



When HR Goes BAD

Charges of fraud or misconduct by HR professionals can create havoc within an organization

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Abstract (summary)

Many employers look to the human resource department to be the voice of compassion, reason and ethics -- a corporate conscience. So whenever that conscience is accused of wrongdoing or unethical behavior, the damage to an organization can be devastating, both internally and externally. Cases of HR misconduct often go unreported and don't grab media attention like the major incidents of corporate fraud such as the collapses of Enron and WorldCom. The culture and tone of an organization does anchor employee behavior and how HR departments operate, says Molly McCoy, CEO of hrQ, a Denver-based consulting and executive search firm. Appropriate reporting structures and proper procedures to ensure that HR professionals follow the rules will help prevent questionable practices from spinning out of control. Having an ethics officer report directly to top-level management or even the corporate board can help ensure that unethical conduct isn't misreported or ignored.

Many employers look to the human resource department to be the voice of compassion, reason and ethics-a corporate conscience. So whenever that "conscience" is accused of wrongdoing or unethical behavior, the damage to an organization can be devastating, both internally and externally.

Cases of HR misconduct often go unreported and don't grab media attention like the major incidents of corporate fraud such as the collapses of Enron and WorldCom. Those cases, unfortunately, reflect a pervasive pattern of corrupt corporate cultures. However, HR misconduct does occasionally grab the attention of the media, and when HR professionals act unethically, that misconduct can appear more egregious.

"The culture and tone of an organization does anchor employee behavior and how HR departments operate," says Molly McCoy, chief executive officer of hrQ, a Denver-based consulting and executive search firm. "Most cases of corporate misconduct or fraud usually don't originate in the HR department. HR executives appear to be a little better behaved and significantly less in the spotlight than other executives when it comes to corporate scandals."

Still, incidents of wrongdoing by HR professionals do exist. Here are some recent examples of HR professionals gone wrong-and ways you can address or prevent similar problems at your organization.

Public Censure, Huge Fine

One case that appeared before the U.S. Supreme Court in January 2009 involved the employee relations director for the City of Nashville and Davidson County, Tenn., who was accused of sexual harassment by female members of his staff.

In the case, a payroll coordinator provided evidence and testimony during the internal investigation about the director's harassing behavior, but she did not file a harassment claim. After the city's investigation was complete, the director was not disciplined, and the coordinator who testified about the harassment was subsequently fired. She filed a lawsuit claiming retaliation. But because she had not previously filed a harassment claim, the lower court found that the law did not protect the employee from retaliation.

The Supreme Court ruled that the employee could claim she was fired in retaliation even though she did not formally file a complaint about her boss. The case was remanded back to the lower court, and on Jan. 25 a jury awarded the employee \$1.5 million in compensatory damages, back pay and future lost wages.

According to court documents, the investigation into the harassing behavior of the employee relations director was inconclusive. The city government found that he acted inappropriately, but it took no disciplinary action. City officials declined to comment on the case and referred to the city and county government's employee code of conduct, which was developed by a civil service commission appointed by the mayor.

The code states: "An employee of the Metropolitan Government shall not engage in any criminal, dishonest, infamous, immoral, or disgraceful conduct or behavior, activity, or association which discredits him and/or the Metropolitan Government. Each employee is expected to conduct himself both on and off the job in such a manner as to reflect credit on both himself and the Metropolitan Government."

McCoy and others interviewed for this article said they wonder if HR professionals' involvement in unethical behavior and corporate scandals could exacerbate legal situations and bring stiffer judgments and penalties on a company.

"I have no hard evidence to prove it, but anecdotally it seems that whenever HR is the culprit, then the reaction seems to be more severe," McCoy reflects. "This is because compliance with rules and regulations is often viewed as the specialty and provenance of HR."

A Worst-Case Scenario

Every once in a while, a case of HR misconduct appears that can best be described as a "worst-case scenario." A recent incident of misconduct among the HR staff for the city government of Asheville, N.C., serves as an example. In March 2010, four employees with the

city's HR department were arrested and charged with multiple counts of felony fraud and obstruction of justice in relation to their misuse of flexible spending accounts.

Lisa Roth, the city's HR director, and Robin Nix, assistant director of HR, resigned immediately after the felony charges were filed. The city dismissed Laura Masters, a compensation analyst, and Liz Oldre, a benefits specialist, when the charges were filed.

Nix pleaded guilty to the charges in September, received a suspended prison sentence and was ordered to perform 72 hours of community service. The court ordered Nix to pay \$8,524 in restitution to the city and a \$2,000 fine. Nix claimed that she did not know she was breaking the law when she filed for reimbursement from her flexible spending account for items that she never purchased.

Masters pleaded guilty on Oct. 5 to charges of forgery and obtaining property by false pretenses. In a plea deal with prosecutors, Masters submitted an "Alford plea," which allows defendants to plead guilty without admitting to committing the crime.

Masters told reporters as she left the courtroom that she "did not admit guilt."

Attorneys for Masters and Nix claimed that the two women never intended to break the law. Prosecutors presented evidence that in 2008 and 2009, Masters received \$19,052 in reimbursements from a health care flexible spending account for products and services that she never purchased.

Oldre still faces several counts of fraud for filing bogus reimbursement claims, while her former boss, Roth, is charged with felony obstruction of justice for lying and making false statements to investigators when questioned about the fraud allegations. The felony charges against the remaining two defendants were still pending in state superior court at press time.

Steven Wheelless, an attorney with Steptoe & Johnson in Phoenix, calls the case an aberration. "The majority of HR professionals are highly ethical people whose primary goal is to protect their organization from this type of behavior," he says. "But I believe a story like this will certainly grab the attention of employers throughout the country."

Investigators in the case accused the defendants of routinely flouting the flexible spending account rules and regulations by allowing employees to exceed the legal limit for deposits and by permitting several workers to start contributions to their accounts midway through the plan year.

"It's a particularly egregious situation and problem when staff members of the department entrusted to comply with the law are accused of fraud," Wheelless says.

The Road to Recovery

The ensuing scandal has rocked Asheville's HR function to its core and damaged the reputation of city government among citizens and city employees.

"Total recovery from a situation like this will be very tough if not impossible," predicts Michael Colledge, manager of faculty compensation for Brigham Young University and a member of the Society for Human Resource Management's (SHRM) Ethics Special Expertise Panel. "Once trust is broken, it is a very hard thing to regain and will take years to rebuild."

The city faces an even tougher road than a corporation might, because government scandals tend to be more high-profile. In addition, tens of thousands of residents and some of the city's 1,500 employees have most likely lost faith in the city government's HR function.

Any organization faced with a scandal or crisis of this magnitude must act fast, experts say. Managers need to show that they are committed to fixing the problems and ensuring that they never happen again.

"Management must go the extra mile when addressing a problem like this," says Louis Obdyke, who retired as the labor and employment counsel for Continental Airlines in September. "You really cannot over-communicate in a situation like this. It's vitally important to get out there and deliver the message that management is doing everything possible to rectify the problem."

Town-hall-style meetings with staff members, where they can ask questions directly to senior executives, are an excellent way to begin rebuilding trust, suggests Obdyke, who also serves on SHRM's ethics panel. Face-to-face meetings with supervisors and staff are another good idea and allow employees to express their concerns and receive immediate feedback.

"If employees feel left out or that they aren't getting the answers they want or feel they deserve, this can create even more problems in the long run," Obdyke says.

Asheville city officials moved quickly once the charges of fraud became public knowledge: City Manager Gary W. Jackson notified all city employees through e-mail and discussed the situation openly in an online video.

"Being open, honest and upfront is the best way to handle a bad situation like this," Obdyke says.

Checks and Balances

Obdyke and other experts agree that senior leaders can prevent such scandals from arising by having proper checks and balances.

Have a clearly defined reporting structure and ways to report unethical behavior, Obdyke says.

Appropriate reporting structures and proper procedures to ensure that HR professionals follow the rules will help prevent questionable practices from spinning out of control.

"I like to use the phrase that Ronald Reagan made famous back in the '80s: 'Trust but verify,' " says Jonathan Segal, a partner with the law firm Duane Morris LLP in Philadelphia. "Review reporting processes periodically and ensure that there aren't any breakdowns in communications or failures to follow established procedures."

Training and retraining supervisors and executives on an organization's reporting structure and conducting periodic reviews of ethics policies can help verify that business processes and procedures are followed correctly and that no shortcuts are taken.

Obdyke and Segal suggest that employers develop corporate codes of conduct. Ethics and professional responsibility should be spelled out, as should guidelines for disciplinary action for employees guilty of unethical behavior and misconduct. A corporate compliance officer who works at a high level within an organization's management structure can help ensure that the code of conduct is followed and adhered to, according to Obdyke.

A Hot-Button Issue

Organizational ethics has become a hot-button issue following a string of high-profile corporate scandals. As a result, McCoy says, recent graduates from MBA programs tend to list ethics and compliance among their fields of study and competencies.

A poll released by SHRM in October 2010 found that 48 percent of the 400 HR professionals surveyed reported that their organizations had ethics officers, while 52 percent did not. There is no evidence indicating that the number of organizations with ethics officers is increasing, but Obdyke and others say interest is growing among employers to make sure employees behave ethically.

Obdyke and Segal agree that reporting structures are crucial to ensuring that organizations adhere to ethical codes of conduct. Having an ethics officer report directly to top-level management or even the corporate board can help ensure that unethical conduct isn't misreported or ignored.

According to the SHRM poll, direct reporting to the organization's top executive is the most common structure for ethics officers. Approximately 44 percent of the respondents said their ethics officer reports directly to the chief executive officer, while 20 percent said the ethics officer reports to the chief HR or human capital officer and 10 percent report to the chief legal counsel. Each business should use whatever reporting structure works best for its corporate culture.

While HR professionals can give voice to a corporate conscience, there must also be policies and procedures in place to keep all employees from straying into unethical territory.

Online Resources

For additional information about addressing HR misconduct, see the online version of this article at www.shrm.org/hrmagazine/0111Leonard.

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