



Monday, October 25
9:00am-10:30am

111 - The Golden Rules of Workplace Investigations

William Barnett

VP and General Counsel

State Industrial Products Corp.

Matthew Mulroy

Vice President and General Counsel

Willis North America, Inc.

Robert Taylor

VP, Associate GC & Chief Ethics Officer

American Home Mortgage Servicing, Inc.

Faculty Biographies

William Barnett

William A. Barnett currently holds the positions of vice president, general counsel, risk manager and corporate secretary/treasurer for State Industrial Products Corporation. He is responsible for all human resources functions and for providing legal advice to the corporation and all of its business subsidiaries as well as representing the corporation in court. The corporate legal practice includes a significant emphasis on employment related matters including workplace investigations and alternative dispute resolution. Mr. Barnett was actively involved in the development and implementation of the State Industrial Products Alternative Dispute Resolution Program.

Prior to joining State, Mr. Barnett was an associate with the Cleveland law firm of McCarthy, Lebit, Crystal & Haiman, Co., L.P.A.

Mr. Barnett is an active board member of ACC's Northeastern Ohio Chapter and is a member of the Northern Ohio Regional Commercial Advisory Committee of the American Arbitration Association.

Mr. Barnett earned his JD at Case Western Reserve University and his BS from Northwestern University.

Matthew Mulroy

Willis North America, Inc.

Robert Taylor

American Home Mortgage Servicing, Inc.

The Golden Rules of
Workplace Investigations
ACC Annual Meeting October 2010

Presented by:
Robert Taylor
William A. Barnett
Matthew Mulroy

GOLDEN RULE #1-
KNOW WHEN TO INVESTIGATE

- FORMAL COMPLAINT
- ANONYMOUS COMPLAINT
- REPORTS TO SUPERVISOR OR MANAGEMENT
- GOVERNMENT AGENCY COMPLAINT OR INQUIRY
- CIVIL LAWSUIT OR CRIMINAL COMPLAINT
- ACCIDENT OR INJURY
- HAVING KNOWLEDGE OF FRAUDULENT, HARASSING, DISCRIMINATORY, THREATENING BEHAVIOR

GOLDEN RULE #2-
DEFINE THE SCOPE AND EXTENT OF INVESTIGATION

- SCALE THE INVESTIGATION TO THE SIZE OF THE PROBLEM
- DETERMINE WHICH FACTS ARE IN DISPUTE AND WHICH ARE UNDISPUTED
- HOW SERIOUS IS THE PROBLEM?
- IDENTIFY THE ISSUES
- IDENTIFY THE WITNESSES
- IDENTIFY THE DOCUMENTS
- BE PROMPT – GENERALLY 24 HOURS
 - EXPLAIN ANY REASONS FOR DELAY

**GOLDEN RULE #3-
CHOOSE THE RIGHT INVESTIGATOR**

- **EXPERIENCE**
- **IMPARTIALITY**
- **SENSITIVITIES**
- **PROFESSIONALISM**

**WHEN TO HIRE AN OUTSIDE
INVESTIGATOR:**

- MORE THEN ONE EMPLOYEE COMPLAINS ABOUT THE SAME SERIOUS PROBLEM
- ACCUSED IS A HIGH-RANKING EMPLOYEE
- THE COMPLAINT IS SUBJECT TO MEDIA ATTENTION
- COMPLAINING EMPLOYEE HAS HIRED A LAWYER, FILED A SUIT OR A CHARGE WITH A GOVERNMENT AGENCY (EEOC, OSHA, WAGE AND HOUR DIVISION)
- ACCUSATIONS ARE EXTREME (ALLEGATIONS OF RAPE, ASSAULT, THREATS, THEFT)
- HEIGHTENED NEED FOR OBJECTIVITY AND IMPARTIALITY

**ADVANTAGES TO HIRING AN
OUTSIDE INVESTIGATOR:**

- DOESN'T HAVE TO "LIVE" WITH THE EMPLOYEES AND/OR THE RESULT
- CLEAN SLATE (NO KNOWLEDGE OF PAST PERFORMANCE, DYNAMICS)
- WITNESSES MAY BE MORE FORTHCOMING
- BETTER ABLE TO SERVE AS WITNESS
- EMPLOYEES ARE NOT CONSUMED WITH INVESTIGATION INSTEAD OF WORK

PROS AND CONS OF HIRING LAWYER TO INVESTIGATE:

- **PROS**
 - EXPERIENCED EMPLOYMENT LAWYER WILL BE ABLE TO SPOT ISSUES AND KNOW WHAT ACTION TO TAKE TO AVOID OR MINIMIZE LIABILITY
 - LAWYERS ARE EXPERIENCED IN THE COURTROOM — STRONG WITNESS
- **CONS**
 - LAWYER WHO INVESTIGATES IS A POTENTIAL WITNESS AND THUS CANNOT REPRESENT CLIENT IN LITIGATION
 - LOSE OF ATTORNEY/ CLIENT PRIVILEGE
 - EXPENSIVE

GOLDEN RULE #4- CONDUCT EFFECTIVE INTERVIEWS

- **TIPS ON CONDUCTING EFFECTIVE INTERVIEWS:**
 - KEEP AN OPEN MIND
 - ASK OPEN-ENDED QUESTIONS
 - KEEP YOUR OPINIONS TO YOURSELF
 - FOCUS ON THE FACTS
 - FIND OUT ABOUT OTHER WITNESSES AND EVIDENCE
 - ASK ABOUT CONTRADICTIONS
 - DO NOT RETALIATE
 - ASK INTERVIEWEES TO CONTACT YOU WITH FURTHER INFORMATION
 - DOCUMENT YOUR INTERVIEWS

- **ALLOWING EMPLOYEE REPRESENTATIVES TO SIT IN**
 - UNION MEMBERS HAVE RIGHT TO REQUEST THE PRESENCE OF A UNION REP AT AN INVESTIGATIVE INTERVIEW THAT THE EMPLOYEE REASONABLY BELIEVES COULD RESULT IN DISCIPLINE
- **EMPLOYEE REQUESTS A LAWYER TO BE PRESENT**
 - NOT REQUIRED, BUT CONSIDER ALLOWING — CONSULT WITH LEGAL COUNSEL
- **ACCUSED REFUSES TO BE INTERVIEWED**
 - BEST PRACTICE IS TO HAVE A COMPANY POLICY REQUIRING PARTICIPATION
 - LET THE ACCUSED KNOW THAT YOU WILL CONDUCT AND COMPLETE THE INVESTIGATION WITHOUT HIS/HER INPUT
- **CONSIDER LOCATION OF INTERVIEW**

**GOLDEN RULE #5-
KNOW WHEN TO TAKE
INTERIM ACTION**

- **INTERIM ACTION SHOULD BE TAKEN WHEN:**
 - ALLEGATIONS ARE SERIOUS
 - SAFETY CONCERNS
 - THE ACCUSED EMPLOYEE CONTINUES TO MAKE MANAGERIAL DECISIONS
 - TENSION IN REPORTING RELATIONSHIP
 - ANY CHANCE OF RETALIATION
 - EMPLOYEE REQUESTS TIME OFF

- **APPROPRIATE INTERIM ACTION MAY INCLUDE:**
 - PAID TIME OFF (EMPLOYEE MUST PARTICIPATE IN INVESTIGATION)
 - CHANGE IN REPORTING RELATIONSHIPS
 - PHYSICAL RELOCATION
 - ALTERNATIVE METHODS OF COMMUNICATION (EMAIL V. TELEPHONE)
 - DRUG TESTING (FOLLOW COMPANY POLICY AND LAWS)
 - CAPTURING ELECTRONIC DATA (E.G. LITIGATION HOLD)

**GOLDEN RULE #6-
MAKE AND DOCUMENT DECISION**

- **EVALUATE THE EVIDENCE**
- **DECIDE WHETHER MISCONDUCT OCCURRED**
- **TAKE ACTION**

**TAKING ACTION IN
DISCRIMINATION INVESTIGATIONS**

- SEEK LEGAL COUNSEL IF CHARGE INVOLVES MORE THAN 1 EMPLOYEE
- INVESTIGATION = EVIDENCE
- PROPER INVESTIGATION CAN AVOID PUNITIVE DAMAGES AWARD
- NEED FOR IMMEDIATE ACTION MORE LIKELY
- BALANCE INTERIM ACTIONS V. RETALIATION
- END PROBLEMATIC BEHAVIOR
- RESTORE THE VICTIM

**TAKING ACTION IN
HARASSMENT INVESTIGATIONS**

- FINDING OF HARASSMENT = LEGAL DUTY TO TAKE PROMPT ACTION
- THE RIGHT CORRECTIVE ACTION
 - STOPS THE HARASSMENT
 - PREVENTS HARASSMENT FROM RECURRING
 - RESTORES VICTIM

**TAKING ACTION IN
THEFT INVESTIGATIONS**

- ENHANCE SECURITY AND SAFEGUARDS
 - ADD EMPLOYEES TO PROCESS INVOLVED
 - APPORTION RESPONSIBILITY AMONG EMPLOYEES
- SUSPEND SUSPECTED WRONGDOER – WITH PAY

- DOCUMENT THE INVESTIGATION
 - ORIGINAL COMPLAINT
 - SCOPE AND STRATEGY
 - INTERVIEW NOTES
 - RELEVANT DOCUMENTS
 - COPIES OF COMPANY POLICIES
 - NOTES OF WHAT WASN'T REVIEWED AND WHY

- CHECKLIST FOR WRITTEN REPORT:
- COMPLAINT – DATE AND DETAILS
 - WHY INVESTIGATION INITIATED
 - WHO CONDUCTED
 - WHEN INVESTIGATION BEGAN
 - WHAT DOCUMENTS AND OTHER EVIDENCE WERE GATHERED
 - WHO WAS INTERVIEWED
 - COMPANY POLICIES THAT ARE RELEVANT
 - DATE AND SUMMARY OF WITNESS INTERVIEWS
 - SUMMARY OF OTHER FACTS YOU NOTICED
 - CONCLUSIONS AND HOW THEY WERE REACHED
 - ANY UNRESOLVED ISSUES
 - ACTION TAKEN
 - RECOMMENDATIONS????????

**GOLDEN RULE #7-
CONCLUDE THE INVESTIGATION AND
FOLLOW THROUGH**

- Inform the employee who initiated the complaint of the results
- Inform the accused employee of the results and disciplinary action, if any
- Not necessary to inform witnesses – judgment call
- Prevent retaliation
- Follow up



Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.