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Protect Whistleblowers For Business Success

A Guide To Legitimizing And Safeguarding Corporate Whistleblowers In Today's Digital Workplace

by Alla Valente
July 30, 2019

Why Read This Report

Whistleblowers are an essential safety valve in ethical corporate culture. They provide a mechanism for healthy corporate governance by exposing fraud and corruption and, more recently, revealing abusive practices, sexual harassment, discrimination, and privacy issues. But today, they're imperiled by workplace digitalization that shreds their anonymity and evolving regulations that fall short of legal protection from retaliation. This report outlines steps that risk pros must take to safeguard whistleblowers.

Key Takeaways

Whistleblowers Deter Corporate Corruption And Promote Ethical Culture
Leaks of sensitive corporate information can be embarrassing; however, the forced transparency can also compel policy improvement and more-effective risk management.

Digital Technology Threatens The Anonymity And Safety Of Whistleblowers
Technology has enabled both the discovery and collection of data on employee activities to a degree that no longer affords anonymity and discourages individuals from speaking out.

Companies Must Safeguard Whistleblowers And Align Policies To Match Culture
Companies with strong ethical cultures experience lower rates of misconduct. Company culture defines what monitoring and security measures are acceptable and must balance the need to combat insider threats with the benefits of promoting whistleblowers as institution.

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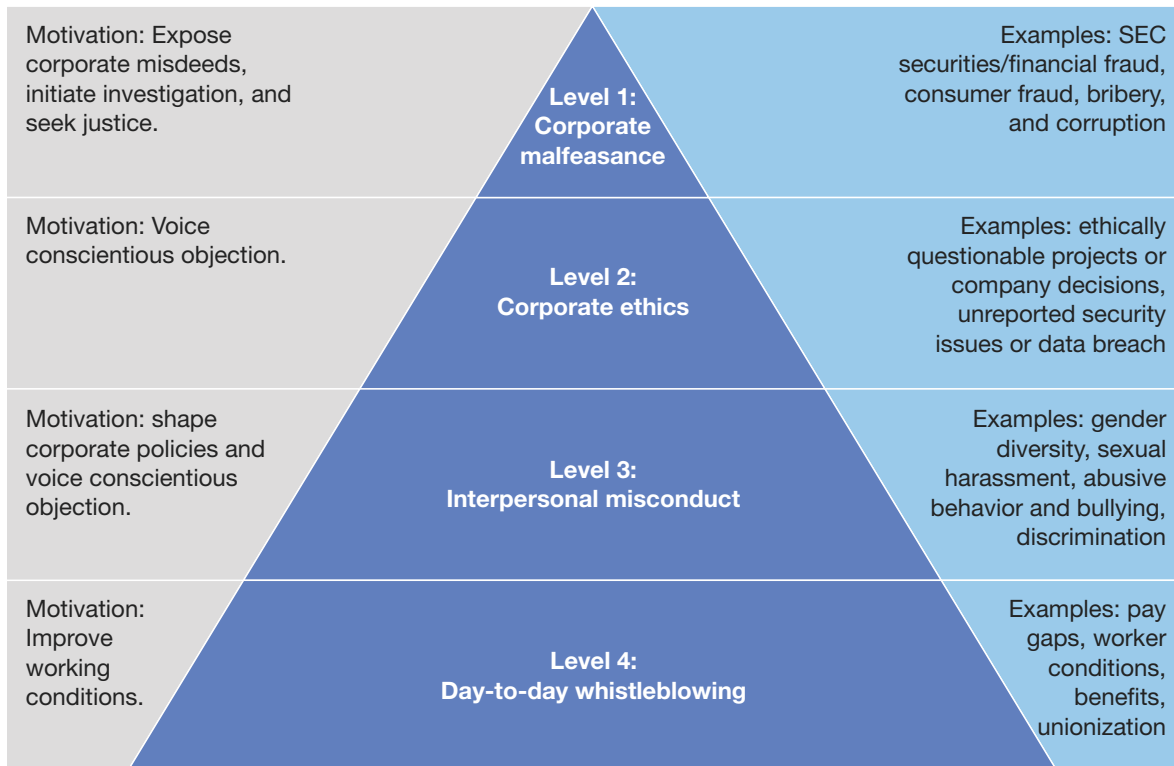Workplace

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Whistleblowers Are Critical To Fostering Culture But Need Protection

Whistleblowing deters corporate corruption and is a sign of an engaged, ethical culture. As the volume and variety of such cases continue to rise, they've shed light on illegal practices, immoral decisions, and unsafe conditions across many industries. While leaks of sensitive corporate information can be embarrassing for the company, the forced transparency can also motivate policy improvements and more-effective risk management. Risk leaders should know that whistleblowers:

› **Trigger positive corporate change.** According to a study from the University of Iowa, after employees come forward with information about wrongdoing inside their organizations, financial misdeeds at those organizations decrease for years after.[1]

› **Uncover a variety of misconduct and corrupt practices.** A decade ago, whistleblower reports mostly exposed incidents of financial corruption and fraud, such as when Enron Vice President Sherron Watkins helped to reveal the company's extensive accounting fraud. Today, they reveal unsafe or illegal practices in food safety, medical care, environmental protection, sexual discrimination, and information security, to name a few (see Figure 1). In December 2018, an arbitrator awarded James Robillard $4.5 million for feeding attorneys information about botched heart surgeries at the Community Regional Medical Center in Fresno.[2]

› **Disclose an aggressive or toxic internal culture that must change.** These are often fast-growing companies that prioritize results and incentivize executives for attaining results — no questions asked. After Wells Fargo was forced to admit to deceptive banking practices, bank executives attributed much of the issue to aggressive sales tactics and incentives. Many existing employees still complain the culture hasn't changed much.[3] Volkswagen's diesel emissions scandal arose from the company's climate of fear, ambitious growth, and the CEO's desire to rapidly make the manufacturer the world's largest carmaker.[4]

› **Are senior employees who feel compelled to act for the good of customers or the firm.** A misconception is that whistleblowers are low-level, disgruntled employees looking to profit from exposing an uncomfortable situation. On the contrary, they're often employees with more tenure, a higher salary, and a higher education level than average employees.[5] They would prefer to identify the situation and address it internally. If these employees feel compelled to speak up, this reveals serious issues of trust and ethics at the senior-most levels of the firm. They may have witnessed serious misconduct or unethical practices and been ignored by executives or senior management when they attempted to raise concerns.

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FIGURE 1 Whistleblower Pyramid

Motivation: Expose corporate misdeeds, initiate investigation, and seek justice.	**Level 1: Corporate malfeasance**	Examples: SEC securities/financial fraud, consumer fraud, bribery, and corruption
Motivation: Voice conscientious objection.	**Level 2: Corporate ethics**	Examples: ethically questionable projects or company decisions, unreported security issues or data breach
Motivation: shape corporate policies and voice conscientious objection.	**Level 3: Interpersonal misconduct**	Examples: gender diversity, sexual harassment, abusive behavior and bullying, discrimination
Motivation: Improve working conditions.	**Level 4: Day-to-day whistleblowing**	Examples: pay gaps, worker conditions, benefits, unionization

Whistleblowers Are Besieged By Tech, Legal Ambiguity, And Retaliation

New technology for online meetings, such as GoToMeeting, WebEx, and Zoom, and document and project collaboration tools, such as Asana, Basecamp, Google Docs, and Trello, connect geographically dispersed employees and make them more collaborative and productive without undermining security. However, the same technology that underpins new forms of employee engagement has also enabled both the discovery and collection of data on employee activities in a way that no longer affords anonymity. In the US, the laws regarding individual privacy rely on a patchwork of state legislation; under GDPR in the EU, employees maintain many of the same rights as individual customers, but they may not know how to exercise those rights.[6] Specifically:

› **Security analytics and monitoring tech can unmask whistleblowers.** Security pros collect data to trace employees' every move via the logs and telemetry from a multitude of technologies — both corporate-issued and employee-owned devices. Security teams can apply data science to identify patterns and contextualize user behavior, thus stripping anonymity, which becomes a significant deterrent to whistleblowing.

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› **Retaliation is at an all-time high.** While incidents of misconduct approach historic lows, the rates of reporting — and subsequent retaliation — are higher than ever. Among employees who witnessed misconduct, 69% reported the incident, with 67% of them acknowledging the incident as part of a pattern of behavior, not an isolated event.[7] And even worse is the rate of retaliation, which doubled from 2013 to 2017 (see Figure 2).

› **The EU's new whistleblower protection could face implementation challenges.** In April 2019, the European Parliament overwhelmingly passed the EU's Whistleblower Protection Directive to "systematically and consistently" protect whistleblowers from retaliation throughout all countries of the European Union and to create safe channels to report breaches of EU law.[8] Under the directive, whistleblower broadly refers to "someone reporting or disclosing information on violations of EU law which they observe in their work-related activities," meaning it applies to employees as well as freelancers, consultants, contractors, volunteers, and interns, among others.[9]

› **North American protections vary by region and sector and change frequently.** Canadian whistleblowers at federal and provincial levels have more clearly defined protection under the Public Servants Disclosure Protection Act.[10] Private sector protections, such as the Alberta Securities Commission's (ASC) whistleblower program, encourage people to report securities-related misconduct to the ASC without fear of repercussion but is limited to Alberta.[11] Meanwhile, the US government's response has been hot and cold. The pendulum has swung in both directions, reinstating the Whistleblower Protection Coordination Act for federal government employees but rolling back Dodd-Frank rules.[12] The US Supreme Court is also defining how protections are applied. The February 2018 decision in Digital Realty Trust, Inc. v. Sommers determined whistleblower protections under Dodd-Frank apply only when the misconduct is also reported to the SEC. Internal disclosures made solely to corporate ethics or compliance programs are not protected.[13]

› **Employees of global corporations experience greater legal ambiguity.** Success in today's global economy relies on a workforce dispersed across geographies. Companies generally have a single code of conduct and set of compliance policies that apply to employees regardless of their geographic location. These policies can contradict country or regional regulations, which can lead to ambiguity around acceptable standards and confusion around legal protections for employees who want to report misconduct.

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FIGURE 2 Rate Of Whistleblower Retaliation Doubled Between 2013 And 2017

Rate of whistleblower retaliation
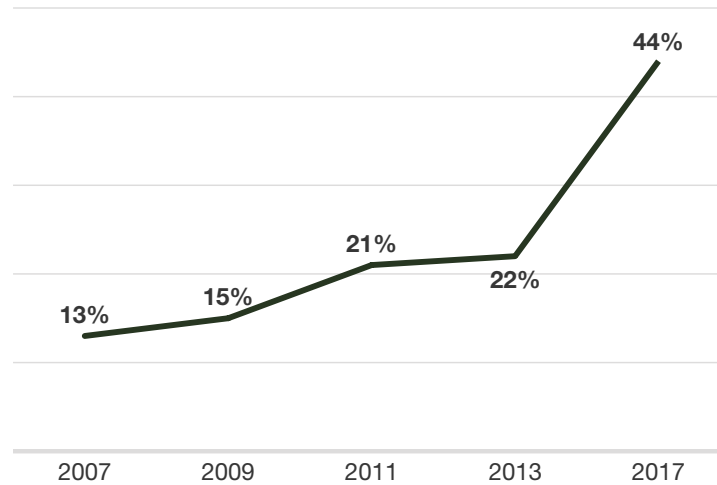
Source: "The State Of Ethics & Compliance In The Workplace," Ethics & Compliance Initiative, March 2018

Ignoring Whistleblowers Is Costly; Listening To Them Is Good Business

Ethical behavior is good for business: Companies that operate at a high moral and ethical level engender trust among their customers and are rewarded where it counts most — profitability. As more companies recognize that consumer behavior is influenced by the perception of corporate behavior, business leaders are prioritizing corporate actions around transparency, ethical treatment of employees, and sustainability to safeguard brand reputation.

On the flip side, companies that don't take ethical behavior seriously will face lasting brand damage, fines, and years of enforcement actions with ongoing lawsuits. In July 2018, Facebook shares dropped 19%, effectively wiping $119 billion off the company's market cap, when millions of users deleted their Facebook accounts over improper harvesting and use of their personal data by Cambridge Analytica to help influence the 2016 US presidential election.[14] It has recovered much of this value in the short term, but its lack of an ethical core and trust with its customers as it attempts to create a unified platform across its offerings threatens its long-term success.[15] Risk pros should know that whistleblowers:

› **Initially report internally in the hopes of avoiding brand-damaging headlines.** According to a study by the Ethics Resource Center, only one in six whistleblowers ever chooses to report externally. In fact, 84% of those that do go public only do so after trying to report internally first.[16]

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Tricia Newbold, the career security advisor who exposed rampant mismanagement of government security clearances, only came forward publicly after a year of submitting internal reports to management, for which she was penalized. Had the White House Personnel Security Office taken corrective action, the incident would not have made headlines and the security clearance process would not be under the microscope of the House Oversight and Reform Committee.[17]

› **Help companies avoid bad outcomes.** Unethical behavior takes a significant toll on organizations by lowering employee morale, increasing regulatory costs and scrutiny, and damaging brand and reputation. Companies that have a strong ethical culture — a strong code of conduct; ethics training for employees and management; a widely advertised, easily accessible, and anonymous internal reporting system — can leverage the information from reports to quickly identify, investigate, and correct problems before external sources disclose or regulators discover them.

› **Attract more values-based consumers.** In the US, Millennials are at the threshold of surpassing Baby Boomers as the nation's largest living adult generation, and with an estimated spending power of $10 trillion over their lifetimes, they're powerful consumers.[18] Compared with their Baby Boomer predecessors, Millennials are better educated, are more socially connected, and have higher expectations for brands to take a stand on values.[19] What's more, Millennials are hypersocial, which translates into social amplification of the customer experience. Not only are they vocal about their expectations for brands they support, or don't support, but they take it a step further to make their voices heard within their communities across social channels.

› **Ultimately increase the company's profitability.** A new academic study provides additional evidence that more-profitable companies use stronger internal-reporting systems and experience fewer bad outcomes. More specifically, they have 6.9% fewer material lawsuits filed against them and pay 20.4% less in settlement amounts.[20]

Whistleblowers Will Help You Avoid A Talent Crisis

Today's workforce is organizing, and it's not limited to labor unions. There's an unprecedented wave of rebellion sweeping technology companies, and it's coming from rank-and-file employees. At tech giants like Amazon, Facebook, and Google, employee activism is making headlines and slowly shaping the way these companies operate and the ethical standards they uphold. Employee activism is extending beyond the tech industry. Employees of furniture giant Wayfair recently organized a walkout to protest the online retailer's sale of mattresses and bunk beds to a nonprofit that works as a federal contractor managing migrant detention camps along the southern border of Texas.[21] And Bank of America announced it would cease lending to detention centers and private prisons.[22] Whistleblowers can help companies get ahead of employee concerns before:

› **Toxic cultures and unethical behavior drive away top talent. . . .** Technology companies depend on their ability to attract and retain top talent. A shortage of skilled talent requires tech companies to do better at not only attracting but also retaining top talent. Yet headlines from Silicon Valley portray a culture more reminiscent of Wolf of Wall Street, while Google's altruistic motto of "Don't

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be evil" has mysteriously disappeared from the company's code of ethics.[23] If high-tech is going to solve its talent crisis, companies must reconnect with their values. Millennial employees value more than compensation. A recent study by Fidelity Investment uncovered that Millennials want to work at companies that offer more purposeful work, better work-life balance, or a better company culture — and they're willing to take a pay cut of $7,600 to do it.[24]

› **. . . And the high-tech talent shortfall threatens digital transformation initiatives.** The US job market is an enigma. On the one hand, the digital transformation is eliminating some jobs in favor of automation and AI, while on the other hand, new jobs are unfilled because of a digital skills shortage. The digital transformation of virtually every industry requires skilled talent, and companies are facing a crisis to recruit and retail talent at a cost of $20,000 to $100,000 per employee — many of which are Millennials.[25] Proper investment in programs to retain and engage employees not only shores up the talent shortage but saves money on ramp-up costs.

› **Employees use social media to express their frustration and damage the brand.** Millennials as employees are engaged, socially conscious, digitally enabled, and empowered to shape corporate culture and the employee experience. When companies don't provide employees with an outlet to share their opinions, employees will turn to crowdsourced review sites like Comparably; Fairgodboss, a job review site exclusively for women, covering topics like parental leave and sexual harassment policies; Glassdoor, which has recently expanded into Europe; and Indeed.[26] Negative reviews on these sites can have a long shelf life and can severely impair a company's recruiting efforts and seriously hinder employee retention.

Four Steps For Protecting Whistleblowers

As whistleblowers struggle to maintain anonymity and digital privacy, security pros struggle to defend their organizations from the rising tide of insider threats, which are responsible for more than half of data breaches.[27] To foster a culture of ethical integrity and protect whistleblowers while also supporting insider threat programs, take four important steps.

Step No. 1: Give Employees An Automated, Anonymous Way To Communicate Concerns

More whistleblowers are stepping out of the shadows to publicly sound the alarms for bad behavior. Other employees rely on anonymity to protect against social stigma and retaliatory response as a requisite for coming forward. Risk pros must ensure their companies provide employees with multiple mechanisms for reporting that guarantee anonymity. We recommend that you:

› **Use an independent third party to monitor the reporting hotline.** Having an anonymous hotline run by a third party is just one step in an overall process for protecting whistleblower identity. When reported incidents are turned over to company personnel like HR or legal for follow-up, employees often feel their reports are less secure. Even better, hire an independent third party to triage and investigate incidents.

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› **Engage employees using multiple communication methods and in native languages.** More and more of our daily communications are conducted via chat, messenger, and other online tools. Companies must allow employees to communicate using methods that are most comfortable and accessible for them, available in a 24x7x365 always-on mode. All the whistleblower technology vendors we interviewed for this report have various reporting channels and offer multilingual support; some have support for over 300 languages and dialects, others can integrate with Google Translate.

› **Investigate and follow up on reports promptly.** It's a cruel blow to take a risk only to find out it was for nothing. When employees take the risk of reporting misconduct, regardless of the severity of the incident, they're risking their job, their reputation at the company, and possibly their livelihood. If employees feel that leadership isn't taking their reports seriously or triaging and following up in a timely manner, they'll stop reporting. Use the automated case management feature provided by most whistleblower technology vendors to prioritize and streamline the follow-up process in scale (see Figure 3).

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FIGURE 3 Sample Whistleblower Technologies

Vendor	Description
Convercent	Convercent's integrated suite of applications connects ethics to business performance. The solution includes user-focused intake channels (text, web, phone, email, and open-door) to encourage increased reporting. Convercent's suite of solutions focus on employee engagement, risk mitigation, and reputation protection with rich analytics to identify patterns and visualize KPIs.
NAVEX Global	The most-established vendor in this space, NAVEX Global provides a platform for consolidating ethics and compliance programs across the company. Whistleblower reports are collected via web forms and hotline; a mobile app is on the road map for Q4 2019. Incident management, ethics and compliance training, analytics, and custom benchmarking services round out the offering.
STOPit Solutions	STOPit offers anonymous reporting through a mobile app and web interface. The STOPit mobile app facilitates reporting with pictures and videos. The STOPit messenger facilitates real-time, two-way dialogue. The product has an incident management system, incident monitoring service and professional services for trainings, workshops, and awareness education.
Whispli	Founded by a former whistleblower turned investigator, Whispli uses a secure and anonymous inbox to enable "trusted conversations" through multiple communication channels available in 50+ languages. Whispli's configurable Case Management solution can either be managed in-house (HR, Compliance, Ethics) or with the support of external independent third parties, including Whispli's independent channel partners.
WhistleBlower Security	Whistleblower Security offers an anonymous global ethics hotline service with multilanguage interpretation available in up to 220 languages. Multiple reporting channels include hotline calls, email, fax, and web forms that integrate with case management system. WBS agents assist with regulatory compliance questions and global regulatory nuances.

Step No. 2: Match Culture To Accurately Reflect Your Corporate Identity And Brand Values

The value of a brand is one of a company's greatest — and most volatile — assets. When companies behave dishonestly, brand reputation suffers and customer loyalty wanes — sometimes indefinitely. Brands like Equifax, Volkswagen, and Wells Fargo now conjure images of deceit, denial, and malfeasance.[28] Companies must promote a culture that embodies the values they stand for and encourages employees to hold the organization accountable for keeping those promises. To be successful:

› **Appoint a chief ethics officer if you don't have one.** Many organizations appoint a chief ethics officer to enhance the code of conduct and related controls and procedures and to improve accountability for ethical behavior through training and performance assessments. Forward-looking companies designate a C-level executive, regardless of the actual title, to champion corporate

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values and hold the company to task for building a strong ethical culture within an organization. Salesforce recently appointed a chief ethical and humane use officer with a mandate "to develop a strategic framework for the ethical and humane use of technology."[29]

› **Update your code of conduct to include ethical uses of AI.** Digital transformation has fundamentally changed the way companies conduct business. The transformative ways in which new technologies are being used, in particular, artificial intelligence and machine learning, require companies to consider ethical considerations for their use. The European Union has already published a set of guidelines on how companies and governments should develop ethical applications of AI, and the Australian government plans to create AI ethics guidelines shortly.[30] Companies should review their code of conduct to ensure it addresses ethical ambiguity of new technologies and, where necessary, update policies and internal controls to protect the organization through digital transformation and protect whistleblowers as a check on unscrupulous uses of artificial intelligence.

› **Make ethics a tone at the top and in the middle.** "Culture eats strategy for breakfast," commonly attributed to Peter Drucker, suggests that ethics is more than a strategy. If it's not embodied at all levels of the organization, it has little chance of success. When employees are surrounded by co-workers who lie, cheat, or steal, they will most likely do the same — regardless of what management says. Prioritize awareness campaigns and ethics training programs for both senior and middle management. Start with a tone-at-the-top assessment to identify areas of strength and areas requiring improvement.[31] If necessary, hire an outside consultant to ensure your corporate culture has a strong ethical foundation.

Step No. 3: Define Acceptable Thresholds For Employee Monitoring And Security

Employment arrangements are shifting in favor of telecommuting, outsourcing, job sharing, and other alternatives, with an estimated 4.3 million employees now working from home at least half the time.[32] Remote workers operate under different conditions than their office counterparts; however, employee monitoring technology does not differentiate between work time and personal time.

The goal here is three-fold: 1) You want to avoid the kinds of monitoring policies that engender employee frustration, resentment, and even anger, which creates toxic cultures; 2) you want to avoid violating employment and privacy law and situations where execs then may feel compelled to cover up; and 3) you want to avoid the kind of monitoring technologies that can have a chilling effect on potential whistleblowers. Risk and security leaders must ensure that policies:

› **Protect employee privacy rights.** Alternative work arrangements can also blur the line between work and private life, creating significant challenges to privacy and data protection. ActivTrak, InterGuard, and Teramind are among the invasive monitoring technologies that can take screenshots of employees' screens, make video recordings, and offer live video feeds without the employees' knowledge.

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› **Make provisions for remote workers.** Corporate policy should address the differences in work hours, level of supervision, and tools of remote and traditional workers, without being overly lenient or punitive.

› **Avoid questionable practices, even if they're legal.** Every company has a culture, a personality, which can help define what security measures are acceptable and which border on creepy even if they're within regulatory compliance. For example, Apple is known to go to great lengths to maintain secrecy — even so far as going through employees' trash.

› **Understand the nuances of privacy regulations across states and countries.** The EU's GDPR details acceptable thresholds for employee privacy. In the US, since the California Consumer Privacy Act (CCPA) was passed, nine additional states (Hawaii, Maryland, Massachusetts, Nevada, New Mexico, New York, North Dakota, Rhode Island, and Washington) have introduced bills modeled partly on it.[33] Each of these privacy regulations have their own nuances, and companies operating in those states should pay close attention to employee privacy provisions if/when states pass these regulations.

Step No. 4: Listen To Employees To Avoid Ethical Scandals And Crises Ahead Of Time

When companies have a strong corporate culture, misconduct drops substantially. However, taking integrity from ideology to reality involves training, support from senior stakeholders, and a tone at the top. A recent report by ECI found that when organizations prioritize integrity, employees are: 1) less likely to feel pressure to violate ethics standards; 2) less likely to observe misconduct; 3) more likely to report misconduct they observe; and, 4) less likely to experience retaliation for reporting.[34]

Today's employees are more engaged and more vocal on a variety of issues. Corporate policy impacts culture, and companies must be attentive to employee sentiment to avoid ethically challenging decisions or initiatives — particularly on the issues risk leaders know are hot-button issues with employees. For example, you must:

› **Seek employee input on the firm's sexual harassment policy . . .** Google faced an enormous backlash and almost a week of daily negative press over its handling of sexual harassment and workplace culture. In protest, 1,500 employees, most of them women, walked out of almost two dozen company offices around the world on November 1, 2018.[35]

› **. . . and its policy for supporting military and other controversial work.** In February 2019, Microsoft employees sent an open letter demanding the company drop a contract with the US Army to provide headsets designed for combat and training in the military. Google effectively ended project Dragonfly to develop a censored search engine for China, designed to block search result categories related to democracy, human rights, and peaceful protest after pressure from employees and human rights groups.[36]

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› **Keep a pulse on contentious social issues.** The aftermath of the February 14, 2018 attack in Parkland, Florida, in which an active shooter with an AR-15 semi-automatic rifle killed 17 students and educators, swift public pressure (from employees and customers alike) forced Avis, Budget, Delta Air Lines, Enterprise Holdings, Hertz, United Airlines, and other companies to end discounts for NRA members.[37] Dick's Sporting Goods and Walmart have adopted restrictions on the kinds of guns they sell and changed the age requirement from 18 to 21; meanwhile, Kroger's Fred Meyer chain stopped selling guns and ammunition altogether.[38] They're taking a stand not only for their values-based consumers but also for their own values-based employees.

Recommendations

Make The Strength Of Your Ethics Culture A Business Priority

The advantages of a strong ethical culture are manifold: higher productivity, lower turnover, and better business outcomes. An ethical culture is likely to lead to fewer whistleblowers, but if and when your organization does cross an ethical, legal, or regulatory line, you want a culture that encourages employees to speak up and doesn't retaliate against them for doing so. These outcomes are possible when companies commit to higher-quality ethics and compliance programs, provide effective policy training and education, safeguard whistleblowers, and take accountability when wrongdoing occurs. To maintain them requires ongoing reevaluation. To build and maintain a healthy corporate culture:

› **Write a strong code of conduct that reflects your company's values today.** Companies change and so do their values and corporate culture. Companies that take a value-based approach to ethics and compliance have an advantage over those with policies that read like the Ten Commandments of what the employees shalt not do. Employees prefer a document that states clearly and concisely the organization's expectations, outlines acceptable behaviors, and presents viable options for asking questions and voicing concerns, and the likelihood is much greater that they will meet those expectations and exhibit the desired behaviors.

› **Prioritize employee engagement and retention versus recruitment.** Attracting and retaining top talent is critical in today's digitally enabled business. Employees have expectations for how organizations and business leaders should act; if their expectations aren't met, they'll eventually look elsewhere. Turnover doesn't just hurt productivity; it lowers employee morale and reduces revenue. Look for patterns in whistleblower reports to identify trends that could be damaging the employee experience, and take preventive action.

› **Engage with employees using their preferred methods (chat, text, SMS, mobile app).** Communication styles and preferences are evolving. Fewer households have landlines, and text plus emoji aren't just for teenagers. Chat channels and social media aren't just for personal use; they're now embedded in business communications. Employee preferences are vast when it comes to preferred methods of communications. Some may be more comfortable speaking to a live person

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over the phone, others might prefer to communicate concerns via chat or a form where they don't have to interact with a live person. Mobile apps also provide a convenient way to take pictures or videos of the incident in reference. Make sure that reporting tools are readily available, easy to use, provide multiple types of interactions, and ensure the security and anonymity of the reporter.

› **Rebrand the whistleblowers and remove the stigma.** Whistleblowers got their name from literally blowing a whistle to alert authorities during a bank robbery. The role of the whistleblower has evolved and so have the types of incidents they report. So why do we still refer to them as whistleblowers? Companies can change the perception by changing their name to reporters. Whistleblower hotlines can be rebranded corporate ethics report lines or policy violation hotlines. It's time that companies changed the negative connotations and social stigma associated with whistleblowers and rebrand them as a necessary safety valve in corporate ethics.

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Supplemental Material

Companies Interviewed For This Report

We would like to thank the individuals from the following companies who generously gave their time during the research for this report.

Convercent

NAVEX Global

STOPit Solutions

Whispli

WhistleBlower Security

Endnotes

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