

## Ethical challenges in Human Resources management concerning whistleblowing on corruption



Whistleblowing about corruption is a delicate matter within organisations that poses ethical challenges for Human Resources. Detecting and proving corporate misconduct is difficult due to complicated transactions, misleading records, and complex company structures that conceal it. Whistleblowers with inside information on misconduct are crucial in exposing corporate crime and corruption. However, they face personal and financial risks when reporting these matters, even though our laws are amongst the best in the world. Unfortunately, whistleblower protection in South Africa falls short of international standards and inadequately safeguards whistleblowers in some areas.

Considering South Africa's high levels of corporate corruption, whistleblowers should be provided with significant protection. Despite the limited protection offered to whistleblowers, the reporting rates of wrongdoing remain low. This is mainly due to fear of victimisation, threats to whistleblowers or their family members, and job losses. The standard reporting rates and widespread victimisation of whistleblowers demonstrate the inadequate protection provided in South Africa.

As part of my research comparing the protection of corporate whistleblowers in South Africa to that in international jurisdictions such as Asia, the United Kingdom, Australia, and the United States, I found that section 159 of the Companies Act requires some reform.

The Companies Act provides three types of protection for whistleblowers.

Firstly, whistleblowers have qualified privileges for their disclosure, meaning they cannot be sued for defamation unless they act wrongly or maliciously.

Secondly, they are protected from civil, criminal, or administrative liability for their disclosure. However,

they are not immune from liability for the conduct that the disclosure may have revealed.

Thirdly, whistleblowers can claim compensation for any damages they suffer if anyone harms them or threatens them.

Physical protection of whistleblowers is critical in South Africa, where reports of intimidation of whistleblowers are standard. Some whistleblowers fled the country due to safety concerns, while others were assassinated after exposing corruption linked to COVID-19 protective equipment. It is essential to consider the primary ethical considerations when protecting whistleblowers.

**Confidentiality:** One of the critical challenges is maintaining the whistleblower's confidentiality and anonymity. Exposing the whistleblower's identity can lead to retaliation or harassment, so HR professionals must keep this information confidential and protect the whistleblower.

**Retaliation:** Even with confidentiality measures in place, there is a risk of retaliation against whistleblowers, particularly if the accused parties hold positions of power within the organisation. HR must have measures to prevent such retaliation and protect the whistleblower's rights.

**Fair Investigation:** HR is responsible for ensuring that any allegations of corruption are investigated thoroughly and impartially. There may be pressure to cover up such allegations, mainly if they involve senior executives, but it is ethically essential to conduct a fair investigation.

**Transparency:** While it's essential to maintain confidentiality for the whistleblower, there is also a need for transparency in the organisation about the processes that are followed when a whistleblowing event occurs. Employees should be aware of the steps that will be taken to investigate and address allegations of corruption.

**Support for Whistleblower:** Whistleblowing can be stressful for the individual involved. HR has an ethical responsibility to ensure that there is support available for whistleblowers, including counselling or mental health services if necessary and if required.

**Promotion of Ethical Culture:** Ultimately, HR plays a crucial role in promoting an ethical culture within an organisation. This includes creating an environment where employees feel safe to report corruption or other unethical behaviour and where such behaviour is not tolerated.

Whistleblowers are crucial in bringing attention to corruption and unethical behaviour within organisations. It's critical to ensure their protection so they can raise their concerns without fear of retaliation or reprisal, and the following practical steps could be implemented to achieve this.

**Establish a Comprehensive Whistleblowing Policy:** Organisations should have straightforward policies that explain what constitutes whistleblowing, how to report concerns, whom to write to, and what the investigative process will be. This policy should be communicated and accessible to all employees.

**Guarantee Confidentiality:** Whistleblowers should be assured that their identities will be confidential to the greatest extent possible. This should be communicated if confidentiality cannot be guaranteed due to the specifics of the legal or investigative process.

**Implement a Reporting Mechanism:** There should be multiple, easily accessible channels for reporting corruption or other unethical behaviour. This can include a dedicated hotline, an online portal, or a designated person or department.

**Enforce Anti-Retaliation Measures:** The policy should state explicitly that the organisation will not

tolerate retaliation against whistleblowers and will take measures to protect them. This might include provisions for transfer to another department or location if necessary and regular check-ins to monitor the whistleblower's situation.

**Legal Protections:** Whistleblowers should be aware of the legal protections available to them. In many countries, there are laws to protect whistleblowers from retaliation, and organisations should inform employees about these protections.

**Independent Investigations:** Ensure all reports are promptly investigated by an independent party to ensure impartiality. The process should be transparent, and the investigation results should be communicated back to the whistleblower within the limits of privacy laws and regulations.

**Promote a Culture of Ethics and Transparency:** An Organisation that values ethics and transparency will naturally be more protective of whistleblowers. Regular training and communication about the importance of ethical conduct and the right to report wrongdoing can create an environment where employees feel safe to voice concerns.

**Provide Support:** Whistleblowing can be stressful. Providing emotional and psychological support through an Employee Assistance Program (EAP) or other resources can be extremely helpful.

Remember, adequate whistleblower protection requires a comprehensive, organisation-wide approach encompassing clear policies, robust reporting and investigation procedures, and a culture that values ethical behaviour and transparency.

To handle these challenges effectively, HR professionals must understand the legal and ethical issues involved in whistleblowing and work closely with legal professionals and senior management to ensure that all problems are handled appropriately.