

Figure 7.6

Survey of Harassment and Its Crimination Law (*continued*)

| Jurisdiction | Prohibitions on Employment Discrimination | Prohibitions on Sexual Harassment | Legal Basis |
|--------------------------|---|-----------------------------------|---|
| Poland | Yes | No | Articles 32 and 33, Constitution; Labor Code |
| Republic of South Africa | Yes | No | Act No. 66, South African Labor Reform Act of 1995 |
| Russia | Yes | No | Russian Labor Law of 1995 |
| Singapore | Yes; age only | No | Retirement Act |
| Spain | Yes | Yes | Articles 9, 14, and 35, Spanish Constitution; Section 34.3.95 of Spanish Employment Act |
| Sweden | Yes | Yes | The Act on Equal Opportunities at Work |
| Switzerland | No | Yes | Article 3, Law on Equal Treatment of Women and Men |
| Taiwan | No | Yes | Article 83, ROC Social Order Maintenance Act |
| Thailand | Yes | Yes | Constitution; Labor Protection Act |
| Ukraine | Yes | No | Article 42, Labor Code of the Ukraine |
| United Kingdom | Yes | Yes | Sex, Race, and Disability Discrimination Laws |
| Venezuela | No | Yes | Law on Violence Against Women and Family |

SOURCE: Adapted with permission from Gerald Maatman, Jr. "Harassment, discrimination laws go global." *National Underwriter*, September 11, 2000, 3.

7.6 WHISTLE-BLOWING VERSUS ORGANIZATIONAL LOYALTY

The decision to become a whistle-blower frequently requires breaking with the very group that we have viewed as critical to our financial success, if not our very survival. The decision entails destabilizing one's life and placing

all the essential underpinnings of our financial security—and the security of those who depend on us—at total risk. It is easy to understand that such a decision is accompanied by a good deal of anxiety and stress.¹²⁵

Among all the rights discussed in this chapter, one of the most valued by a U.S. citizen is freedom of speech. But how far does this right extend into the corporation, especially if an employee observes an employer committing an illegal or immoral activity that could harm others? What are the obligations and limits of employee loyalty to the employer? Under what, if any, circumstances should employees blow the whistle on their supervisors, managers, or firms?

Whistle-blowing is “the attempt of an employee or former employee of an organization to disclose what he or she believes to be wrongdoing in or by the organization.”¹²⁶ Whistle-blowing can be internal (reported to an executive in the organization), external (reported to external public interest groups, the media, or enforcement agencies), personal (harm reportedly done only to the whistle-blower), and impersonal (harm observed as done to another).¹²⁷ Whistle-blowing goes against strong U.S. cultural norms of showing loyalty toward an employer and colleagues and avoiding the “snitch” label. However, strong cultural norms regarding fairness, justice, a sense of duty, and obedience to the law and to one’s conscience also exist. A moral dilemma can occur when a loyal employee observes the employer committing or assisting in an illegal or immoral act and must decide what to do. The whistle-blower may not only lose his or her job but may also experience negative and damaging repercussions in his or her profession, marriage, and family life. Dr. Jeffrey Wigand, head of research at Brown and Williamson Tobacco Company from 1989 to 1993, testified that this company knew and controlled nicotine levels in its products. His testimony, along with that of others, helped the government initially win a substantial lawsuit against the tobacco industry. As the film *The Insider* accurately documented, Wigand paid an enormous personal price as a witness.¹²⁸ Karen Silkwood, now a classic example of one person’s bold attempt to share inside information, may have been murdered for blowing the whistle on the Kerr-McGee plutonium company:

Karen Silkwood was killed on November 12, 1974, at 28 years of age while driving to meet a reporter from the *New York Times* with documentation about plutonium fuel rod tampering at the Kerr-McGee uranium and plutonium plants in Cimarron, Oklahoma.¹²⁹

The second edition of Richard Rashke’s book, *The Killing of Karen Silkwood* (Cornell University Press, 2000), recounts the story in detail.

Not all whistle-blowers undergo such traumatic fates as the two examples offered here. Michael Haley, a federal bank examiner, won \$755,533 in backpay, future loss of income, and compensatory damages under the federal whistle-blower statute and another amended federal statute. He had worked as a bank examiner for the Office of Thrift Supervision (OTS), starting in 1977. He inspected OTS-regulated banks, evaluating the soundness of their operations. He was terminated after he reported violations in federal banking laws and regulations regarding a forced merger.¹³⁰

Under what conditions is whistle-blowing morally justified? DeGeorge¹³¹ discusses five conditions:

1. When the firm, through a product or policy, will commit serious and considerable harm to the public (as consumers or bystanders), the employee should report the firm.
2. When the employee identifies a serious threat of harm, he or she should report it and state his or her moral concern.
3. When the employee's immediate supervisor does not act, the employee should exhaust the internal procedures and chain of command to the board of directors.
4. The employee must have documented evidence that is convincing to a reasonable, impartial observer that his or her view of the situation is accurate and evidence that the firm's practice, product, or policy seriously threatens and puts in danger the public or product user.
5. The employee must have valid reasons to believe that revealing the wrongdoing to the public will result in the changes necessary to remedy the situation. The chance of succeeding must be equal to the risk and danger the employee takes to blow the whistle.

The risks to whistle-blowers can range from outright termination to more subtle pressures, such as strong and hidden criticisms, undesirable and burdensome work assignments, lost perks, and exclusion from communication loops and social invitations.¹³² Although 21 states have laws protecting corporate and governmental whistle-blowers from reprisal, experience shows that the government's actual protection to whistle-blowers, even if after resigning or being fired they are reinstated with back pay and compensation for physical suffering, is weak because of the many subtle forms of retaliation, such as those just listed.¹³³

When Whistle-Blowers Should Not Be Protected

The most obvious condition under which whistle-blowers should not be protected is when their accusations are false and their motivation is not justifiable or accurate.

The following instances show when whistle-blowers should not have freedom of speech against their employers:

- When divulging information about legal and ethical plans, practices, operations, inventions, and other matters that should remain confidential and that are necessary for the organization to perform its work efficiently
- When an employee's personal accusations or slurs are irrelevant to questions about policies and practices that appear illegal or irresponsible
- When an employee's accusations do not show a conviction that a wrongdoing is being committed and when such accusations disrupt or damage the organization's morale
- When employees complain against a manager's competence to make daily work decisions that are irrelevant to the legality, morality, or responsibility of management actions
- When employees object to their discharge, transfer, or demotion if management can show that unsatisfactory performance or violation of a code of conduct was the reason for the decision¹³⁴

Factors to Consider before Blowing the Whistle

Whistle-blowing is a serious action with real consequences. It often involves a decision to be made among conflicting moral, legal, economic, personal, family, and career demands and choices. No single answer may appear. A stakeholder analysis and questions can help the potential whistle-blower identify the groups and individuals, stakes, priorities, and trade-offs when selecting among different strategies and courses of action.

The following 12 guidelines offer factors¹³⁵ that a person should consider when deciding whether to blow the whistle on an employer:

1. Make sure the situation warrants whistle-blowing. If serious trade secrets or confidential company property will be exposed, know the harm and calculated risks.
2. Examine your motives.
3. Verify and document your information. Can your information stand up in a hearing and in court?
4. Determine the type of wrongdoing and to whom it should be reported. Knowing this will assist in gathering the type of evidence to obtain.
5. State your allegations specifically and appropriately. Obtain and state the type of data that will substantiate your claim.
6. Stay with the facts. This minimizes retaliation and avoids irrelevant mudslinging, name-calling, and stereotyping.
7. Decide whether to report to internal contacts or external contacts. Select the internal channel first if that route has proven effective and less damaging to whistle-blowers. Otherwise, select the appropriate external contacts.
8. Decide whether to be open or anonymous. Should you choose to remain anonymous, document the wrongdoing and anticipate what you will do if your identity is revealed.
9. Decide whether current or alumni whistle-blowing is the best alternative. Should you blow the whistle while you are an employee or resign first? Resigning should not be an automatic option. If the wrongdoing affects others, your decision is not only a personal one, but you are also fulfilling moral obligations beyond your own welfare.
10. Follow proper guidelines in reporting the wrongdoing. Check forms, meeting deadlines, and other technicalities.
11. Consult a lawyer at every step of the way.
12. Anticipate and document retaliation. This assists your effectiveness with courts and regulatory agencies.

Managerial Steps to Prevent External Whistle-Blowing

Managers have a responsibility to listen to and respond to their employees, especially regarding the observations of and reporting of illegal and immoral acts. Chapter 5 discussed mechanisms such as "ethics offices," ombudsperson programs, and peer review programs. These are part of a corporation's responsibility to provide due process for employees to report personal grievances, to obtain effective and just resolution of them, and to report the wrongdoings of others, including the employers.

Four straightforward and simple steps management can take to prevent external whistle-blowing are:¹³⁶

1. Develop effective internal grievance procedures and processes that employees can use to report wrongdoings.
2. Reward people for using these channels.
3. Appoint senior executives and others whose primary responsibilities are to investigate and report wrongdoing.
4. Assess large fines for illegal actions. Include executives and professionals who file false or illegal reports, who knowingly market dangerous products, or who offer bribes or take kickbacks.

Preventing, reporting, and effectively and fairly correcting illegal and immoral actions, policies, and procedures are the responsibilities of employers and employees. Management cannot expect employees to be loyal to a company that promotes or allows wrongdoing to its stakeholders. Whistle-blowing should be a last resort. A more active goal is to hire, train, and promote morally and legally sensitive and responsive managers who communicate with and work for the welfare of all stakeholders.

CHAPTER SUMMARY

The demographics of the workforce at the beginning of the 21st century continue to change. These changes include the aging of employees, the "shrinking" of the workforce, an increasing number of women and minority entrants, the demand for work-life balance from singles and dual-career families, the gap in educational levels, and a greater demand for the skills of disabled workers. The changes in the composition of the workforce signal changes in work-related values and motivations. Corporations and managers can expect moral tensions to rise regarding issues such as age discrimination, health care needs, conflicting communication, generational differences, and requests for more balanced and flexible work schedules. "One size fits all" management techniques do not work.

The social and psychological contract between corporations and employees is also changing. The original employment-at-will doctrine serves as the basis for employment between employer and employee; however, over the years, this doctrine has been complemented by the doctrine of implied employee rights. Most firms, large and small, use a mix of the two doctrines. Two underlying concepts of employee rights are balance and governmental rights.

The nature of legal and moral relationships between employers and employees is also changing. Employers rely on federal and state laws to guide their employee policies and procedures. However, many employers implement benefits and policies aimed at motivating and supporting employees' well being. Work-life resources and insurance coverage for employees' same-sex partners are such examples.

Recent court decisions have supported racial affirmative action practices at the university admittance level. Although EEOC policies and affirmative action practices remain a part of federal law, some states are showing less acceptance of these laws and procedures. Current and future issues related to