weeks FMLA leave to care for his sick mother. Carl asked him, "Your mother died earlier this year. How many mothers do you have?" The employee explained that the first FMLA leave he had used was for his biological mother, who lost custody of him when he was 2, but with whom he had been reunited when he was 17. His second FMLA request was to care for his foster mother who had been his legal guardian from the time he was 2 until he was 17. The employee was requesting six weeks, which would total the legal 12 under FMLA. Carl denied the request because the employee could not prove the legal relationship with the foster mother, even though several employees knew the employee's family background and tried to convince Carl that the employee was telling the truth.

The question students must seek to answer as they learn about ethics in a legal environment is, "If something is legal, does that make it ethical?" Keep this question in mind as you read and learn about the at-will employment doctrine, affirmative action, the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, and the Family Medical Leave Act.

WHY MUST A MANAGER BE CONCERNED WITH THE EMPLOYEE STAKEHOLDER?

The employee stakeholder is fundamental to the operation of the business. The business cannot function without the employee, and if the business should violate the legal rights of the employee, the business may be subject to substantial liability. In addition, since the enactment of antidiscrimination legislation, societal attitudes have shifted in favor of ethical treatment of employees, which has become increasingly important to the business manager.

WHAT MUST A MANAGER KNOW?

Every effective manager must know the laws that regulate the relationship between a business and its employee stakeholders. Knowledge of the laws is important to protect the business from legal liability, as well as to protect the rights of the employee. These laws begin with the employment at-will doctrine.

Employment At-Will Doctrine

The most common employment arrangement in the United States is employment at will. In a nutshell, this means that the employment agreement between employer and employee may be terminated by either party with or without just cause. Employees not covered by the employment at-will doctrine include those working under a contract and those covered under collective bargaining agreements. The vast legal and ethical issues that arise in employment often have their foundation in the at-will employment environment.

WHAT DOES THE EMPLOYMENT AT-WILL DOCTRINE MEAN TO THE STAKEHOLDER?

Under the doctrine, employees are free to leave their jobs for any reason or for no reason at all, and employers are, likewise, free to terminate employment relationships without cause, with the exception of certain protections discussed later in the chapter. The at-will employment doctrine differs from employment relationships governed by employment contracts, collective bargaining agreements, or the mandated job protections that often apply to government jobs (such agreements and protections generally limit an employer's right to terminate an employee to situations in which the employer can demonstrate "just cause" for the termination).

The power balance in this at-will relationship depends on the strength of the labor market and the economy, but this doctrine is often considered advantageous to employers. Employers typically do not depend upon an employee for their very survival, yet employees may depend on jobs for their very survival. Therefore, employment at will is seen as giving the upper hand to the employer.

WHAT DOES EMPLOYMENT AT WILL MEAN TO THE MANAGER?

Legal and ethical issues can and will arise in the employment at-will environment. Most often, businesses are sued for wrongful termination, but hiring practices, promotion decisions, and job assignments can also be at issue in a lawsuit. Even in an at-will employment environment, effective managers must understand that at-will employment is not an absolute concept—there are exceptions, and violation of those exceptions may bring serious liability.

The first exception to the "termination for just cause or no cause" principle is that an employer may not claim that a termination was lawful under the employment at-will doctrine if the termination violates a law. For example, terminations based on race, color, national origin, religion, or sex are illegal. Even in the at-will environment, managers may not discriminate against individuals protected by the laws covered later in this chapter.

The second exception to the "termination for just cause or no cause" principle is that an employer may not claim that a termination was lawful under the employment at-will doctrine if the termination violates a public policy exception (i.e., the termination violates a social norm or value). For example, a social norm in the United States is that perjury, or lying under oath, is unethical and illegal. If an employer orders an employee to lie under oath and the employee refuses (because perjury is in violation of a social norm), the employer is not free to terminate the employee under the employment at-will doctrine. To do so would be a violation of societal norms.

The third exception to the "termination for just cause or no cause" principle is that an employer may not claim that a termination was lawful under the employment at-will doctrine if the termination violates the implied contract exception (i.e., the termination violates an implied contract right of the employee). For example, an employer's handbook states that no employee will be terminated during a probationary period of one year. This gives the employees the impression that they cannot be terminated, even for cause, within their first year, thus creating a contractual understanding. Americans historically value the legitimacy and enforcement of contracts. Therefore, an employer's termination of an employee who relied on this implied contract would be a violation of the implied contract exception.

The final exception to the "termination for just cause or no cause" principle is that an employer may not claim that a termination was lawful under the employment at-will doctrine if the termination violates the good faith and fair dealing exception (i.e., the termination violates a societal expectation of fairness). Although individuals in society are aware that businesses must sometimes terminate employees and that businesses should be free to make staffing decisions that best meet the needs of the business, society also expects that business will be fair. For example, an employer is not free under the employment at-will doctrine to terminate an employee to avoid paying the employee an earned commission. To do so would be a violation of societal expectations of fairness.

Ethics Application: At-will Employment

Example: Charla accepted a job offer with a new law firm. During the interview process, the law firm asked for a two-year commitment. There was neither a written contract, nor another mention of this two-year commitment beyond the initial interview. Six months into the job, Charla was miserable. Her boss berated her daily, her co-workers never acknowledged her, and her clients treated her with disdain. Charla tendered her resignation with two week's notice. At that time, her manager warned her that if she left before her two years of service were up, she would be sued for violating their agreement. But Charla knows that employment at will works both ways, and she is free to leave because she was not a contract employee.

Activity: Ask yourself the following questions:
1. What legal issues are involved in this case?
2. What ethical issues are involved in this case?
3. What stakeholders are affected by this case?
4. Does this case present the possibility of something being legally right but ethically wrong?

The Civil Rights Act

WHAT DOES THE CIVIL RIGHTS ACT MEAN TO THE EMPLOYEE STAKEHOLDER?

The Civil Rights Act of 1964 protects employees from discrimination based on race, color, national origin, religion, and sex. The law covers hiring, firing, promotions, job assignments, compensation, or any other condition relating to employment.

WHAT DOES THE CIVIL RIGHTS ACT MEAN TO THE MANAGER?

Effective managers pay close attention to avoiding unlawful discrimination in every decision they make. If found liable for unlawful intentional discrimination in a court of law, the business may be subject to both compensatory and punitive damages decided by the jury. Jury awards have consistently grown larger in an effort to inform businesses that illegal discrimination will not be tolerated in this nation. The effective manager safeguards not only the civil rights of potential and actual employees, but also the numerous other stakeholders who stand to lose if the business is found liable for discrimination.

Ethics Application: The Civil Rights Act

Example: Cantigo Corporation has recently implemented a new hiring policy that requires all new employees to be from the Blanchard Park neighborhood of Elwin City. This requirement was put in place to address commuting and tardiness problems experienced by Cantigo employees who are residents of other areas. Blanchard Park census data indicates that 98.4 percent of residents are white Christians.

Activity: Ask yourself the following questions:

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Affirmative Action

Affirmative action is a term used to describe a set of policies designed to eliminate discrimination based on race, color, national origin, religion, or sex, by providing opportunities and access for people who have traditionally been denied such. These policies have their roots in the Fourteenth Amendment to the U.S. Constitution, which provides for equal protection under the law for all inhabitants of the United States.

In the realm of employment, affirmative action policies require that employers take active measures to ensure that qualified minorities and women enjoy the same opportunities as qualified white males

in obtaining and retaining jobs, receiving salary increases, and advancing their careers. Contrary to the public's common misperception, affirmative action policies do not require an employer to hire anyone who is unqualified for the position. Quotas are illegal except in cases where a court of law finds intentional discrimination. Affirmative action, or hiring based upon qualifications and not race, color, national origin, religion, or sex, is not to be achieved through the setting of rigid and inflexible quotas, but employers are expected to make good-faith efforts to provide opportunities to all qualified applicants.

WHAT DOES AFFIRMATIVE ACTION MEAN TO THE EMPLOYEE STAKEHOLDER?

Affirmative action is a way to expand opportunity and access to qualified employees who are not part of what has been labeled "the good ol' boys network." In theory, all applicants have the same chance to win a job offer, but in reality, the vast number of managerial and higher paying jobs are never advertised. They are filled through word of mouth, social networks, and professional networks. Historically, these networks in the United States have been formed along race, religion, and gender lines, with the majority of hiring managers belonging to social networks of white Christian males. Affirmative action won't help an unqualified applicant get a job, but it does require employers to allow the access and the opportunities to all qualified applicants.

WHAT DOES AFFIRMATIVE ACTION MEAN TO THE MANAGER?

Effective managers look beyond social networks to fill positions. Managers must broaden their applicant pool to include people of color, women, and non-Christians. Managers do not need to hire unqualified applicants of any race, color, national origin, religion, or sex. Quotas should never be used except as ordered by a court of law to address past intentional discrimination (and if the manager's company is in such a situation, no doubt they will have extensive legal counsel on how to address all employee-related decisions pursuant to the court order). Finally, managers must make a good faith effort to recruit, train, and retain individuals historically denied access and opportunity. For example, businesses can advertise in periodicals and papers serving the communities of color instead of advertising in mainstream publications that are largely read by white communities.

Ethics Application: Affirmative Action

Example: Cal believes in providing women access to the traditionally male field of construction. Therefore, when he is searching for job applicants for his construction firm, he only advertises in The Women's Press, a newspaper with 98 percent female readership. However, Cal treats both male and female applicants equally, always hiring the most qualified without regard to gender.

Activity: Ask yourself the following questions:

1. What legal issues are involved in this case?
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3. What stakeholders are affected by this case?
4. Does this case present the possibility of something being legally right but ethically wrong?

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was enacted in 1990 to eliminate discrimination against individuals with disabilities. Prior to that, many states, counties and municipalities instituted measures prohibiting discrimination against the disabled; many others, of course, did not. The ADA makes it illegal to discriminate against a person with disabilities.

WHAT DOES THE ADA MEAN TO THE EMPLOYEE STAKEHOLDER?

An individual is covered under the ADA if he or she has a physical or mental impairment that substantially limits him or her in one or more major life activities. Not everyone with a physical or mental impairment qualifies for coverage under the ADA. Coverage under the act is afforded only to those whose impairments prevent or severely restrict the individual from engaging in activities that are of central importance to most people's daily lives.

Individuals covered under the ADA are protected from discrimination in regard to job application procedures, the hiring or firing of employees, employee compensation, job training, or other terms and conditions of employment.

WHAT DOES THE ADA MEAN TO THE MANAGER?

The ADA applies to businesses with more than 15 employees and prohibits discrimination against any qualified person with a disability. Effective managers take care to protect not only the applicant and employee rights under the ADA, but also other stakeholders who would be negatively affected if the company were found liable in a costly disability discrimination case.

The ADA requires employers to make reasonable accommodations available to disabled employees. However, what qualifies as a reasonable accommodation depends on the circumstances, and an employer is not required to make accommodations for a disabled employee if making such accommodations would cause undue hardship to the employer.

Ethics Application: ADA

Example: Susan has diabetes. She needs to maintain consistent blood sugar levels throughout the day. In order to do this, she must eat every three hours. Her employer, a large landscaping company, allows all employees to take a break every three hours unless they are racing against inclement weather or dusk. On Tuesday, all employees were required to work for six hours before being allowed to break for a snack because of an approaching thunderstorm. Susan was unable to complete her shift due to low blood sugar levels. She was then reassigned to an office job that paid half of her normal hourly wage so that the crew would not be held up based on one employee's diabetic needs.

Activity: Ask yourself the following questions:

1. What legal issues are involved in this case?
2. What ethical issues are involved in this case?
3. What stakeholders are affected by this case?
4. Does this case present the possibility of something being legally right but ethically wrong?

Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) was enacted in 1967 to prohibit employers from discriminating against individuals on the basis of age with regard to hiring, discharging, or any other term or condition relating to employment.

WHAT DOES THE ADEA MEAN TO THE EMPLOYEE STAKEHOLDER?

Employees age 40 and over are protected from discrimination under the ADEA. In order to prevail in a lawsuit, an employee must prove the following:

• The employee is age 40 or over

• The employee is qualified for the job at issue

• The employee's application for the job was rejected or the employee's employment was terminated

• Following application or termination, the position either remained open or was filled by a younger person

• Age actually played a role in the employer's decision-making process and had a determinative influence on the outcome.

WHAT DOES THE ADEA MEAN TO THE MANAGER?

Effective managers understand that ADEA lawsuits are costly and jeopardize all business stakeholders. Managers must make decisions based on qualification and variables other than the age of the applicant or employee.

The ADEA applies to employers with at least 20 employees. However, there is one exception: an employer may rely on age in making employment determinations where age can be shown to be a genuine qualification. For example, an employer may turn down a 55-year-old model applying to model jeans marketed to teenagers. Finally, recent amendments to the act permit mandatory age limits for law enforcement officers and firefighters.

Ethics Application: ADEA

Example: Sally applied for a job as a hairstylist in a salon catering to wealthy women over the age of 45. Sally was not hired because the salon owner felt she was too young. Sally was 32.

Activity: Ask yourself the following questions:

1. What legal issues are involved in this case?

2. What ethical issues are involved in this case?

3. What stakeholders are affected by this case?

4. Does this case present the possibility of something being legally right but ethically wrong?

Occupational Safety and Health Act

The era of industrialization in America, between the Civil War and World War I, was fraught with dangerous and unhealthy working conditions that resulted in economic and social losses. In response to the hazards faced by workers, labor groups began to demand governmental controls. The Occupational Safety and Health Act (OSH Act) was enacted in 1970 to protect employees from safety and health hazards in the workplace.

WHAT DOES THE OSH ACT MEAN TO THE EMPLOYEE STAKEHOLDER?

Employees have the right to be safe from harm, injury, or death while in their working environments. Employees also have the right to be trained in maintaining a safe work environment and the right to work with fellow employees who follow safety and health precautions.

WHAT DOES THE OSH ACT MEAN TO THE MANAGER?

Managers must place employee safety before profit, not the other way around. In certain businesses, it seems easy to let some safety standards slip or go without remedy, but the effective manager treats the safety and health of his or her employees as if it were his or her own safety and health on the line.

The Occupational Safety and Health Administration (OSHA) enforces the OSH Act. Among the standards that have been set by OSHA are standards relating to: occupational exposure to blood-borne pathogens, cotton dust, lead, cadmium, asbestos, and other highly hazardous substances and chemicals; scaffold safety; fire protection; safety in grain-handling facilities; fall protection in construction; and ergonomic protections in offices. OSHA has also set standards permitting access to employer-maintained medical and toxic exposure records and standards for providing information, training and labeling with regard to toxic materials.

Managers must be aware that OSHA violations can lead to fines and even criminal penalties. To allow workers to be hurt in the workplace is unconscionable, but the fines and penalties that result from the oversight or negligence can also negatively affect all stakeholders.

Ethics Application: OSHA Violations

Example: Dentry Inc. recently moved its production facilities to Mexico to be free from OSHA regulations. A fire started recently in a lunchroom, and 32 employees were injured. Because the doors to the facility were padlocked, employees were unable to evacuate.

Activity: Ask yourself the following questions:

1. What legal issues are involved in this case?
2. What ethical issues are involved in this case?
3. What stakeholders are affected by this case?
4. Does this case present the possibility of something being legally right but ethically wrong?

Family and Medical Leave Act

What happens when an employee must choose between taking time off to care for a sick family member and keeping his or her job? According to Congress, everyone loses: employee, family, business, and society. That is why Congress passed the Family Medical Leave Act (FMLA) in 1993. The Act was designed to aid both workers and their employers by entitling employees to take reasonable leave from work when medical or family concerns call for employees to be absent.

WHAT DOES THE FMLA MEAN TO THE EMPLOYEE STAKEHOLDER?

Before passage of the FMLA, employees were at their employer's mercy when they needed to take a leave of absence for their own health problems or to care for a sick relative, give birth, or adopt a child. Parents felt that they were forced to choose between parenting and work, with both sides losing. Under the FMLA, employees can now take up to 12 weeks per year for giving birth, adopting a child, or caring for a seriously ill relative. Employees can know that they will have a job when they return from their absence.

In order to qualify for a leave based on medical reasons, either the employee or the person who needs the employee's care must have a serious health condition. The term "serious health condition" is defined in the statute as an illness, injury, impairment, or physical or mental condition that involves either (a) inpatient care in a hospital, hospice, or residential medical care facility, or (b) continuing treatment by a health care provider.

WHAT DOES THE FMLA MEAN TO THE MANAGER?

The enactment of FMLA was intended to benefit employers as well, and effective managers recognize why this is so. There are important productive advantages to ensuring the stability of employee-employer relationships, and those advantages can be realized at a comparatively small cost to employers.

Under FMLA, eligible employees may take leave from their employment for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. Eligible employees are those who have been employed for at least 12 months and for at least 1,250 hours of service during the previous 12-month period at a worksite where at least 50 employees are employed by the employer within 75 miles of that worksite.

A wise manager understands that FMLA also protects managers because, after all, managers are also employees.

Ethics Application: FMLA

Example: Clare used FMLA to cover her absence when she agreed to care for a child from the county foster care system. Clare had no reason to believe that she would permanently adopt this child. The child remained for 12 weeks, and then was moved to another foster home when Clare returned to work. Clare's employer has now denied her FMLA claim.

Activity: Ask yourself the following questions:

1. What legal issues are involved in this case?

2. What ethical issues are involved in this case?

3. What stakeholders are affected by this case?

4. Does this case present the possibility of something being legally right but ethically wrong?

Chapter Summary

Recall the Cambridge Engineering case study at the beginning of the chapter. The case study presented multiple legal and ethical issues.

EMPLOYMENT AT WILL

First, there is the issue of Carl's practice of immediately terminating an employee who had resigned and had given two week's notice. Under the employment at-will doctrine, the employer is free to terminate the employee for just cause or no cause. There do not appear to be any exceptions that would apply to this case. Therefore, under the law, Carl's decisions are probably legal.

However, the next question is to determine whether Carl's actions are ethical. To do this analysis, students must ask the following questions:

1. Who are the stakeholders?
2. What are their interests?

Then the prudent manager will begin to apply the ethical theories first identified in chapter 1. For example, how does applying a rights approach to ethical decision-making reshape Carl's actions and guide the manager in knowing whether the action was ethical or not? Under a rights approach, the employee's rights have probably been violated given Carl's actions of the early termination. Therefore, even in the absence of a legal violation, actions by managers may still amount to ethical violations.

CIVIL RIGHTS ACT OF 1964 AND AFFIRMATIVE ACTION

Carl states that he does not intentionally exclude women and people of color from the organization, yet through his difficult and unusual interviewing process, he still maintains an all-male, allwhite workforce.

Under the Civil Rights Act of 1964, Carl is prohibited from discriminating against an applicant on the basis of race or sex. There is no evidence presented in the case study to suggest that Carl's practice discriminates against people of color or women, yet the impact of his interviewing processes appear to do just that—exclude people of color and women. Without more facts, it is difficult to be certain, but it does appear that Carl has rigged the interview process so that the chosen applicants represent his own race and gender.

It is quite apparent from the case study that Carl's organization does not practice affirmative action. Carl has yet to extend a job offer to a qualified person of a race or gender different from his own. This practice is exactly what affirmative action was meant to discourage, yet Carl continues to staff his company entirely with white males.

Therefore, it appears that Carl may be in violation of both the Civil Rights Act of 1964 as well as affirmative action policies. An ethical analysis, utilizing the utilitarian approach for example, could probably be used to justify how and why Carl's action serves the greater good. However, good

managers realize that when laws are broken, it is not prudent to justify the action with ethical theories.

THE ADA

Carl reassigned an employee after the employee was injured in a non-work-related accident. Under the ADA, Carl needs to make a reasonable accommodation for the employee covered by the ADA. Carl has failed to do this and has instead reassigned the employee to another work area. The ADA does not require employers to provide a job for which the applicant is not qualified, and the employee Carl has reassigned is not qualified for his new job. However, it is unclear from the case study whether the accommodations requested by the employee would cause an undue economic hardship to the company.

However, an effective manager does not end the analysis after reviewing the law. The next task is to determine whether Carl's actions are ethical. To do this analysis, students must ask the following questions:

1. Who are the stakeholders?
2. What are their interests?

Then the prudent manager will begin to apply the ethical theories first identified in chapter 1. For example, how does applying a justice approach to ethical decision-making reshape Carl's actions and guide the manager in knowing whether the action was ethical or not? Under a justice approach, it appears that the situation has not achieved a just end for the primary stakeholder in this case, the employee. Therefore, even in the absence of a legal violation, actions by managers may still amount to ethical violations.

OSH ACT AND OSHA

From the information presented, Carl has failed to keep his employees free from physical harm in the work environment, which is a requirement of the OSH Act. Carl had a duty to not only protect the safety and health of his employees, but to also comply with the ensuing OSHA investigation. Carl made veiled threats to his employees in an attempt to gain their loyalty during the investigation.

Without knowing exactly what happened in the lab, it still appears that the organization is in violation of the OSH Act. Furthermore, it appears that Carl's "speech" to employees before the OSHA investigation was in violation of OSHA investigation requirements.

Under an ethical analysis, a manager might be able to make a case for Carl's speech to his employees and his veiled threats. Under a utilitarian approach, the fact that no fines were levied against the organization meant that business continued on as usual and no employees were laid off. However, this type of ethical analysis should never be used when a law has been violated. The OSH Act and OSHA requirements appear to have been violated, and by doing so, it is clear that the correct ethical analysis should focus on rights and justice. Under both theories, Carl and the organization have failed.

FMLA

This is a tough case under the FMLA because as a relatively new law, employers are not always certain what their responsibilities are. In Carl's case, it appears that he does not believe the employee

and has denied a second FMLA leave. Because there are employees who might try to abuse or take advantage of the leave afforded by the FMLA, it is acceptable for the employer to request documentation showing that the relationship between the employee and the seriously ill family member is one contemplated under the law. In that regard, Carl is not in violation for denying the FMLA leave because the employee could not document that the foster mother was actually a "relative" under the law.

The analysis, of course, should not end there. The effective manager takes this analysis to the next level, the ethical level, and asks the following questions:

1. Who are the stakeholders?
2. What are their interests?

Again, the effective and ethical manager will apply ethical theories to the decision making process. Under either the rights or justice approach, it appears that Carl's action of denying the leave was a violation of the employee's rights and expectation of justice, respectively. Under a categorical imperative analysis, it also appears that Carl's decision is unethical because his motive is purely selfish. Furthermore, to deny someone the exercise of his or her rights under the law in every situation would be considered, by most, unethical. Finally, under a utilitarian approach, the ethical decision-making process could look one of two ways. First, it could be said that the greater benefit here is to the company and that means the employee may not take the leave, in order to provide the greatest good for the greatest number. However, the utilitarian perspective also brings to light the damage to good will and fair dealing if Carl denies the leave. The decision may hurt the company in the long run, and it will certainly hurt this employee, whose work may suffer or who may leave employment to care for his ill foster mother.

In conclusion, an effective manager must know the laws that govern the relationship between the business and the employee stakeholder. Furthermore, managers should not hide behind the law as an excuse for unethical decisions. The effective manager uses a two-pronged approach, integrating requirements under the law with ethical decision-making processes using ethical theories and concepts.

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