

# Are we doing enough to protect our whistleblowers?

By [Lucinda Hinxman](#)

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It takes a very special person to be a whistleblower, as their motives are very seldom for self-gain but rather to pursue social justice. And yet, there is a great sense of injustice in the fact that whistleblowers often face worse consequences than those suffered by those who have committed the acts being exposed by the whistleblower, with the whistleblower often becoming a social outcast.



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An example of this can be seen in the case of former CEO of Trillian Financial Advisory, Mosile Mothepu, who blew the whistle on one of South Africa's biggest scandals - State Capture. After exposing the company's questionable dealings to the Public Protector, Mothepu was ostracised, intimidated and threatened, which took a toll on her personal life and her career.

The question is: are we really doing enough to protect whistleblowers in the country?

## What legal recourse exists for whistleblowers?

South Africa has legislation in place aimed at protecting whistleblowers: namely, the Protected Disclosures Act, which enables any employee to disclose information relating to an offence or mismanagement in the workplace and prohibits an employer from subjecting employees to occupational detriments for doing so. Additionally, the Labour Relations Act ensures that any dismissal for, or in relation to, a protected disclosure is considered automatically unfair dismissal and carries the risk of up to 24 months of remuneration or compensation being awarded to the employee.

And yet, there continue to be instances where whistleblowers are dismissed from their employment for making a protected disclosure or are compelled to leave of their own accord and have become social pariahs in their workplace and, ironically, the person no one trusts. By exposing the underbelly of the goings-on within the workplace, a whistleblower more often than not paints a target on their own back. This then leads to the whistleblower in turn being investigated by the employer and dismissed for some innocuous misconduct no one previously cared to pursue but, nevertheless, a workplace rule has been broken, providing enough muster to argue against it being considered an occupational detriment.

So, is the answer to protecting whistleblowers from retaliation that we need more government intervention?

The legislation protecting whistleblowers is already comprehensive and we must avoid overregulation. However, where we are failing is in the implementation of the protective legislation. What we all really want to see is the result of the whistleblowing realised – disciplinary action and the criminal trial. Consequently, the duty to intervene and protect whistleblowers lies with both business and society at large, but also with the government through its policing and prosecuting authority.

## **Business has a responsibility to whistleblowers**

Business leaders have a professional duty to protect and encourage whistleblowers.

This might seem daunting as no business really wants to believe that there is a fox in the hen house, let alone face the ramifications of such misconduct being made public. However, by encouraging whistleblowing, companies not only ensure that their business is operating free of fraud and corruption but hold themselves and their employees to the organisation's desired ethics and standards, creating an environment of transparency.

Some businesses have already implemented internal whistleblowing mechanisms such as anonymous hotlines where employees can report illicit activity. However, anonymity can often make it difficult for an employer to take action in investigating the tip-off and/or taking disciplinary action due to the whistleblower not being a witness in an enquiry, which is pivotal to an enquiry, especially where there is little to no documentary evidence. Many businesses also have internal mechanisms to deal with whistleblowing; however, due to the internal nature of these procedures not involving a third party, there is an opportunity for these investigations to be manipulated - we are too often told by whistleblowers that they had told their employer about a situation and yet nothing had been done about it.

This is one of the many reasons why businesses should consider putting in place a system that allows employees to blow the whistle to an independent or impartial party, tasked with the investigation of such tip-offs. Whistleblowing procedures also need to go beyond putting an internal policy in place and must truly change the way that whistleblowers and their tip-offs are handled. As with legislation, an HR policy is worthless without effective implementation.

## **Changing the perception of whistleblowers calls for a culture change**

We have all heard the phrase “nobody likes a tattle-tale”. It is something that our parents and other adult figures in our lives have told us from a very young age and it is ingrained in our culture. This mindset is often why whistleblowers, ironically, become seen as untrustworthy, are isolated from the workplace and society, and experience other far-reaching consequences for having done the right thing.

We need to make a social and cultural change in the way that we view whistleblowers to ensure that they are not ostracised

but rather - celebrated. Whistleblowers play a crucial role in ensuring accountability and should be hailed as our heroes. They are and remain one of our last checks and balances we have against the misconduct, fraud and corruption which has become so perverse in our businesses, that we all want to be rooted out.

All of us, as South Africans, need to play a part in protecting whistleblowers and ensuring that their bravery leads to action. While we may not all be brave enough to act, we can protect those who do because, at the end of the day, we need them.

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