

4.3: Policies, Practices, and Cultures

Learning Objectives

- Identify how company policies reflect business ethics.

You might be wondering how a company provides guidance to all employees about what behavior it expects from them. Imagine a global company like Wal-Mart, which has over two billion employees worldwide. “Fortune Global 500,” *CNN.com*, <http://money.cnn.com/magazines/fortune/global500/2008/snapshots/2255.html> (accessed September 1, 2009). How do all the employees know what is considered ethical behavior by the company? Can they take as much time as they want for lunch? Are they able to take off as many days as they wish? What expenses qualify for reimbursement? All the policies of a company are included in its **employee handbook**.

Employee Handbooks: Your Practical, Professional How-To

Every company has a highly specific code of ethics governing the actions of its employees. This manual, the employee handbook (sometimes called the code of ethics or code of conduct or other similar name), outlines the company’s policies concerning gift giving, nondisclosure of company information, and other areas of behavior. Starbucks’ code of ethics, *Business Ethics and Compliance: Standards of Business Conduct*, for example, explains when employees may and may not accept gifts: “You may not encourage or solicit meals or entertainment from anyone with whom Starbucks does business or from anyone who desires to do business with Starbucks. Giving or accepting valuable gifts or entertainment might be construed as an improper attempt to influence the relationship.” Starbucks, *Business Ethics and Compliance: Standards of Business Conduct*, <http://assets.starbucks.com/assets/sobc-fy09-eng.pdf> (accessed September 1, 2009). An employee handbook will also include the company’s sexual harassment and nondiscrimination policies, an explanation of procedures including breaks and scheduling principles, a list of benefits for part- and full-time employees, a breakdown of disciplinary policies and grounds for dismissal, as well as rules concerning phone, fax, mail, Internet use, and the permissible use of company vehicles. The handbook will additionally contain information like the history and goals of the company.

While all employee handbooks are slightly different, all include the guidelines and policies that define ethical behavior in that company or organization. You can review several different companies’ policies at the Web sites below:

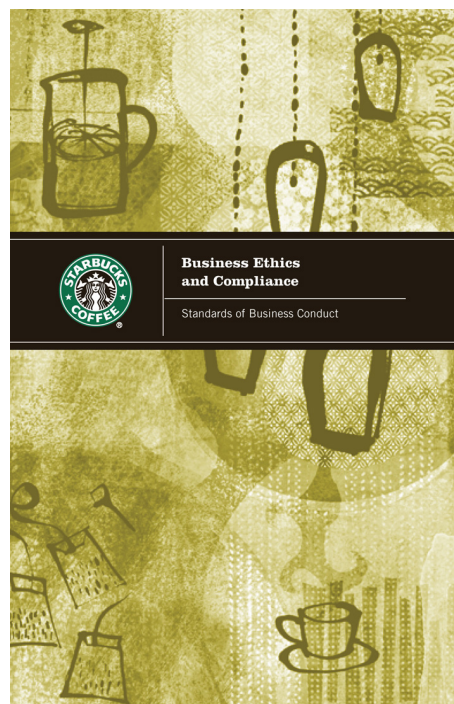


Figure 4.3.3

Starbucks communicates its expectations in terms of ethics in this handbook called [Business Ethics and Compliance: Standards of Business Conduct](http://assets.starbucks.com/assets/sobc-fy09-eng.pdf). Starbucks, *Business Ethics and Compliance: Standards of Business Conduct*, <http://assets.starbucks.com/assets/sobc-fy09-eng.pdf> (accessed September 1, 2009).

✓ Company Policies

Gap Code of Business Conduct

www.gapinc.com/content/dam/gapincsite/documents/COBC/Code_English.pdf

Source: The Gap, Inc.

McDonald's Standards of Business Conduct for Employees

www.aboutmcdonalds.com/mcd/investors/corporate_governance/standards_of_business_conduct.html

Source: McDonald's Corporation

United States Government—Code of Ethics

<http://usgovinfo.about.com/blethics.htm>

Source: United States House of Representatives Ethics Committee

What Company Policies Say and What They Mean

Whatever company you end up working for will have its own policies with which you will need to familiarize yourself. But most companies include the same basic issues that are frequently encountered in sales: conflicts of interest, bribes, and noncompete clauses. The specifics of these policies will vary from company to company, but this section will give you a good idea of what to expect, the meaning of key terms you will encounter, and some sample policies to study.

✓ A Page from IBM's Employee Handbook

Most companies include a gift and entertainment policy in its employee handbook. IBM has a specific policy that covers these areas.

No IBM employee, or any member of his or her immediate family, can accept gratuities or gifts of money from a supplier, customer, or anyone in a business relationship. Nor can they accept a gift or consideration that could be perceived as having been offered because of the business relationship. "Perceived" simply means this: if you read about it in your local paper, would you wonder whether the gift just might have something to do with a business relationship? No IBM employee can give money or a gift of significant value to a supplier if it could reasonably be viewed as being done to gain a business advantage. If an employee is offered money or a gift of some value by a supplier or if one arrives at their home or office, a manager should be informed immediately. If the gift is perishable, the manager will arrange to donate it to a local charitable organization. Otherwise, it should be returned to the supplier. Whatever the circumstances, the employee or the manager should write the supplier a letter, explain IBM's guidelines on the subject of gifts and gratuities. Of course, it is an accepted practice to talk business over a meal. So it is perfectly all right to occasionally allow a supplier or customer to pick up the check. Similarly, it frequently is necessary for a supplier, including IBM, to provide education and executive briefings for customers. It's all right to accept or provide some services in connection with this kind of activity—services such as transportation, food, or lodging. For instance, transportation in IBM or supplier planes to and from company locations, and lodging and food at company facilities are all right. A violation of these policies may result in termination. Milton Snoeyenbos, Robert Almeder, and James Humber, *Business Ethics* (Amherst, NY: Prometheus Books, 2001), 133.

A **conflict of interest** is "a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties." Michael McDonald, "Ethics and Conflict of Interest," University of British Columbia Centre for Applied Ethics, <http://web.archive.org/web/20071103060225/http://www.ethics.ubc.ca/people/mcdonald/conflict.htm> (accessed September 1, 2009). There are four types of conflicts of interest that you may encounter in your career: family interests, gifts, private use of employer property, and moonlighting.

Family interests create a conflict when a relative of yours is either someone from whom you might purchase goods or services for your employer or when you have influence over the potential hiring of a family member of yours. It's best to avoid these types of situations as it can be difficult to make an objective decision.

Gifts create a conflict of interest when they are given to you by someone with whom you do business. Gifts are frequently given at the holidays and may include something small like a case of wine or something more extravagant like a trip.

private use of employer property can be anything from stealing pens to using your work computer to work on editing your vacation pictures to driving the company car on a weekend getaway and then reporting the mileage on a corporate expense report.

Moonlighting is holding down a second job. While that might not sound insidious at first, if you work two jobs in the same field, it is almost inevitable that you will run into ethical problems. Who gets your best ideas? Where does most of your energy go? And if you have inside knowledge of two different corporations, working not to let that information influence you will be terribly difficult.

A **bribe**, according to Merriam-Webster, is “money or favor given or promised in order to influence the judgment or conduct of a person in a position of trust; something that serves to induce or influence.” “Bribe,” *Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/dictionary/bribe> (accessed September 1, 2009). Soliciting, accepting, offering, or giving a bribe is illegal—even if your offer is refused, you are committing a crime. Bribery can take place in many different venues. Pharmaceutical companies attempt to persuade doctors to prescribe their products by buying them meals and giving them pens and other trinkets as well as trips to medical conventions. Business gifts are considered a form of bribery when they are given by someone who could benefit from having influence on a decision maker. For example, if you are the buyer of electronics at Wal-Mart, you are not able to accept any gifts from vendors or prospective vendors as it might appear to influence your buying decisions for the chain.

A **noncompete agreement** (sometimes called a covenant not to compete, or CNC) prevents an employee from entering into competition with the employer once his job has ended—in other words, it prevents you from taking a job with a competitor after you've quit or been fired. A noncompete agreement may also prevent former employees from starting their own businesses in the same field. The reasoning behind the CNC is the fear that a former executive could take his insider knowledge and **trade secrets**—as well as his contacts—with him to a new position. No employer wants to expose its strategy to its competitors. Noncompete agreements are generally upheld by the courts as long as they contain reasonable limits as to the time period and geographical space—that is, for example, that you may not compete in the state for two years after your termination. Noncompete agreements are not legal in California, although there are still measures in place in that state to protect trade secrets. “California Non-compete Agreements,” Lawzilla, <http://lawzilla.com/content/noncompete.shtml> (accessed September 2, 2009). Not every job will ask you to sign a noncompete agreement, and if you haven't signed one, then there are no restrictions on your future employment. This is one reason it's so important to read and understand anything you sign. However, even if you don't sign a noncompete agreement, you may be asked to sign a **nondisclosure agreement (or confidentiality agreement)** or your company may have a nondisclosure or confidentiality policy that requires you to protect your former employer's trade secrets; you may not exploit that information in future employment. Gene Quinn, “What Is a Confidentiality Agreement?” IPWatchdog, <http://www.ipwatchdog.com/2008/01/03/what-is-confidentiality-agreement/id=31> (accessed September 2, 2009). A trade secret is “any kind of information that allows you to make money because it is not known.” “What Is a Trade Secret and How Is It Different from a Patent or Copyright?” HowStuffWorks, April 30, 2001, <http://www.howstuffworks.com/question625.htm#> (accessed February 14, 2010). For example, Coca-Cola's signature formula is a trade secret, as is the recipe for Kentucky Fried Chicken. Information about the internal workings of a company that could only plausibly be gained by working for that company is usually a trade secret.

If you find yourself between jobs and worry about the legality of finding another (having signed a noncompete agreement with your previous employer), bear in mind that noncompete agreements are most likely to be enforceable if your new job is strikingly similar to your old job. If you go from the sales department at Target to the advertising department of Kmart, you are probably (legally) in the clear. Russell Beck, “Noncompete Agreements That Don't Mean What They Say,” *Journal of New England Technology*, September 5, 2008, www.masshightech.com/stories/2008/09/01/focus4-Noncompete-agreements-that-dont-mean-what-they-say.html (accessed February 14, 2010). Your new job is different enough that you are unlikely to be seen by the court as exploiting your knowledge of Target's sales practices. Remember that this is only a concern if you have signed a noncompete agreement previously; while noncompete clauses are common, they are not universal.

What Is Whistle-Blowing?

Jeffrey Wigand, former head of research and development for Brown & Williamson Tobacco Corporation (the third-largest tobacco company in the United States), is one of the most famous **whistle-blowers** in America. He says of himself, “The word whistle-blower suggests that you’re a tattletale or that you’re somehow disloyal. But I wasn’t disloyal in the least bit. People were dying. I was loyal to a higher order of ethical responsibility.” Chuck Salter, “Jeffrey Wigand: The Whistle-Blower,” *Fast Company*, December 19, 2007, www.fastcompany.com/articles/2002/05/wigand.html (accessed February 14, 2010). Wigand’s testimony against the tobacco industry, his claims that executives at Brown & Williamson knew that cigarettes were addictive, lied about it under oath, and destroyed documents related to that fact, led directly to the lawsuit brought by forty state attorneys general against tobacco companies.

Whistle-blowing, the act of publicly exposing the misconduct of a company or organization, is a courageous act. Wigand’s reputation was destroyed by a punitive smear campaign conducted by the industry he spoke out against, and the stress resulting from that and the trial destroyed his marriage. Brown & Williamson filed a lawsuit against him for revealing confidential company information (the suit was dismissed as a condition of the \$368 billion settlement against the tobacco industry). Jeffrey Wigand, “Biography,” <http://www.jeffreywigand.com/bio.php> (accessed September 2, 2009). But Wigand blew the whistle in order to save thousands of lives. The true story was made into a blockbuster movie in 1999 called *The Insider*.



The movie trailer includes highlights from the movie inspired by a true story. Source: Touchstone Pictures

Another famous whistle-blower is Erin Brockovich, whose story was also brought to life on the big screen in the movie of the same name.

Of course, whistle-blowing exists on a less grand scale. If you know which of your classmates stole the answer key to an exam and you tell the professor, you have blown the whistle. Whistle-blowing doesn’t always involve risking your life, and it doesn’t always involve bringing a corporation to its knees. At its heart, it is action taken to reveal wrongdoings in hopes of seeing justice done.

Only limited protection existed for whistle-blowers until recently; today, the best protection they have (unless they work for the federal government) is the Sarbanes-Oxley Act of 2002, mentioned earlier, which states that “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, imprisoned not more than ten years, or both.” Cornell University Law School, “Retaliating against a Witness, Victim, or Informant,” <http://www.law.cornell.edu/uscode/18/1513.html#e> (accessed September 2, 2009). It’s important to bear in mind that you have no obligation to blow the whistle; you can simply refuse to take part in any unethical or illegal activity. If you know that crimes are being committed at your place of business, you have to decide for yourself what form that refusal will take: you may simply not commit any crimes yourself, you may try to persuade others to behave ethically, or you may feel that you must resign your position. It will depend on your situation and your personal code of ethics.

Ethics and the Law

The ever-changing landscape of technology has created new opportunities to test ethics; spammers, scam artists, and identity thieves have created the need to clearly define legal, and in some cases, ethical behavior online. An increasing number of cases of fraud committed via social networking sites have taken place. There have been cases of people who create Twitter profiles in the

names of other, real people. News anchor Keith Olbermann and Tony La Russa, manager of the St. Louis Cardinals, have both been victims of such hoaxes. Danielle Citron, “Twitter Fraud,” Concurring Opinions, June 10, 2009, www.concurringopinions.com/archives/2009/06/twitter-fraud.html (accessed September 2, 2009). If tempted to such behavior yourself, remember: you are what you tweet. Your reputation will be affected by all the things that you do—make sure that you’re making yourself look good.

Tightening Legal Loopholes

One of the best examples of laws being enacted in response to unethical business practices is the Robinson-Patman Act. In 1914, the Clayton Act became the first federal statute to expressly prohibit price discrimination in several forms. Large chain grocery stores used their buying power to negotiate lower prices than smaller, independent grocery stores were offered. The Robinson-Patman Act was passed in 1936, during the Great Depression, as a direct response to that unfair business practice, closing the loophole. Donald S. Clark, “The Robinson-Patman Act: General Principles, Commission Proceedings, and Selected Issues,” Federal Trade Commission Web site, June 7, 1995, www.ftc.gov/speeches/other/patman.shtm (accessed September 2, 2010). Buyers for the big chain stores weren’t breaking the law when they used their influence to get better prices than small stores could, but they were behaving unethically—and the law caught up with them in the end.

Another example of ways in which it can take the law some time to catch up to reality is the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography And Marketing Act) of 2003. Federal Trade Commission, “The CAN-SPAM Act: A Compliance Guide for Business,” September 2009, www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm (accessed February 14, 2010). CAN-SPAM purports to take on spam—that is, unsolicited marketing e-mails, often with sexual or “STAY AT HOME, EARN \$\$\$!!!”—type messages. Perhaps the most famous arrest of a spammer came in 2005, when Anthony Greco was arrested at Los Angeles International Airport and charged with violating CAN-SPAM by sending more than 1.5 million messages to users of the MySpace instant messaging service that advertised pornography and mortgage-refinancing services. Paul Roberts, “Arrest, but No Relief from IM Spam,” InfoWorld, February 22, 2005, <http://www.infoworld.com/d/security-central/arrest-no-relief-im-spam-863> (accessed September 2, 2009).

Culture and Ethics

When you are working in a different country, or with professionals from other cultures, there may be different ideas as to what is appropriate and ethical. The Japanese, for example, have a culture of corporate gift giving; *kosai hi* (literally “expense for friendly relations”) Boye Lafayette de Mente, *Japan’s Cultural Code Words* (North Clarendon, VT: Tuttle Publishing, 2004), 225. refers to the Japanese business practice of maintaining large expense accounts used for entertaining clients and nurturing other professional relationships. This money is, for example, often used to buy golf club memberships as gifts for people with whom Japanese businessmen and women have valuable working relationships. When you come face-to-face with these different customs, it is important not to be insulting, but you also cannot ignore your company’s policies. “When in Rome” will only carry you so far.

A good rule of thumb is this: if you wouldn’t be comfortable telling your boss about it, or if you’d be embarrassed to tell your mom about it, don’t do it. If you’re working for a company that does business in more than one country, odds are they will have a liaison from each country that can help you to navigate the intricacies of cultural difference. In Middle Eastern countries, there is a custom of *baksheesh*, a word that encompasses everything from tipping to alms for a beggar to out-and-out bribery. If you are working in the Middle East, there may be an expectation that you will help to grease the wheels; your supervisor should be able to brief you on company policy in such situations. S. E. Smith, “What Is Baksheesh?” wiseGEEK, <http://www.wisegeek.com/what-is-baksheesh.htm> (accessed February 14, 2010).

One excellent example of the ethical struggles unique to international business can be found in Michael Crichton’s book *Rising Sun*, which deals with the clash of Japanese and American business practices. At one point, two police officers are discussing how often they are offered gifts by the Japanese: “Giving gifts to ensure that you will be seen favorably is something the Japanese do by instinct. And it’s not so different from what we do, when we invite the boss over for dinner. Goodwill is goodwill. But we don’t invite the boss over for dinner when we’re up for a promotion. The proper thing to do is to invite the boss early in the relationship, when nothing is at stake. Then it’s just goodwill. The same with the Japanese. They believe you should give the gift early, because then it is not a bribe. It is a gift. A way of making a relationship with you before there is any pressure on the relationship.” Michael Crichton, *Rising Sun* (New York: Ballantine Books, 1992), 136. When you need to decline a gift yourself, apologize and explain that company guidelines prohibit your acceptance of the gift. You should then promptly report the gift to your supervisor.

Key Takeaways

- Your company will make available to you their policies on various ethical issues in the **employee handbook**; it is your responsibility to read the materials provided and remain familiar with their contents.
- There are four different types of **conflicts of interest**: **family interests**, **gifts**, **private use of employer property**, and **moonlighting**.
- **Bribery**, the use of gifts to influence someone, is both unethical and illegal.
- Many employers will require you to sign a **noncompete agreement**; be sure that you understand the details before you agree.
- A company's **trade secrets** should never be disclosed.
- **Whistle-blowing**, the exposure of a company's wrongdoing to the public, is never your ethical obligation—you are obligated only to refuse to participate. However, it can be a deeply noble act. You must analyze the situation yourself and decide what is called for.
- **Sarbanes-Oxley Act of 2002** regulates corporate financial practices and provides protection for whistle-blowers.
- While different cultures have different ideas about what is ethical, working in a different country or with a client from another culture does not excuse you from following company policies regarding gifts, and so on.

? Exercise 4.3.1

1. Review the employee handbook of the company for which you work (or have worked). What are the company policies as they relate to travel expenses? How do you substantiate your travel expenses in order to get reimbursement? What are the company policies as they relate to confidentiality? What kind of information do you know that might be considered confidential?
2. Identify a situation in which you found yourself facing a conflict of interest: perhaps you had two after-school activities with equal claims on your time, or maybe you wanted to use your part-time job to give discounts to your friends. How did you resolve the conflict? Would you handle things differently if faced with the same situation again?
3. Research a whistle-blower not mentioned in this chapter. Who was he or she, and what did he or she expose? Do you agree with his or her decision to blow the whistle? Why or why not?
4. Find an example of someone who took part in bribery and was found out. Who was he or she, and what were the consequences of his or her illegal actions?
5. Describe what is meant by confidentiality. What does a company expect when a company policy states that employees are bound by confidentiality?
6. Describe the difference between unethical and illegal behavior. Is unethical behavior always illegal?

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