

Whistleblowing

Whistleblowing

It is the act by an employee, informing the public or higher management of unethical or illegal behavior by an employee, or supervisor.

According to the codes of ethics of the professional engineering societies, engineers have a duty to protect the health & safety of the public.

So in many cases, an engineer is compelled to blow the whistle on acts or projects that harm these values.

An engineers also have the professional right to disclose wrong doing within their organizations & expect to see appropriate action.

What is Whistle Blowing ?

- “Whistle Blowing” is the term used to refer to unauthorized reporting or disclosure of confidential information in institutional settings.
- The whistleblower steps outside the approved channels of communication to disclose information to an audience who normally would not be entitled to it.

The unauthorized public disclosure of privileged information by an employee to protect the public interest

- must be public
- must be information the employee has access to by virtue of their job position
 - i.e. not simply personal opinion

Kinds of Whistle blowing:

- **Internal Whistle** blowing is made to someone within the organization.
- **Personal Whistle blowing** is blowing the whistle on the offender, here the charge is not against the organization or system but against one individual.
- **The impersonal, External Whistle Blowing:** blowing the whistle against third party or organization.

Rarely whistleblower are honored as heroes by their fellow workers, for the following reasons:

- They doubt the loyalty of the whistleblower to the employer.
- The whistleblower is perceived as a traitor, as someone who has damage the firm - the working family to which he/she belongs.

When should Whistleblowing be attempted

Need

Proximity

Capability

Last resort

When should Whistleblowing be attempted

Need: there must be clear & important harm that can be avoided by blowing the whistle. Employee must understand that you need not to blow the whistle about everything but just about the important issues.

Proximity: the whistleblower must be in a very clear position to report on the problem. Rumors are not adequate. Firsthand knowledge is essential to make an effective case about wrong doing.

Capability: the whistleblower must have a chance of success in stopping the harmful activity. You are not obligated to risk your career & the financial security of your family.

Last resort: whistle blowing should be attempted only if there is no one else capable or more proximate to blow the whistle & if you feel that all other lines of action within the context of the organization have explored & shut off.

Whistleblower Provisions of Sarbanes-Oxley

Whistleblower Provisions of Sarbanes-Oxley

I. PROHIBITION AGAINST EMPLOYEE DISCRIMINATION *(civil)*

- Protects employees of publicly traded companies from retaliation. The anti-retaliation provisions apply not just to publicly traded corporations, but also to the corporation's contractors, subcontractors and agents. The following are key sections of the law:
 - A 90 day statute of limitations.
 - Discrimination complaints must be filed with the Department of Labor
 - An auditor aggressively doing his or her job may be engaging in protected activity.
 - The DOL must first investigate the whistleblower case. If, on the basis of the investigation, the DOL finds that the employee has been subject to retaliation, the DOL must order the employer to immediately reinstate the employee. Either an employee or employer may appeal the investigative findings. Upon appeal, the parties are entitled to an on-the-record hearing.
 - The DOL must complete its adjudication of a whistleblower case within 180 days. Thereafter, an employee may continue to have his or her case heard within the DOL, or may seek a de novo trial in federal district court.
 - Employees who prevail under the law are entitled to a full "make whole" remedy. This remedy includes; reinstatement, back pay, interest, compensatory damages, special damages, attorney fees and costs. The law does not provide for punitive damages.
 - Other federal and state whistleblower protection laws are not subject to federal preemption.

Whistleblower Provisions of Sarbanes-Oxley (continued)

Whistleblower Provisions of Sarbanes-Oxley

2. PROHIBITION AGAINST EMPLOYEE DISCRIMINATION (*criminal*)

This law amends the obstruction of justice statute to clearly prohibit retaliation against employee whistleblowers. The new provision states as follows:

- Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.
- The law covers disclosures for any violation under federal law. It is not limited to employee reports of criminal corporate fraud. Moreover, employers who lose civil whistleblower cases may find themselves personally accountable in a subsequent criminal proceeding.
- This amendment should result in many whistleblowers obtaining potential coverage under civil RICO.

Whistleblower Provisions of Sarbanes-Oxley (continued)

Whistleblower Provisions of Sarbanes-Oxley

3. CORPORATE RESPONSIBILITY

Unlike other whistleblower laws, Sarbanes-Oxley also set forth requirements related to corporate responsibility. Three provisions in the law which directly apply to whistleblowers are:

- Section 301 requires publicly traded corporations to establish audit committees. These committees are required, in turn, to "establish procedures" for accepting employee complaints (both anonymously and non-anonymously) concerning "questionable accounting or auditing matters." Under the whistleblower provisions, internal reports to such committees constitute fully protected activity. Thus, corporations are now mandated to establish procedures to accept internal whistleblower complaints.
- Section 307 establishes new rules of conduct for any attorney who appears or practices before the SEC. Under these rules, all attorneys are now mandatory whistleblowers. As a matter of federal law, attorneys must report "evidence of a material violation of securities law" or "breach(s) of fiduciary dut(ies) or "similar violation(s)" to a corporation's "chief legal counsel" or "chief executive officer." If these reports do not properly resolve an attorney's concerns, an attorney is required to further report his or her concerns to a company's audit committee or a similar committee. Under the whistleblower provisions, all such reports should be considered protected activity.
- Section 105(b)(3) provides for the suspension or debarment of a public accounting firm which "refuses" to "otherwise cooperate" in an investigation conducted by the newly created "Public Company Accounting Oversight Board." Discrimination against employees who blow the whistle to the Oversight Board should qualify under this provision as a failure to "cooperate" with the Board.

Purpose of Whistle Blowing

- To draw attention to unethical, inappropriate or incompetent conduct which has or may have detrimental effects either for the institution or for those affected by its functions.
- It extends to situations where an individual believes that an activity is harmful while others involved are not aware of it or reject the perception that is involved.

Characteristics of Whistle Blowing

- The whistleblowers are prepared to take full responsibility for their actions.
- Implies a concern for the preservation of ethical values which overrides a concern for self-preservation.
- Whistleblowers open themselves to the risk of losing personal and financial security, and isolation and yet they feel compelled to make the disclosure and to stand by it.

Criteria – Is Whistle-Blowing Justified?

- Is the whistle-blower acting in the public interest?
 - what is the public interest?
 - life
 - health
 - safety
 - environment?
 - wasting tax dollars?
 - who should judge?
 - the whistle-blower?
 - the government
 - a third party

Laws Protecting Whistle Blowers

- Whistle Blowers in some areas are not without legal support. In United States, both federal and state laws are aimed at protecting those who undertake whistle blowing.
- However, even with this support, the potential whistle blower must still contemplate a difficult and dangerous path.
- The primary protection law is the Federal Whistle Blower Protection Act of 1989.
- Another Federal Law is the False Claims Act, which has been around since 1863.
- Many state governments have passed their own whistle blower protection acts.

Conclusion

- A whistle blowing incident is probably the most emotionally difficult thing you can experience as a professional.
- Not every incident that should result in whistle blowing does, sometimes the whistle is “swallowed” rather than blown
- In some cases, there are federal and state laws meant to provide protection for the whistle blowers
- If you find yourself in a possible whistle-blowing incident, you should exhaust all internal alternatives for addressing the problem and accumulate all documentation possible. If blowing the whistle becomes the only alternative, then you should anticipate a job change and you should get good legal representation