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Whistleblowers

Whistleblower Protection and Compliance: A Comparative Study of the United States and Japan

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Whistleblowing plays a crucial role in uncovering corporate misconduct, fraud, and violations of law and regulations. As organizations become increasingly complex and global, the importance of robust whistleblower protection and compliance frameworks has grown significantly, but different countries approach encouraging and protecting whistleblowers in different ways.

Examining whistleblower protection and compliance frameworks in the United States and Japan reveals both similarities and significant differences. While Japan has recently made strides in strengthening its whistleblower protection laws, the United States maintains a more established and comprehensive system. Both countries recognize the importance of internal reporting systems, confidentiality protections and anti-retaliation measures. However, the U.S. system generally offers broader protections, more varied reporting channels and unique financial incentives that are absent in the Japanese framework. At the same time, Japan's protections are centralized and cohesive, where the U.S. system is characterized by a complex web of federal and state laws.

This article compares whistleblower protection and compliance landscapes in the United States and Japan, two of the world's largest economies, with distinct legal and cultural contexts. By analyzing recent developments, legal frameworks and practical implications in both countries, we aim to provide insights into the evolving nature of whistleblower protection and its impact on corporate governance and compliance by highlighting similarities, differences and potential areas for improvement in both systems, offering valuable perspectives for policymakers, corporate leaders and compliance professionals operating in these jurisdictions or managing cross-border compliance programs.

See ["Japanese Companies Face Growing Anti-Corruption Enforcement Risk"](#) (Jan. 27, 2016).

Patchwork of Whistleblower Protections in the U.S.

Over the years, the United States has developed a complex system of whistleblower protection laws and regulations across various sectors and industries. While the protections are comprehensive,

some lacunae remain, and navigating the system can be confusing for whistleblowers.

Legal Framework

The legal framework for whistleblower protection in the United States is characterized by a patchwork of federal and state laws, each offering varying levels of protection and covering different types of disclosures. Key federal laws include the Occupational Safety and Health Act of 1970, which protects employees who report workplace safety issues; the Whistleblower Protection Act of 1989, which addresses fraud against the government; the Sarbanes-Oxley Act of 2002, which is applicable to employees of publicly traded companies; the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), which is the foundation of the SEC's successful and lucrative whistleblower reward program; and the Anti-Money Laundering Act of 2021 (AMLA), which encourages whistleblowers to report suspected money-laundering activities and other violations of the Bank Secrecy Act. Numerous state laws complement these federal statutes, often providing broader protections for whistleblowers.

Scope of Protection

In the United States, whistleblower laws offer broad protection to various individuals, encompassing current and former employees, job applicants, contractors, subcontractors and occasionally third parties knowledgeable about misconduct. The extent of protection provided under these laws varies according to their specific provisions. Typically, they cover disclosures related to violations of laws and regulations; instances of fraud, waste and abuse; risks to public health and safety; and misconduct involving financial practices and securities violations.

Reporting Channels

The U.S. system offers various avenues for whistleblowers to voice their concerns. While some laws encourage employees to initially report issues internally within their organizations, whistleblowers also have the option – and, in some cases, are even encouraged (as discussed in the next section) – to report directly to relevant government agencies. Additionally, some laws permit whistleblowers to report their concerns directly to members of Congress. Whistleblowers may also choose to disclose information to the media or the public.

Anti-Retaliation Provisions

U.S. whistleblower laws generally include strong anti-retaliation provisions. Employers are prohibited from taking adverse actions against whistleblowers, such as termination, demotion or harassment. If a whistleblower faces retaliation, they may be entitled to remedies including reinstatement, back pay and compensatory damages. In many cases, while whistleblowers may not avoid the responsibility of showing that the adverse employment action occurred because of their whistleblowing activity, the major burden of proof lies with the employer, which must demonstrate that the adverse actions were not retaliatory.

To be eligible for protection under the anti-retaliation provisions, whistleblowers must choose the appropriate reporting channels based on their specific claims. For example, the AMLA protects whistleblowers who report violations to the AG, Secretary of the Treasury, other regulators or members of Congress, or internally to their employer. In contrast, the Supreme Court determined in *Digital Realty Trust, Inc. v. Somers* that, in order to qualify for protection under the anti-retaliation provision of Dodd-Frank, an individual must meet the act's definition of a whistleblower, which includes reporting suspected violations to the SEC. Thus, employees who only make internal reports might not receive anti-retaliation protection under Dodd-Frank.

See [“What the *Digital Realty Trust* Decision Means for FCPA Compliance”](#) (Mar. 7, 2018).

Whistleblower Incentives

A unique feature of some U.S. whistleblower laws is the provision of financial incentives. For instance, the SEC's whistleblower program offers awards ranging from 10 percent to 30 percent of monetary sanctions for information that leads to successful enforcement actions. The AMLA whistleblower program boosted financial incentives by eliminating the previous \$150,000 cap on payments and mandating that the Secretary of the Treasury must issue awards to whistleblowers whose disclosures lead to successful enforcement. While the size of these awards remains discretionary, there is a statutory minimum of 10 percent of the sanctions.

These incentives have been widely acknowledged for their role in boosting both the quantity and quality of whistleblower tips, thereby enhancing regulatory oversight and corporate accountability. As a result, other U.S. agencies are looking to get in on the action: the DOJ's Fraud Section recently announced that it is developing its own whistleblower incentive program, and several U.S. Attorneys' offices have done similarly.

See the Anti-Corruption Report's two-part series on the DOJ's intention to launch a whistleblower program: [“What Will It Look Like?”](#) (Mar. 27, 2024), and [“What Does It Mean for Whistleblowers?”](#) (Apr. 10, 2024).

Challenges

Despite the comprehensive legal framework for whistleblower protection in the United States, several challenges persist.

One major issue is the complexity stemming from the multitude of laws and regulations governing whistleblowing. These complexities can often confuse both whistleblowers and employers alike, making it challenging to navigate the appropriate channels and understand the full extent of rights and obligations under the law for both companies and whistleblowers.

Inconsistencies across different laws and jurisdictions further complicate matters, as protections and procedural requirements can vary depending on the specific statute invoked or the state in which the whistleblower resides or works. Addressing these challenges requires a nuanced understanding of the legal landscape and careful consideration of best practices to ensure effective protection and support for whistleblowers across all sectors and industries.

See “[Government Enforcers Explain Their Approach to Whistleblowers and VSD](#)” (Jul. 17, 2024).

Japan’s Centralized Protections

While U.S. whistleblower protections are an often-confusing patchwork, Japan’s system of whistleblower protections are more centralized. Indeed, Japan has recently taken steps to strengthen its whistleblower protection framework, primarily through **amendments** to the **Whistleblower Protection Act** (WPA) that came into effect in June 2022. These changes reflect a growing recognition of the importance of whistleblowing in promoting corporate transparency and accountability in Japanese business culture.

Legal Framework

The cornerstone of Japan’s whistleblower protection system is the WPA, first enacted in 2004 and amended in 2020 (effective 2022). The WPA aims to protect whistleblowers from unfair treatment and encourage the reporting of wrongdoing in both the public and private sectors. Key features of the amended WPA include mandatory internal reporting systems for large organizations, an expanded scope of protected individuals, a broader definition of reportable matters, enhanced confidentiality requirements and stricter anti-retaliation provisions.

Mandatory Internal Reporting Channels

One of the most significant changes introduced in the WPA’s 2022 amendments is the requirement for organizations with more than 300 employees to establish and maintain internal reporting systems. This mandate aims to ensure that employees have accessible and reliable channels to report concerns without fear of reprisal. For organizations with 300 or fewer employees, while not strictly mandatory, there is a strong recommendation to implement such systems.

Expanded Scope of Protection

The amended WPA has broadened the range of individuals eligible for whistleblower protection. In addition to current employees, the WPA now extends protection to retired employees within one year of retirement; corporate officers, including directors and executives; and temporary workers and contractors. This expansion acknowledges that valuable information about misconduct may come from various sources within an organization’s ecosystem, not just from current full-time employees.

Reportable Matters

The scope of reportable matters has been expanded under the amended WPA. Previously focused primarily on criminal activities, the WPA now covers violations of laws and regulations, administrative violations and matters that pose significant risks to public health, safety or the environment. This

broader scope allows for the reporting of a wider range of misconduct, potentially uncovering issues before they escalate to criminal activities.

Confidentiality and Anti-Retaliation Measures

The amended WPA places emphasis on protecting whistleblowers' identities and preventing retaliation. It includes provisions to ensure these protections. First, there are confidentiality requirements, mandating that organizations must maintain the confidentiality of any information that could identify the whistleblower. Breaches of this confidentiality can result in criminal fines. Second, the WPA explicitly prohibits any form of retaliation against whistleblowers, including dismissal, demotion, pay reduction or other adverse treatment. Lastly, any retaliatory action taken against a whistleblower is punishable under the law.

Reporting Channels and Processes

The WPA outlines a three-tiered reporting system that begins with internal reporting, where employees are encouraged to report concerns through their organization's internal channels. If internal reporting proves ineffective or inappropriate, individuals can then report directly to relevant government agencies. In cases of serious violations or imminent danger, whistleblowers may disclose information to the media or other public channels. Additionally, organizations are required to designate responsible persons to handle reports impartially and ensure the effective functioning of the reporting system.

Challenges

While the WPA represents a certain step forward, several challenges remain in implementing effective whistleblower protection and compliance programs in Japan.

Excludes Foreign Employees and Entities

The WPA primarily aims to protect national "citizens" (i.e., Japanese citizens), and its application is limited to "workers" subject to Japan's labor standards, employed by Japanese entities and engaged in Japanese operations. Therefore, whistleblowers employed at overseas locations and engaged in foreign operations generally fall outside the scope of this law. While the WPA might apply to their whistleblowing if their employment contract stipulates Japanese law as applicable, it covers only facts related to violations of Japanese law. Furthermore, it is important to note that the local laws typically apply by default once corporations begin conducting business in those jurisdictions. This principle can complicate whistleblower protection, as different countries have varying standards and regulations regarding whistleblowing. In some jurisdictions, the laws may offer more comprehensive protection than the WPA, while in others, the protections may be weaker or nonexistent. This inconsistency can create challenges for multinational companies trying to implement uniform whistleblower policies across their global operations.

Does Not Cover Small Companies

The mandatory requirement to establish and maintain internal reporting systems does not apply to companies with 300 or fewer employees. Additionally, even for companies with more than 300 employees, the establishment of external reporting channels is not mandatory. The absence of external reporting channels does not necessarily create a neutral environment where employees can report without feeling internal biases or pressures. This lack of neutrality could undermine whistleblowers' confidence and compromise the reliability and effectiveness of internal reporting systems.

Difficult to Show Retaliation

Under the current WPA, whistleblowers must demand that businesses correct adverse treatment and, if necessary, file a lawsuit to prove that the adverse treatment was due to their whistleblowing.^[1] However, businesses usually possess more evidence and information regarding the motives behind actions such as dismissal, demotion or pay reduction. Unless the burden of proof shifts to the employer's side, this imbalance makes it challenging for whistleblowers to provide sufficient evidence, thereby discouraging them from reporting misconduct.

A Culture Issue Remains

Traditional Japanese business culture, which values harmony and loyalty, may discourage employees from speaking up about workplace issues.^[2] This cultural emphasis on maintaining group cohesion and avoiding conflict can create an environment where individuals feel hesitant to report problems or unethical behavior. Moreover, unlike the U.S. system, the Japanese system does not hold out the prospect of financial reward to whistleblowers who report corporate misconduct to Japanese regulators.

How Companies Can Encourage Whistleblowing in Japan

To encourage whistleblowing, Japanese companies need to ensure the confidentiality and security of whistleblower reports. Robust data protection measures, including local data hosting and encryption, are essential.

Additionally, comprehensive training programs are necessary to educate employees about their rights, reporting options and the importance of speaking up. For organizations that operate overseas subsidiaries or hire non-Japanese-speaking employees, providing multilingual reporting channels is crucial to accommodate their diverse workforces.

Furthermore, promoting a speak-up culture and offering internal incentives for reporting can further encourage employees to report misconduct. Independent reporting channels managed by third parties can ensure impartiality and protect whistleblowers from internal pressures. Regular monitoring and evaluation of whistleblowing systems are also crucial for maintaining their effectiveness and reliability.

See the Anti-Corruption Report's two-part series taking a fresh look at hotlines: “[Responding to a Global Focus on Whistleblowers](#)” (Sep. 2, 2020), and “[Fostering a Speak-Up Culture and Leveraging Data](#)” (Sep. 16, 2020).

What to Expect Going Forward

As global business practices continue to evolve and corporate misconduct becomes increasingly sophisticated, both the United States and Japan face ongoing challenges in refining their whistleblower protection systems. Future developments in both countries are likely to focus on enhancing the effectiveness of reporting mechanisms, strengthening enforcement and adapting to emerging risks in areas such as cybersecurity and ESG. For multinational organizations operating in both jurisdictions, navigating these different systems requires careful attention to local legal requirements and cultural nuances. Developing comprehensive, globally consistent, yet locally compliant, whistleblower programs will be crucial for effective risk management and ethical business practices in the years to come.

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[1] Iwasaki, M. (2023). Whistleblowers as Defenders of Human Rights: The Whistleblower Protection Act in Japan. *Business and Human Rights Journal*.

[2] Yamamoto, K., & Lloyd, R. A. (2019). Issues in international labor: A study of Japanese expatriates in Japan-based MNEs in the United States. In George, B., & Roberts, J. (Eds.), *The Changing Landscape of Global Business: Principles and Practices*, Cambridge Scholars Publishing.