



Commercial Insurance Update

Topics Concerning Buyers of Commercial Insurance

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Workplace Investigations

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This topic is probably not one you spend a great deal of time thinking about. However, when you stop and consider the variety of workplace events and employee behaviors that could lead to the need for an investigation, it becomes apparent this area of risk management deserves careful attention.

Managing this risk is best done by creating and supporting a business culture that fosters mutual respect and professional interactions among company personnel. Companies who have developed a culture of honesty, openness in communications, and respect for all rarely have need to investigate employee misconduct. Employees who trust and have confidence in the owners and managers of an organization are far less likely to commit acts resulting in the need for an investigation.

However, when there is an event that triggers the need for an investigation, you must be prepared to conduct it.



SAMPLE CASE: *The receptionist has told you that for the past two months she has needed to purchase many more parking stickers than she thought necessary.*

Yesterday the Controller gave her two books of all day stickers, two books of one hour

stickers, and one book of half-hour stickers. Today she is missing one of the books of all day stickers. What should you do?

Why Investigate?

It's the right thing to do! Handling concerns or complaints made by employees in a swift and thorough manner demonstrates that you care about them and wish to provide a great place to work. This will also reduce your risk of lawsuits and government agency initiated investigations.

In many instances, there is a legal duty to conduct an investigation. If there are allegations of sexual

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harassment, discrimination, or retaliation the Equal Employment Opportunity Commission (EEOC) and Department of Fair Housing and Employment (DFEH) require a prompt, thorough and impartial investigation into the alleged harassment.

OSHA states that the employer has a duty to investigate if the employer is aware of dangerous activities by an employee or threats of workplace violence.

To comply with the Federal Drug-Free Workplace Act of 1988 and the California Drug-Free Workplace Act of 1990, investigations into alleged or suspected violations must be made.

Finally, the courts have concluded that a good faith, prompt, thorough investigation which leads to discipline or termination of an employee can mitigate or even defeat an employee challenge to that discipline or termination, even if facts subsequently come to light that would have changed the initial decision to discipline or terminate.



SAMPLE CASE: *This situation should be investigated because there is a possibility of employee theft. Our policy manual clearly states that theft is an unacceptable behavior, and employees found guilty of committing theft will be disciplined.*

We want to determine who is taking the stickers. Is it an employee, a security guard, the janitors, or someone else with access to the cash box where the stickers, along with some petty cash and postage stamps are kept?

When Should You Investigate?

We should investigate whenever we become aware of a situation that warrants an investigation, and whenever we are put on notice by an employee, client, vendor, etc. that something has occurred where an investigation is necessary. Some examples include:

- A complaint of sexual harassment
- Employee theft or embezzlement
- Acts of violence
- Dishonesty
- Unsafe use of company equipment
- Suspected use or possession of alcohol, drugs or other controlled substances
- Suspected falsification of records
- Complaint of unfair discipline
- Reported possession of firearms
- Complaints from a client



Risk Management Seminars

2010 Series

450 B Tower, 450 B Street, Suite 1800, San Diego, CA 92101-8005

- **Workplace Investigations**
When and How to Investigate Issues of Misconduct, Harassment, Discrimination, and Retaliation
Friday, February 19, 2010 7:30-10:00 am
- **Business Continuation and Exit Planning**
Tuesday, March 2, 2010 7:30-10:00 am
- **Sexual Harassment Prevention Training**
AB 1825 Compliant
Friday, March 5, 2010 7:30-10:00 am
- **Strategic Human Resources**
for Owners, Officers, and Business/Office Managers
Who Handle HR Part-Time
Friday, March 19, 2010 7:30-10:00 am
- **How to Become a Corporate Safety Officer**
Friday, April 16, 2010 7:30-10:00 am

For more information about upcoming seminars

Click [here](#) to view our seminar list and individual flyers

To sign up for upcoming seminars

Contact **Darcee Nichols** at dnichols@cavignac.com or **619-744-0596**.

All training sessions available to our clients

Reserve early / seating is limited! *

* **NOTE:** Due to the popularity of our seminars and limited seating, we regret we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.

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- Sharing company information with others outside the company
- Unsafe use of company vehicles



Additionally, you should review your company policies. Many employee handbooks contain language that detail under which circumstances an investigation will be undertaken. Remember, it is important to follow your policies (and not to amend them during an investigation).



SAMPLE CASE: *Investigations should be conducted whenever there is the possibility that company policy has been violated.*

What If You Don't Investigate?

One of the biggest mistakes managers and supervisors make is to ignore, dismiss as not significant, or even deny conduct that should be promptly and thoroughly investigated. This is understandable, but not acceptable.

It may be natural to avoid the uncomfortable situation that can be created when you become aware of and begin to deal with employee or third-party misconduct. However, that discomfort must be overcome, and a prompt, thorough investigation must take place.

When employees understand that the company will not tolerate unacceptable behavior, and will take prompt action to gather facts and take corrective action, they are more productive and better workers. This will create a safe workplace and build employee trust and confidence in management.



SAMPLE CASE: *The theft will most likely not stop, and the company will lose money every time a book of parking stickers is taken. Since they are housed in the cash box, there is also the risk of losing the small amount of petty cash kept there, as well as the postage stamp supply.*

Who Should Handle the Investigation?

Depending upon the severity of the situation, you may elect to investigate using your own personnel (HR Director, Safety Officer, Office Manager or company officer). Alternatively, you may decide to have an independent third party conduct the investigation. A third party investigator must be licensed either as an attorney or private investigator. Third party Human Resource consultants who are not licensed attorneys

or private investigators should not be relied upon to conduct investigations.

Someone in your organization should be designated as the person responsible for investigations, and should be knowledgeable about what is necessary to complete a thorough, impartial and complete investigation. That person should be competent to either conduct the investigation in-house or coordinate the third party resources for the investigation.

Proper handling of a workplace investigation will not only lead to a successful outcome, but can also help minimize your risk for legal claims.



SAMPLE CASE: *In this case, the in-house Human Resources Director will lead the investigation.*

Type of Investigation

You will use one or more of the six methods of investigation:

- **Physical Surveillance** – Watching the parking lot of your company to see whether the employees are dealing drugs during lunch.
- **Electronic Surveillance** – Setting up hidden cameras in the kitchen to see who has been stealing the cases of soda and wine.
- **Research and Internal Audit** – Using a CPA to conduct an audit of the books to isolate suspects in an embezzlement matter.
- **Forensic Analysis** – Use of a drug testing lab to substance test an employee when there is reasonable suspicion the employee is impaired and not able to perform the tasks of their job.
- **Undercover** – Use of an investigator posed as an employee in the workforce to gather evidence during the day-to-day activities of the company.
- **Interviewing and Interrogation** – Use of questioning to systematically collect information.

Which of these methods will you use? Which will be most effective and efficient, yielding the proper outcome?



SAMPLE CASE: *This investigation will consist of interviewing and interrogation. If we are not able to identify the perpetrator from this part of the investigation, we will consider electronic surveillance assuming the theft will occur again.*

The parking lot attendant, building janitorial staff, and security staff will be questioned (with a company representative present if requested).

2010 Human Resources Seminar Series

Workplace Investigations

When and How to Investigate Issues of Misconduct, Harassment, Discrimination, and Retaliation

Friday, February 19, 2010 7:30-10:00 am

If you find our "Workplace Investigations" article helpful, **don't miss this opportunity for expert instruction and hands-on experience!**

Participants will learn when and how to conduct workplace investigations as well as have an opportunity to practice what they learn by conducting a mock investigation. [Click here for more information.](#)

Investigations (continued from page 3)

Information gathered will be treated confidentially, and all involved will be counseled on the importance of keeping the investigation confidential.

Elements of an Investigation

Before undertaking an investigation it is important to think through and plan what you are about to do. The outcome of your investigation could critically impact the employment life of one or more of your employees. Be careful and deliberate in how you go about investigating.

Following are the critical elements of an investigation.

- **Commitment by Management** – Is company management fully behind conducting the investigation? Will it provide the resources necessary, and exhibit patience during the process?
- **Meaningful Objectives** – Establish the nature and scope of investigation. What are you investigating? Is this a complaint of harassment, theft, employee misconduct, etc.? Does this situation involve only in-house employees, or are there others involved?
 - If there are others involved, how will you get information from them? Is this a small matter where you will only need to verify the information provided before taking action, or is this a complex situation that will take hours of planning before you begin investigating?
- **A Well Designed Strategy** – How are you going to go about this investigation? What is the allegation? What are you trying to find out? Who should be interviewed? What questions will you

ask? Are there documents to review? Who will be part of the investigation team? Who should be present for the interviews?

- **Properly Used Resources and Expertise** – Will the time spent by HR and/or third party investigators to plan and execute the investigation be well spent? Will you need any additional expertise (CPA, forensic expert, etc.)?
- **Lawful Execution** – The investigation must be conducted in a way that protects employee privacy and follows all state and federal laws pertaining to employee rights. High ethical standards should be employed to plan and execute the investigation.

Documenting all of these steps is very important. Without specific and clearly documented plans, your investigation could appear to be fractured and haphazard. It may be easily challenged and characterized as less than thorough.



SAMPLE CASE: *The HR Director will work with the company's Safety Officer to plan and execute the investigation.*

- **Management Commitment** – HR Director discusses the situation with the CEO and secures support for the investigation.
- **Meaningful Objectives** – The objective of this investigation will be to find out who has been taking the parking stickers.
- **A Well-Designed Strategy** – We will use interviews and interrogation to discover facts. We will keep the investigation as confidential as possible so as not to dissuade the perpetrator from continuing to take stickers until discovered.
- **Properly Used Resources and Expertise** – HR estimates that between one to five hours will be needed to conduct the investigation.
- **Lawful Execution** – Employee privacy will be honored, but full cooperation is expected from every employee we speak with. Company policy will be followed, and full consideration will be given to ensure the methods used are lawful and ethical.

The Five Phases of an Investigation

An investigation is a story that unfolds as each phase of the investigation is undertaken. The five phases of a well done investigation are:



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- **Planning and Preparation** – Getting ready to conduct the investigation
- **Information Gathering and Fact-Finding** – Getting information, facts and evidence
- **Verification and Analysis** – Reviewing the information collected to determine fact from fiction, evidence from hearsay and to develop a well-founded conclusion from which to take action.
- **Determination and Implementation of Disciplinary and/or Corrective Action** – Corrective action must be fair and equitable. If an employee told some off-color jokes, would you terminate him/her for sexual harassment? Would you give a verbal warning to an accounting department employee who stole money out of the cash box? Would you put a written warning into the personnel file of an employee who became angry and shouted at co-workers?
- **Prevention and Education** – How did this happen, and how can you avoid a repeated event?



SAMPLE CASE:

- **Planning and Preparation** – We will speak with the parking vendor to see whether the stickers can be traced. If the parking vendor keeps track of who purchases which sticker numbers, we may be able to find out who is using them.
The parking attendant may be able to identify the user of the parking stickers. We will discuss this with the parking attendant at the booth.
- **Information Gathering, and Fact Finding** – We will develop a list of suspects (all of our employees, night janitorial crew, night security crew) and possible witnesses (all of our employees, night janitorial crew, night security crew, parking attendants).
If other interviews are necessary, we will conduct them in the office. If we need to interview the night janitorial crew or the security guard, we will coordinate with the building manager.
- **Verification and Analysis** – Our first step will be to ask the parking vendor whether the stickers were traceable back to the company. The stickers taken had a specific number on them. Can that number be traced back to our company's purchase?
If they can, we will ask the booth attendant if she will look for that number on the tickets turned in by the various people using stickers. If she will,

we have a fairly good chance of identifying the perpetrator.

- **Determination of Responsibility and Implementation of Disciplinary and/or Corrective Action** – *If the alleged perpetrator is identified by the booth attendant, we will determine "next steps" based on whether that person is an employee or third party. If an employee, the supervisor of that person and the HR director will meet with the alleged perpetrator to interview and find out whether they took the parking stickers.*

When presented with the evidence of the sticker on the ticket, and having been identified by the booth attendant as the person using the sticker, we expect a



confession. Absent a compelling reason why the stickers were taken, we will recommend termination due to violation of company policy and evidence that the person is not trustworthy.

If no confession is made, we will review the investigative process. When we've done all that can be done to gather evidence and facts, if the most logical conclusion is that this employee is the perpetrator, we will recommend termination.

- **Prevention and Education** – *The cash box that contains the parking stickers should be kept safe and secure, accessible to only a limited number of people. It should be kept locked when the office is not open for business or when the receptionist is not sitting at the front desk.*

Sooner or later, your company will face the need to investigate an employee. Being prepared to perform a well-managed workplace investigation will enable you to conduct such an investigation quickly, thoroughly and objectively. Appropriate outcomes will be easier to determine and measures to prevent a reoccurrence can then be adopted. ✂

Some of the material in this article was provided during a two-day seminar entitled "The Process of Workplace Investigations" presented in December 2009 by Eugene F. Ferraro, CPP, CFE, PCI. Mr. Ferraro is the president of Business Controls, Inc. BCI is again presenting this seminar on March 25-26, 2010 in Irvine, CA. Register online at www.businesscontrolsstore.com.

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.



Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Doctor's Orders!

If you're like most Americans, you might have vowed to lose weight or get in shape this year. Having trouble sticking to that plan?



You might want to set up a special appointment with your doctor (or other health care provider.) Healthy eating, weight management, and physical activity are not usually main topics of discussion during general office visits, especially when an exam is involved.

If you make an appointment solely to talk about your weight management goals, you'll be surprised what you can accomplish in that short visit. Even if you might feel uncomfortable discussing your weight, remember your doctor is there to help you, and has the best advice. Follow these tips for that visit:

- Tell your doctor you would like to talk about your weight. Share concerns about any medications you are taking.
- Write down your questions in advance, and bring a pen and paper to take notes.
- Bring a family member or friend with you for support if you are extremely uncomfortable at the thought of going alone. Another advantage is that this person can help you stay on track with your weight management plan.
- Make sure you understand what your doctor is

saying. Do not be afraid to ask questions, even about terminology.

- Ask for other sources of information, such as Web sites or brochures.
- If you want more support, ask for a referral to a registered dietitian, support group or commercial weight loss program.
- Call your doctor after your visit if you have any more questions. ✂

Source: NIH MedlinePlus

TV—the Death of You?

According to a new study as reported by Health.com, watching too much television can actually shorten your life.

The study consisted of 8,800 healthy adults. The findings? People who watched more than four hours of television a day were 80% more likely to die from heart disease, and 46% more likely to die from any cause, compared to those who watched less than two hours per day.

Furthermore, each additional hour spent in front of the TV increased the risk of dying from heart disease by 18% (and the overall risk of death by 11%).



Researchers think that the problem is not the act of viewing television, but more the position one sits in while watching it – leading to muscle inactivity.

If you enjoy television, why not put the treadmill in front of it and walk a couple miles? Or, get up and do stretches, push-ups and/or crunches during commercial breaks. Your body will thank you! ✂

Community Bulletin Board

"Neighbors helping neighbors in San Diego"



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To provide quality and compassionate services for the survival, health and independence of seniors living in poverty

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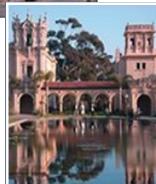
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