

Module 6: Consequences of Non-Compliance with the Code of Conduct

Failure to act with integrity, apply appropriate business ethics or comply with applicable laws and regulations can have a severe adverse impact on an organisation and its business. Nothing is more important to a business's success than the strength of its reputation, and nothing has a more profound impact on such a reputation than an employee's conduct as an individual.

Further, failure to comply with the specific provisions of the law can result in significant loss of business through potential penalties or even criminal sanctions.

Anyone who fails to comply with the code of conduct will be subject to disciplinary action up to and including termination of employment, depending on the nature of the non-compliance.

Click on the first lesson below—or the “*Start eLearning*” button above—when you're ready to begin.



Whistle Blowing



Criteria and Risk



The Process



When You Should "Blow the Whistle"

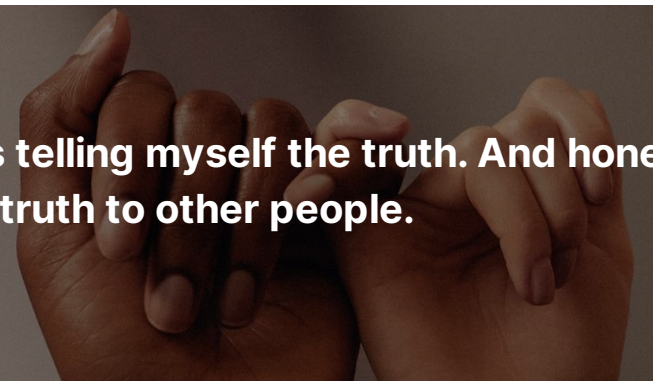


Knowledge Check



Module 6: Completed

Whistle Blowing

A background image for a quote, showing two hands clasped together in a firm grip, symbolizing integrity and honesty. The image is in a dark, muted color palette.

“ Integrity is telling myself the truth. And honesty is telling the truth to other people.

Spencer Johnson

Whistle blowing can be seen as either a public service or as a petty act of tale telling. This may not be an easy decision to make, but whistleblowing concerning a misconduct is considered a public service. Although, legally protected, whistleblowers take on serious personal risks by informing the proper authority about their employer's unethical actions. There are circumstances, however, when an incident needs to be reported in order to protect the public.



To check your understanding of the lesson content, answer the question below...

Integrity is telling myself the ____.

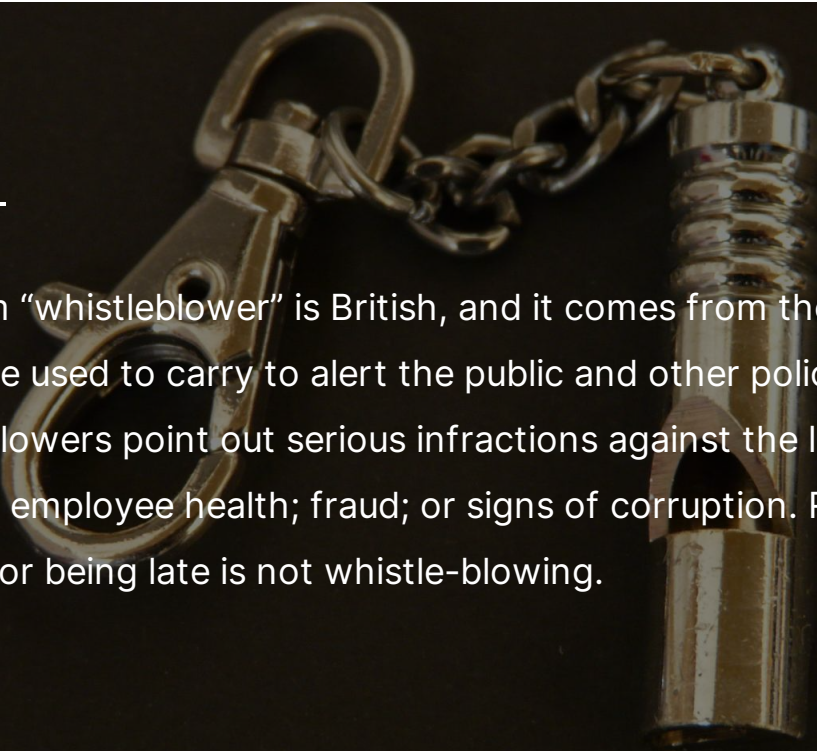
Type your answer here

SUBMIT



Complete the content above before moving on.

Criteria and Risk

A close-up photograph of a brass whistle attached to a metal chain and a carabiner clip. The whistle is cylindrical with a flared end and a small hole at the top. The chain is made of thick metal links. The background is dark and out of focus.

The term “whistleblower” is British, and it comes from the whistles that the police used to carry to alert the public and other police to a crime. Whistleblowers point out serious infractions against the law; risks to public or employee health; fraud; or signs of corruption. Reporting a co-worker for being late is not whistle-blowing.

Whistleblowing is defined as raising a concern about wrongdoing within an organisation. The Protected Disclosures Act, No 26 of 2000 (PDA) was enacted to protect whistle-blowers and to help combat corruption. The PDA must be viewed in the context of high levels of perceived corruption in South Africa. Evidence of this was given in Transparency International's 2014 Corruption Perception Index which gave

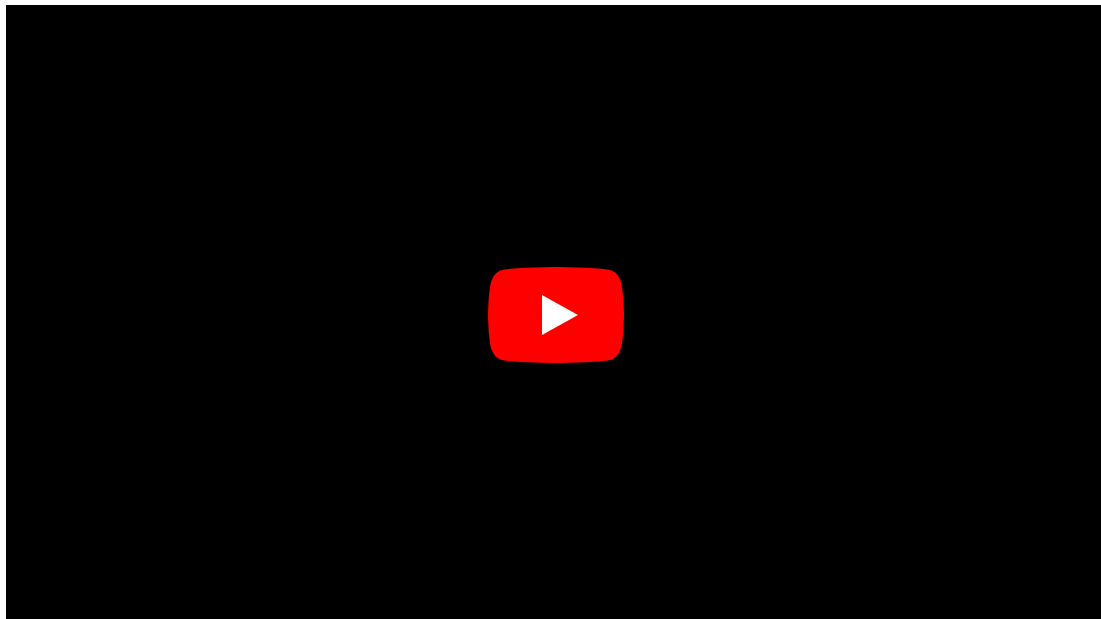
South Africa a score of 44 out of a possible 100 (with 100 being perfect non-corruption), ranking us 67 out of 175 countries.

The “test” case for protected disclosures was *Grieve v Denel* (2003) 24 ILJ 551 (LC), in which the Labour Court gave context to section 3 of the PDA:

“No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.”

Watch this video clip...

 **YOUTUBE**



The protection of whistleblowers in South Africa

Encouraging people to report wrongdoing and illegal activity is essential for corruption prevention. There's been widespread concern for the protection of whistleblowers in both the private and public sectors. Corruption Watch has reported it receives on average 4000 reports of corruption annually, mostly from municipalities and police departments.

VIEW ON YOUTUBE >

When we show up to the present moment with all of our senses, we invite the world to fill us with joy. The pains of the past are behind us. The future has yet to unfold. But the now is full of beauty simply waiting for our attention.

Dismissal in breach of the occupational detriment requirement under the PDA is deemed to be automatically unfair under s187 of the Labour Relations Act, No 66 of 1995 (LRA) and could result in a maximum of 24 months' compensation awarded to the employee. Other occupational detriments not resulting in dismissal are deemed unfair labour practices which could give rise to a maximum of 12 months' compensation.

The most cited case in terms of the PDA is the decision of *Tshishonga v Minister of Justice & Constitutional Development* 2007 4 BLLR 327 (LC), in which the Labour Court introduced a four-stage approach to ascertain whether or not the requirements of the PDA are met:

- **Was there a disclosure?**
- **Was it a protected disclosure?** The disclosure will be protected if it was in good faith, if it was subjectively believed to be substantially true and if there was no ulterior motive. In *Van Alphen v Rheinmetall Denel Munition (Pty) Ltd* (2013) 34 ILJ 3314 (LC), the Labour Court stated that protection requires an impropriety from the employer. Further, the company's protected disclosure procedure must be followed by the employee.
- **Was the employee subject to an occupational detriment?** There must be a causal link between the disclosure and the occupational detriment. In *Independent Municipal & Allied Trade Union & another v City of Matlosana Local Municipality & another* (2014) 35 ILJ 2459 (LC), the Labour Court gave practical pointers to determine if there is a link between the occupational detriment (in this case a disciplinary enquiry) and the disclosure namely:
 - the timing of the institution of the charges or the occupational detriment.
 - the reasons given by the employer.
 - the nature of the disclosure; and
 - the person responsible for taking the decision to institute the charges.
- **What remedies are available?**

Since December 2013, there have been 15 reported cases involving protected disclosures. The increase in the number of disputes is attributed to employees

becoming more aware of the protections afforded to them under the PDA.

It is thus critical for employers to engage with and understand the PDA and then examine their internal whistleblowing procedures to ensure statutory compliance.



To check your understanding of the lesson content, answer the question below...

When was legal protection first provided to whistleblowers?

☐

1994

☐

1998

☐

2000

☐

2002

SUBMIT



Complete the content above before moving on.

The Process



There are two types of whistleblowers: internal whistleblowers and external whistleblowers. Internal whistleblowers go to someone within the organization to report a problem. Many companies have ways of doing this anonymously so that the employee will be protected from retaliation. External whistleblowers go outside the organization with the issue. They go to law enforcement or the media. External whistle-blowing is the best option when reporting unethical conduct of businesses that are corrupt from the top down. Once the whistle is blown, whistleblowers need to protect their rights and possibly seek legal counsel to shield themselves from retaliation.



To check your understanding of the lesson content, drag and drop the scenarios below...

Match The Following:

External whistleblower

The best option when reporting unethical conduct of businesses

Go outside of the organization with the issue

Go to the law enforcement or media

Internal whistleblower

Go to someone within the organization to report an issue

Ensures that the employee will be protected from retaliation

Allows for anonymity



Complete the content above before moving on.

When You Should "Blow the Whistle"

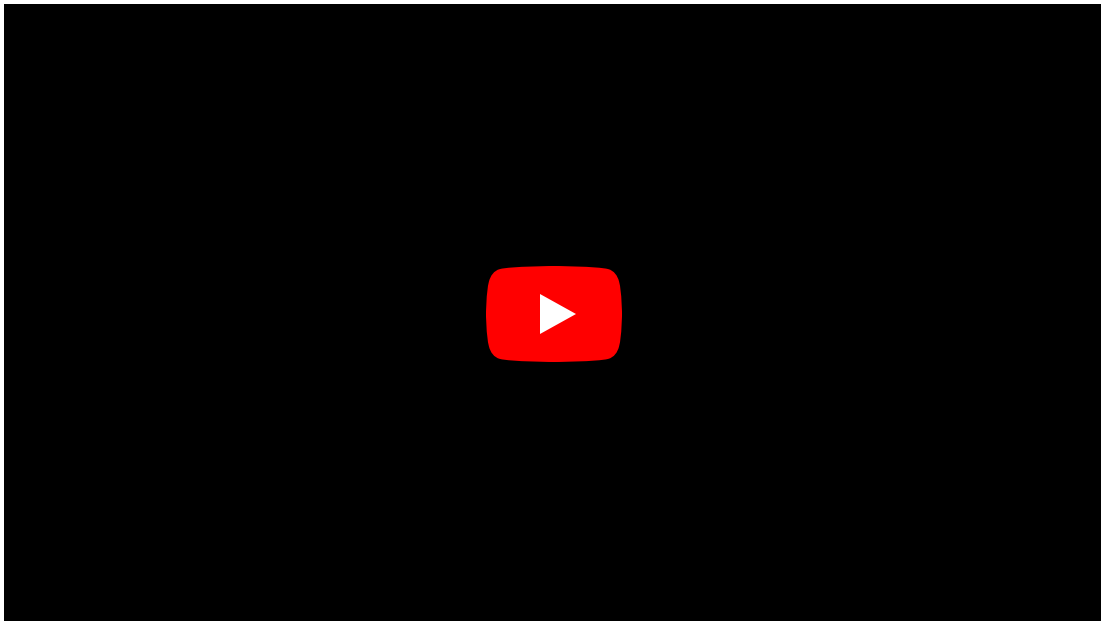


Think carefully before blowing the whistle. Doing so is neither fun nor easy. There are situations when blowing the whistle is the right thing to do. If the rights, health, or safety of others is knowingly compromised and it seems no one is able to fix the problem, then the ethical thing to do is 'blow the whistle.'

Blowing the whistle legally requires you to have a "reasonable belief" that the violations occurred with company knowledge. It is best to have evidence of the misconduct before moving forward.

Watch this video clip...





Eskom CEO Interview - My Guest Tonight with Annika | Part 1

My Guest Tonight is on e.tv every Tuesday, 10PM Catch the full interview here :
<https://bit.ly/3INe78n>

VIEW ON YOUTUBE >



To check your understanding of the lesson content, answer the question below...

Blowing the whistle legally requires you to have a “_____” that the violations occurred with company knowledge.

Type your answer here

SUBMIT



Complete the content above before moving on.

Lesson 5 of 6

Knowledge Check



Module 6: Review Questions

Question

01/10

Whistleblowers are protected under the law.

☐

True

☐

False

Question

02/10

What are the two types of whistleblowers?

- ☐ Legal and Illegal
- ☐ Social and Political
- ☐ Red and Green
- ☐ Internal and External

Question

03/10

Blowing the whistle legally requires you to have _____ that the violations occurred with company knowledge.

- ☐ Reasonable belief
- ☐ Unknown knowledge
- ☐ Plausible deniability
- ☐ Monetary motivation

Question

04/10

Internal whistleblowers go_____ to report a problem.

- ☐ To someone within the organization
- ☐ To the police
- ☐ Home
- ☐ None of the above

Question

05/10

Corruption Watch has reported it receives on average ____ reports of corruption annually, mostly from municipalities and police departments.

☐ 2000

☐ 3000

☐ 4000

☐ 5000

Question

06/10

Many companies have ways of doing this anonymously so that the employee will be protected from _____.

- ☐ Newspapers
- ☐ Retaliation
- ☐ Nosy coworkers
- ☐ None of the above

Question

07/10

Whistleblowers need to protect their rights and possibly seek _____ to shield themselves from retaliation.

- ☐ Refuge
- ☐ Legal counsel
- ☐ Advice
- ☐ A new profession

Question

08/10

Anyone who fails to comply with the code of conduct will be subject to _____ up to and including termination of employment, depending on the nature of the non-compliance.

- ☐ Written warning
- ☐ Verbal warning
- ☐ Disciplinary action
- ☐ Employment termination

Question

09/10

You should only 'blow the whistle' when_____.

- ☐ Rights of others are knowingly compromised
- ☐ Health of others is knowingly compromised
- ☐ Safety of others is knowingly compromised
- ☐ All of the above

Question

10/10

External whistleblowers go _____ with the issue. Select ALL that apply.

☐

To law enforcement

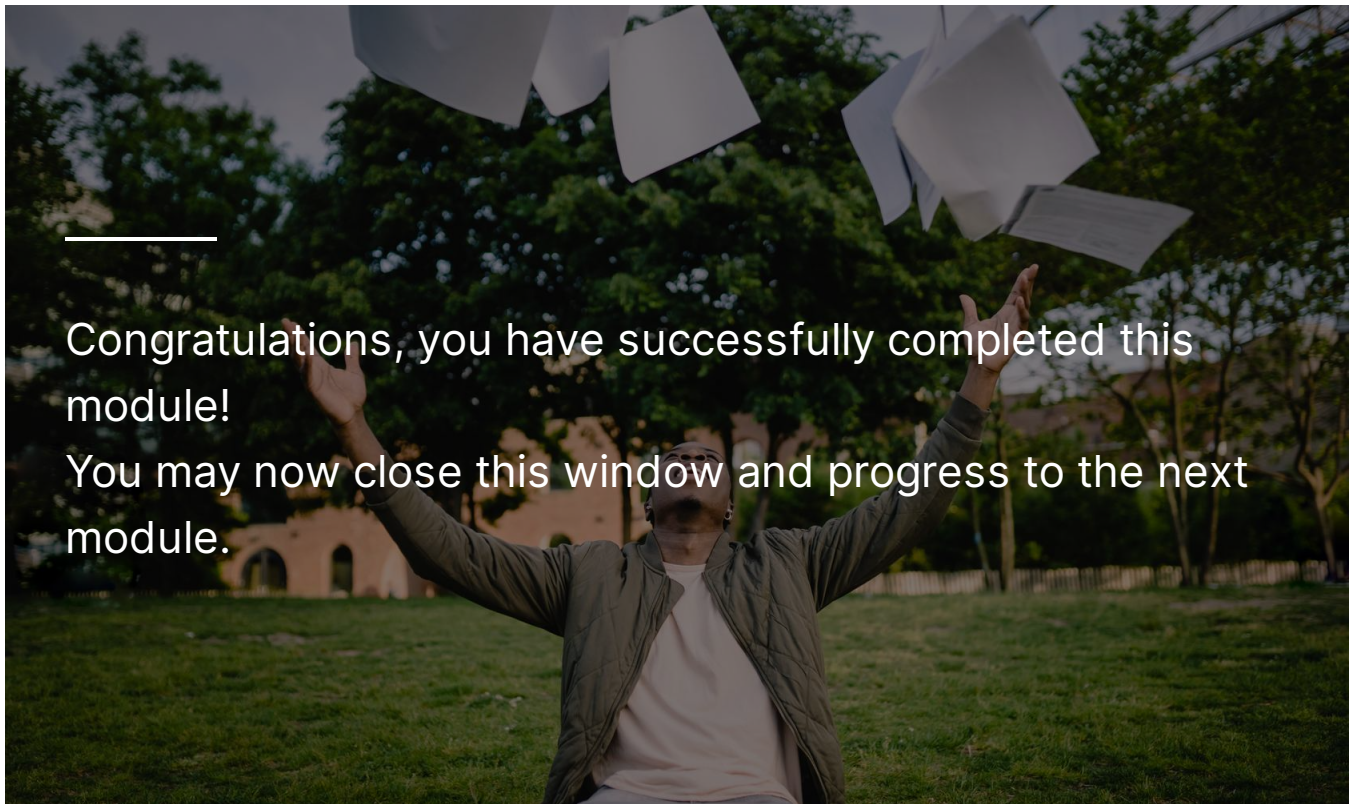
☐

To the media

☐

To a new job

Module 6: Completed



Congratulations, you have successfully completed this module!
You may now close this window and progress to the next module.