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60-Second Memo

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When the MVP is the Alleged Harasser

By Marcie B. Cornfield, Esq.

Every company has one. The all-star. The top performer. The employee who goes the extra mile and commands the respect of his or her peers. With these exceptional performers, if a complaint of impropriety is made against one of them, the allegations can be hard to believe. Often, there is a natural instinct to defend them and maybe even to downplay the allegations. However, that is the wrong approach.

Now, we all have our blind spots. Mine was Brett Favre. I love the Packers. (My Wisconsin citizenship would be revoked if I didn't.) I love Aaron Rodgers, and before him I loved Brett Favre. In my mind, he always retired honorably as a Packer and faded into the sunset, another Title Town hero. Of course I learned of the allegations against him. My initial reaction was that there was no way the person I admired could ever do the acts alleged in the news. Not the guy who had the game of his life one day after his father passed away; not the guy with two daughters; not the guy who stood by his wife through breast cancer. Then I remind myself that as an attorney, this is the same type of conduct that plays out in workplaces across the country every day, and my reaction to the allegations against Brett Favre was the same as the reactions many employers have when a star employee is accused of impropriety. Moreover, football even offers some lessons for how to handle such situations.

As an HR professional, you receive claims ranging from the mundane to the absurd every day. Even if you don't personally believe the allegations, you need to investigate any and all complaints of harassment and discrimination. It does not matter who engaged in the conduct, whether it is a high level executive or

an hourly employee. It does not matter whether you personally believe the conduct occurred or whether the complaint seems completely implausible. Each claim deserves the same effort. (Just because it's third and long doesn't mean you don't have to play defense.) Otherwise, your policy is not worth the paper on which it is written, and your employees will lose faith that HR treats every employee equally. When investigating allegations against your star employees, it's important to remember the following Xs and Os:

- **Investigate all complaints.** You must maintain the legitimacy of your policies. To do so, all complaints must be taken promptly and investigated thoroughly, and seriously - regardless of who makes the allegations or against whom the allegations are made, or what you personally believe, whether it is a male employee complaining about a female co-worker, a male employee complaining about another male employee, etc.
- **Take prompt remedial action.** Where wrongdoing is found, take prompt and swift action. Document the action taken. Do not cover it up or excuse it, no matter who within your organization has engaged in the conduct. Star players may get the benefit of the doubt on the field, but they shouldn't in your office.
- **Update your policies.** Periodically update your workplace harassment policy to ensure it complies with the ever changing legal and regulatory environment. This helps protect your company in the event of a lawsuit and helps educate employees to spot possible illegal conduct.
- **Train and retrain (or: practice, practice, practice).** Retrain supervisors and all employees periodically to ensure they are aware of any changes in your policies, the law, and your complaint process and to help maintain a culture that respects the contributions and dignity of all employees. All new hires - especially supervisors - should receive your policy and training immediately upon commencement of employment. Training should cover both sexual harassment and other forms of workplace harassment and discrimination based on protected categories, such as race, national origin, religion, disability, and age.
- **Don't let your employees dictate the investigation.** When employees bring forth a complaint and say, "I just wanted you to know, but please don't do anything" or try to tell you how to conduct the investigation and who to interview, remind them that you call the plays and that there are rules you have to play by.
- **Make sure the punishment fits the crime.** With regard to the texting scandal that implicated Brett Favre, the NFL imposed a fine of \$50,000 - a punishment that many believed a mere slap on the wrist for what they considered very bad behavior. If employees believe that a star employee has

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"gotten away" with harassment or other wrongful conduct simply because he or she is a top performer in the company, you will hurt morale and have people believe HR is calling it for one side and the rules only apply to those who are not all-stars.

Vince Lombardi said, "The achievements of an organization are the results of the combined effort of each individual." As an HR professional, your effort goes towards ensuring that all employees perceive to be and are treated fairly and equally. By doing so you help create positive environments where every employee feels respected. Just remember these tips to make sure your blind spot doesn't cause you to get blindsided.

The author, while is decidedly embarrassed to admit it, would like to thank her husband for all football metaphors contained within this article.

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