

LAYOFFS AND EMPLOYEE DISCIPLINE: BUSINESS ETHICS ISSUES

*Dragoş BÎGU*¹
*Ionuţ ANASTASIU*²

ABSTRACT

The purpose of this paper is to examine from an ethical point of view employee disciplinary process and layoffs. In the first part, we have discussed the requirements of an ethical discipline procedure, which regard practices that are sanctioned, the characteristics of rules that are imposed, the system of sanctions and disciplinary procedure. In the second part, we have analyzed layoffs and we argued that they are legitimate if some conditions are met. These conditions refer to how the management should communicate with employees, select the laid-off employees, and mitigate the harm incurred to employees and communities. We have finished with some conclusions.

KEYWORDS: *employee discipline, layoffs, layoff communication, outsourcing*

JEL CLASSIFICATION: *J63, M1*

1. INTRODUCTION

Many debates in the ethics of human resources management are conducted in terms of an ideal setting, where ethical conduct is equally beneficial to employers and employees. In this article, we will discuss two less than ideal situations in the life of a company: when one of the employees commits an act of misconduct or a significant mistake, which requires disciplinary action, and when, for economic or business reasons, layoffs are conducted. We will analyze to what extent the two types of measures (layoffs and sanctions) are justified and how the management of companies and human resources departments should act in such situations. In the first section, we will focus on the issue of disciplinary measures, and in the second on the ethics of layoffs. In the final section, we will draw some general conclusions regarding the two issues.

2. DISCIPLINARY MEASURES: AN ETHICAL ANALYSIS

When an employee commits, intentionally or negligently, an act that significantly affects the company's activity or adversely affects its image, he/ she can be justifiably disciplined. However, the fact that in such situations disciplinary measures are justified must not make us overlook the need for companies to comply with some ethical requirements in applying sanctions. These requirements concern four issues: i) the nature of the practices and types of behavior that are sanctioned, ii) the characteristics of the rules by which these practices are sanctioned, iii) the system of sanctions imposed inside the organization and iv) the disciplinary process by which the sanctions are established. In this section, we will refer to these four issues.

As for the first element, companies legitimately sanction those acts that have a negative effect on the organization, by affecting the quality of delivered products or service, the work environment, the company image, etc. Some observations are needed. First, sometimes companies misuse internal regulations by using them to punish actions that are ethically correct and beneficial for the society,

¹ Bucharest University of Economic Studies, Romania, dragos_bigu@yahoo.com

² Bucharest University of Economic Studies, Romania, i_anastasiu@yahoo.com

but in the short term damage the company. A commercial employee can be punished, formally or informally, for advising a customer not to buy a product that is not suitable for his needs. Such sanctions are not the result of an ethical environment in the organization and they are not in the long-term benefit of the company. Secondly, disciplinary measures have a preventive dimension and, for this reason, some actions, which are risky, but have not actually led to negative consequences, can be legitimately sanctioned.

Thirdly, sometimes corporate sanctions concern employees' off-the-job acts that are unethical or at least contrary to accepted values of the community. Such sanctions raise some objections, since companies should not interfere in employee's private lives. The fact that a type of behavior is immoral or even illegal is not in itself a reason for discipline in the workplace. However, off-the-job practices that are immoral (or are considered immoral in the society) may harm company's image, employee's job performance or work environment – and these are legitimate grounds for sanction. In such cases, the harm and how company's legitimate interests were injured should be proven.

The decision to discipline the employee must be the result of an applied analysis that mainly considers two general factors: the connection between the off-the-job action and employee's performance on the job and the degree to which the employee's conduct can impact the overall public image of the company. As regards to the first aspect, an act that is immoral or considered as such must be penalized by the company only insofar as it relates to offender's job or to the values publicly assumed by the company. For example, it can be argued that a racist public action of an employee harms the image or the work environment of a company for which ethnic diversity is an important value.

As regards to the second factor, employees' actions affect differently the image of the employer. The actions of the top managers of the organization have a more serious impact on the image and reputation of the organization than those of the rank-and-file employees. Other elements can also be relevant for the impact of employee's action on the company's reputation. For instance, the reprehensible actions of an employee dressed in the company's uniform can be easily connected to employer's image, and the harm to company's image is obvious.

The second element regarding the sanctions imposed by the companies concerns the character of the rules that employees must observe. These rules should be stated as clearly as possible and encoded by internal documents (internal regulations, codes of conduct, codes of ethics), which are formally communicated to employees. Unfortunately, it is almost impossible that the rules imposed on employees do not contain vague terms, such as "civilized behavior" or "activity that damage company's reputation". As far as possible, these phrases should be detailed by internal documents.

At the same time, the rules must be reasonably and intelligibly linked to company's legitimate interests, or to the company's policy and objectives. Employees should be able to easily understand why the rules are imposed and how breaking them would harm the company. Some of the rules have rather a preventive character, as they sanction conducts that do not necessarily lead to negative consequences. For example, banning love an affair between coworkers is partly justified by potential negative consequences for the organization, for example after breaking up, if the relation will not work out. Although sometimes challenged, such rules can be justified if the negative consequences are high and cannot be avoided by other measures.

The third element relevant to the question of fairness of discipline in workplace relates to the sanctions that are imposed. They must be proportionate to the seriousness of the misconduct (Sims, 2017, 443). In estimating the seriousness of an act of misconduct, some factors are important: the consequences for the organization, whether the act was intentional or not, repeated or not. In assessing the severity, the actual consequences are important, but also the potential danger to which the organization has been subjected by employee's conduct. It is important that the sanctions system should include sanctions of different severity, which have to be used in a fair and reasonable manner. Let's take the example of some employees who were fired for unjustified criticism of the company. Without challenging the justification of a sanction, we may wonder whether, at least in cases where the employee is at the first mistake, a milder disciplinary measure would not be more

appropriate. A criticism of a single employee does not have a strong impact on the company's image and reputation. In addition, the first error of this kind can be considered an act of negligence for the employee who probably did not intend to damage company's image.

Finally, the fourth element that should not be overlooked in the analysis of a disciplinary system is the process of imposing sanctions (Shaw 2014, 319). Investigation of the alleged acts of misconduct should be conducted by independent ethics committees. Their decisions should be based on internal regulations, interpreted in a fair and reasonable manner. In conducting their investigation, the ethics committees must observe some of procedural safeguards. The investigation process must be carried out in a fair, impartial and objective manner. The committee's decision must be based solely on evidence and the investigation must be free of bias and prejudice. An employee cannot be disciplined as long as there is not sufficient evidence against him or her. The employee must be informed of the accusation against him/her. The employee has the right to express his/her opinion during an objective and good faith hearing. Finally, it is important that the rules are equally applied to all employees, and similar facts must be similarly treated.

2. LAYOFFS: AN ETHICAL ANALYSIS

In the last section, I referred to the dismissal of employees as a disciplinary measure. However, employees are often fired for objective reasons, which are not the result of their misconduct or incompetence, but are related to the company's economic situation. In most cases, layoffs affect a significant number of employees, which sometimes leads to a problem for the whole community, not only for the individual employees that are fired. We should draw a distinction between two general situations when companies choose the solution of layoffs: those when redundancies and reorganization are the ultimate solution for avoiding bankruptcy, and those in which they aim to increase company's efficiency, which, however, would survive without redundancies (Gilbert, 2016, 173).^{1,2} We will examine the two situations differently.

First, there are situations where the company is in a very difficult situation and firing some employees becomes the only way for it to avoid bankruptcy. In these situations, layoffs are justified. Postponing redundancies may lead to bankruptcy, which would result in a worse state for all employees. Therefore, the solution to dismiss some of some of them is a preferable solution from a utilitarian point of view (Gilbert, 2016, 173). At the same time, managers' main objective must be the company's survival and, when redundancies are the only solution, they become justified. What can be required from company's management is to try to take alternative measures to avoid redundancies or at least to reduce their number. For this purpose, managers can take decisions such as early retirement of some employees, elimination of overtime and hiring freeze (Weber, 1994, 24). Other more unpleasant short-term decisions for employees can be sending them on unpaid leave for a few days a month, or cutting their wages.

In companies whose top management is paid much better than regular employees, reducing the compensation received by managers can be a way to reduce the number of redundancies. Is this measure, sometimes accepted by the management of companies in a difficult economic state, an ethically required measure or only a praiseworthy measure, placed beyond the realm of moral duty? A final answer is difficult to give. It can be argued that when it is taken for a limited period and the number of redundancies avoided is significant, this measure is one that brings long-term benefits to the company, which will keep a number of qualified employees and increase their loyalty. Unfortunately, sometimes these measures are not sufficient, and the layoffs are the ultimate solution for the company to survive and for the other employees to get their salary.

As we have shown above, redundancies can be easily justified if they represent the last solution to avoid bankruptcy. However, not all cases fall into this category. There are a number of situations in which redundancies aim at significantly increasing company's efficiency, even if the company as a whole would survive without layoffs. Are layoffs justified in such cases? An answer to this problem

leads us to a fundamental problem of business ethics. Undoubtedly, the ultimate goal of managing a company is profit. A private business is essentially defined by the fact that the owners (shareholders) aim to profit. Of course, companies have often other goals, such as increasing market share or expanding to other markets, which often reduce profit in the short run. However, in the long run, these objectives are subordinated to the aim of profit. Profit can be seen in two different ways. According to the first view, the legitimate objective of a company is profit maximization, and since legal and ethical obligations to stakeholders are complied with, corporate management is entitled to do anything to maximize profits. According to the second view, a moderate profit rate is the legitimate objective of the companies and the long-term condition for its survival. Beyond this rate, however, companies have an ethical obligation to also consider the interests of the stakeholders.

If the first view is accepted, the layoffs for increasing efficiency and so profit are not ethically problematic. Employees do not have the right to keep their job in a particular company,³ and their dismissal for increasing efficiency does not violate any obligation of companies. We cannot deny that layoffs have a negative impact on employees and their families and that they are not to blame for company's situation, but this does not mean that there is a violation of employees' rights. Under these circumstances, it is morally acceptable for company management to do layoffs in order to increase efficiency. If the second view is accepted, beyond a certain profit rate, pursuing increase of profit at the expense of employees is unethical.

Examination of the two approaches to profit would take us too far from our topic. However, I will briefly argue for the former. Profit should not be seen as a necessary evil, but as a justified reward for the company's performance. In a competitive market, if the company complies with legal and ethical norms, a high profit is evidence of an efficient production process and of a better satisfaction of consumers' needs. Profit shows how effectively resources are used and, for this reason, increased profit is beneficial to the society as a whole. This overall view of profit maximization is correct also in approaching the layoffs, which I will continue to show.

There are three main situations that prompt companies to make layoffs. The first one is when significant technological advancement occurs, which makes human labor be displaced. Mechanization, for a long period in history, advancement of computer technology and automation, nowadays, are examples of such advancements that bring about layoffs. The second circumstance that typically leads to layoffs is mergers and acquisitions, which result in redundancies, as the two staffs combine. Finally, the third event is the outsourcing of some jobs, often in countries where labor is cheaper, which result in layoffs in the location that is left by the company. We will briefly examine the three types of situations, and we will argue that, although undesirable, layoffs are not unethical.

From a right-based perspective, I have already argued that, if correctly managed, layoffs do not violate any right. From a utilitarian perspective, it is true that layoffs are harmful for employees, their families and sometimes for communities. However, there are also important benefits. In all three cases, reduction of costs generates lower prices, in the benefit of all consumers. Other benefits should not be overlooked. Technological progress creates new jobs. First, even if the technology decreases the number of jobs in the field where it is used, labor is needed in order to build and develop the new equipment. As an example, accounting software leads to loss of jobs for accountants, but new jobs are created in software industry. Secondly, technological advancements provide important cost savings, which are used by the companies for investment and hiring new employees in other positions.⁴ Outsourcing also creates new jobs, in the cities where the business processes are moved.

The fact that layoffs are ethically acceptable should not make us overlook that during such events companies should comply with some norms. From a legal point of view, in most countries there are some laws that regulate layoffs. For instance, employees are entitled to a minimum period of notice on termination of employment. As a provision of a law or of the collective employment agreement, dismissed employees are entitled to compensatory payments. In some countries, there are laws that regulate the role of trade unions in the dismissal process or provide rules for selecting employees

that are dismissed. Apart from legal norms, companies should also comply with some ethical requirements, which can be classified in four categories: communicating with employees about the whole process, selection of laid-off employees, informing laid-off employees, alleviating the harm incurred to employees and communities.

Companies are required to make layoffs in an honest and transparent manner, to explain to employees why the solution of layoffs is chosen, what are its benefits for the organization and how the organization will change after layoffs. The top management of companies often avoids informing employees on the layoff process, in order not to produce chaos in the organization. However, employees will probably hear about the layoff process, and the rumors will create more chaos than open information. After the important decisions about the layoff process were taken, it is better for managers to inform transparently employees about the whole process.

The selection of laid-off employees should be made on the basis of clear, objective and impartial criteria, communicated to all those involved. These criteria should be related to company's legitimate interests. Criteria that are discriminatory or related to personal factors (such as family problems, the difficulty to find another job) should be avoided. If the company is able to provide severance payments, an adequate strategy that is often used by companies is to let employees accept voluntary layoffs in exchange of attractive severance packages. If the number of voluntary layoffs is not sufficient, a tempting idea would be to use performance criteria in order to select employees for layoffs. However, for many positions designing indisputable and clear and objective performance criteria is not easy at all. Such criteria should be used, but they should be supplemented by other criteria.

The laid-off employees should be treated with dignity. Managers should talk face to face with redundant employees, but not by e-mail or telephone, explaining them the reason of their decision (Trevino & Nelson, 2005, 302). Showing some empathy and offering help, but not promising more than can be delivered, are necessary elements for an ethical process. A solution that is often implemented, at least in some countries, is to give employees just a few minutes to leave completely the company, in order to prevent sabotages from disgruntled employees.⁵ If not necessary, such solution should be avoided, since this policy harms employees' dignity.

The last point concerns the solutions that should be used by management in order to mitigate the harm that is done to employees and communities. Providing severance payments, even not required by law, is such a solution.⁶ Often large companies can provide outplacement services, helping employees to find other jobs. Funding training courses for employees and for the whole community is another solution to alleviate the harm done by layoffs.

3. CONCLUSION

In this paper, I have discussed from an ethical point of view two topics: employee discipline and layoffs. I will finish drawing two common conclusions. First, the two sections show that some practices that are harmful for some parties can be ethically acceptable. Although both disciplinary measures and layoffs harm employees, they can be ethically acceptable for two reasons. First, from a right-based perspective, when correctly managed, they do not violate employees' rights. Secondly, from a utilitarian perspective, taking into account all stakeholders, benefits can outweigh harms. The second conclusion is that even if these practices can be ethically acceptable, companies should comply with some moral requirements of fairness, honesty, transparency and respectful treatment.

ENDNOTES

¹ Gilbert draws the distinction between three categories of layoffs, but we include his second (to improve the company) and third category (to change the company by mergers or acquisitions) in a single class.

² The distinction between the two situations is not always clear-cut. There are many cases when without redundancies companies can survive in the short term, but in the medium or long term the company is put in danger

³ Employees do not have the right not to be fired (without qualification), but they have the right not to be fired for wrong reasons – for instance because they are member of a certain category – or without any justification. It is tempting to argue that because employees are not to blame for the circumstances that lead to their layoff, it is their right to keep their job, but this argument is not valid

⁴ In most cases, the new jobs require more skills and abilities than the previous ones and it's very difficult for unqualified employees that are dismissed to find a new job. However, it's mainly government's, not companies', responsibility to mitigate this social problem by implementing public policies.

⁵ For such an episode, see (Pfeffer, 1998, 25)

⁶ Kim (2014) argues that, even when not legally mandatory, severance payments are ethically obligatory, in order to preserve employees' dignity.

REFERENCES

- Gilbert, J. (2016). *Ethics for Managers: Philosophical Foundations and Business Realities*, 2nd Edition. New York and London: Routledge.
- Kim, T. W. (2014). Decent Termination: A Moral Case for Severance Pay. *Business Ethics Quarterly*, 24(2), 203-227.
- Pfeffer, J. (1998). *The Human Equation: Building Profits by Putting People First*. Boston, MA: Harvard Business School Press.
- Shaw, W. (2014). *Business Ethics: A Textbook with Cases*, 8th edition. Boston, MA: Wadsworth, Cengage Learning.
- Sims, R. R. (2017). *A Contemporary Look at Business Ethics*. Charlotte, NC: Information Age Publishing.
- Trevino, L. K., & Nelson, K. A. (2011). *Managing Business Ethics: Straight Talk About How To Do It Right*. Hoboken, NJ: John Wiley and Sons.
- Weber, L. J. (1994). Ethical Downsizing: Managers Must Focus on Justice and Human Dignity. *Health Progress*, 75(6), 24-26.