

Workplace Investigations and Whistleblower hotlines

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ABC

Marketing Executive

BB Labs.

To,

Mr. XYZ

Human Resources

Dear Mr. XYZ,

I have been a faithful employee in this company for the past four years. My time at the company has been good one so far, but now a problem has crept up, which threatens to disrupt my otherwise peaceful time at the company. This letter is regarding the behavior of my immediate head, Mr. Spencer Gibson. Mr. Gibson is the head at the Marketing Department from the last two months, and for some reason of his own, he has singled me out to harass.

Ever since, he was transferred from another department to head the marketing division, he has managed to find some fault with me, even if there are none. I am constantly accused of not completing my daily work despite me meeting all my daily targets. Many times I have been kept out of team meetings. The formats for the reports are changed, and Mr. Gibson conveniently forgets to inform me about it, so that he has another reason to point fingers at me. On the

If this kind of injustice continues, I will be forced to consider my employment in the company. I have invested a good three years of my life, and would be heart-broken to leave this place. I have faith that you will help me sort out this issue with Mr. Gibson, and we may be able to find a way to co-exist.

Sincere Regards,

ABC

Marketing Executive

Wallace v UGG

Subsequent jurisprudence has identified several key areas where an employer's conduct will constitute bad faith that will attract *Wallace* damages:

- Making false accusations,
- Damaging the employee's prospects of finding another job,
- Misrepresenting the reasons for termination,
- Firing the employee to ensure deprivation of a benefit, and
- Firing the employee in front of coworkers.



Natural Justice

- Bias can take the form of actual bias, imputed bias or apparent bias. Actual bias is very difficult to prove in practice while imputed bias, once shown, will result in a decision being void without the need for any investigation into the likelihood or suspicion of bias.
 - Actual – established bias
 - Imputed – party to the action
 - Apparent – reasonable suspicion due to actions
- The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.



What Should Employer do once an Employee is Suspected of Misconduct?

- Legal counsel
- Human resources
- Determine if investigation is required
- Who should conduct the investigation
- Results of the investigation
- Insurance claim, civil remedy, criminal complaint with police
- Impact on internal controls, company policies and procedures



Options Available

- Status Quo
- Terminate employee with no investigation – cause or no cause
- Suspend employee - with or without pay
- Internal investigation or external investigation

Do Nothing?

- Perception that misconduct is condoned
- Could result in costly litigation
- If it happens again, insurance may not cover loss



Termination with No Investigation

- Allegations may be false
- Result in costly litigation
- Other employees may be involved
- Cannot determine the cause of the misconduct
- Need to prevent further occurrences
- Losses may be higher than expected

Why Investigate?



- Stop the misconduct
- Determine who is responsible
- Determine how it occurred
- Determine the value of the loss
- Implement procedures that will limit or prevent future similar incidents
- Protect yourself civilly

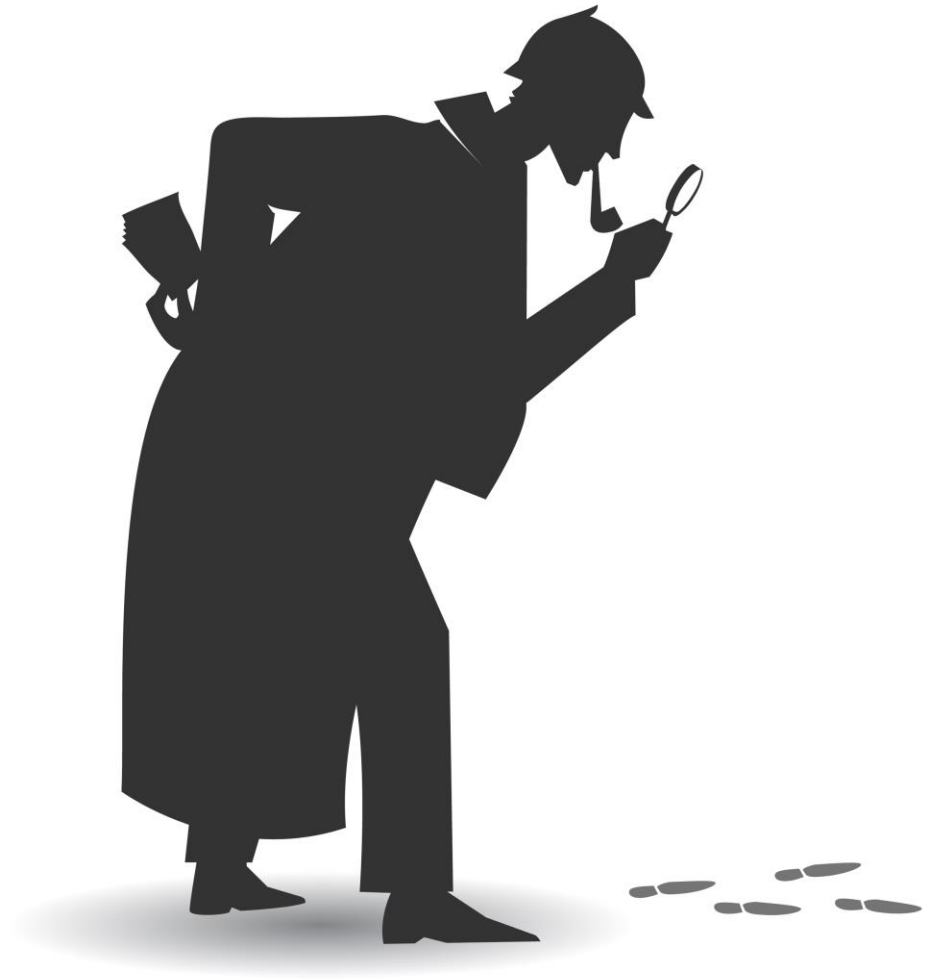
Investigations

- Full of surprises
- Unpredictable conclusions
- Employer should be cautious when investigating allegations of employee misconduct or making an allegation without proper investigation.
- Vested interest



Internal Investigations

- Possibility that staff performing investigation may commit criminal act
- Adequacy of tools
- Success in criminal and civil cases
- Can be expensive and disruptive to day to day operations



Issues to Consider when Conducting Employee Investigations



- Timing of suspension or termination
- Former employee does not have to cooperate
- Searches and/or surveillance
- Personal information about employees

Investigation plan

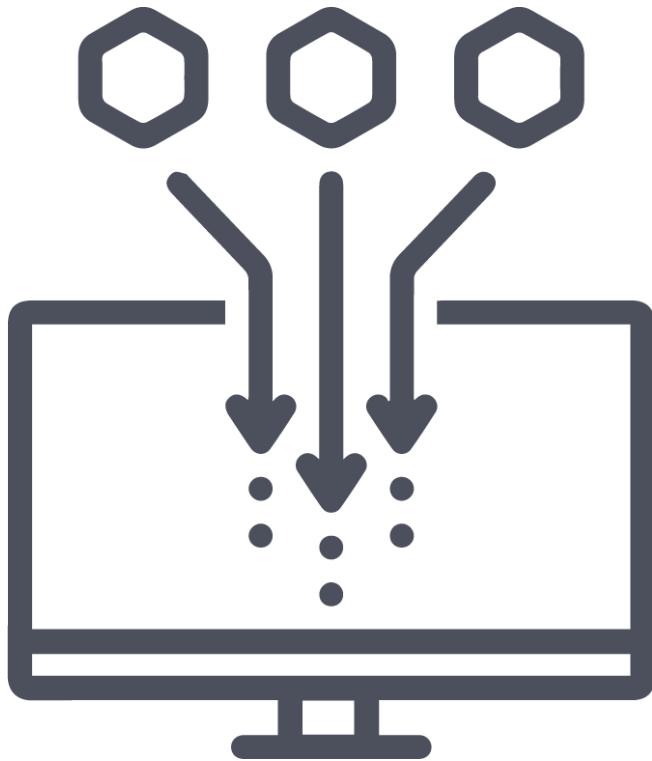
The organization should implement a crisis investigation and response which are critical to safeguarding the reputation of your municipality. On site personnel can provide investigation or strategic response to avoid or remediate litigation concerns.

Investigation plans address:

- Securing evidence
- Debriefing staff
- Interviewing witnesses
- Coordinating recommendations and response



Electronic Evidence



- More than information technology
- Process used by investigators to image computer hard drive(s), servers, PDA's, then review e-mails, documents, web usage
- Recover
 - Deleted files
 - Printed items
 - Web Site

Employee Computer

- **DO NOT** touch
- **DO NOT** turn it on or off
- **DO NOT** begin search through computer files
 - Alters files
 - Date and time stamps
 - Evidence that employee was the last person to use file



Victims/subjects

In the process of natural justice, the victim or subject is the person who is addressed first – there may be other parties which add context to your investigation – be prepared to explain why you did things the way you did

- Prep them with what will happen in the interview
- Make them comfortable
- Offer coffee, water or smoke breaks
- Be prepared for tears
- Take good notes or audio record



Witnesses

Identify with the victim who they think you should talk to. Record those names, you will be asked why you did not interview them:

- Explain confidentiality – this is a harassment investigation – you are likely unable to give them anonymity
- Explain the process
- Explain what you are looking for
- Be careful on your wording



Suspension checklists

- Plan your suspension; include legal counsel and a witness to protect your actions.
- Plan what you are going to say. Do not let your emotion damage this process.
- Collect any company car or vehicle keys.
- Collect and secure credit/purchase cards. Collect and secure stand alone computer, laptop(s), blackberry, Iphone, PDAs etc.
- Ensure telephone system reflects changes as well as taking away access to phone.
- Collect and secure all facility entry materials – keys and/or swipe cards. Change locks if there is concern that keys have been copied.
- Collect and secure all business cards with organization's name of it.



Hotlines

What is a hotline?

A hotline is a mechanism for a person, a stakeholder, employee or member of the public to report suspected acts of impropriety in an anonymous and confidential fashion.



Confidential and anonymous

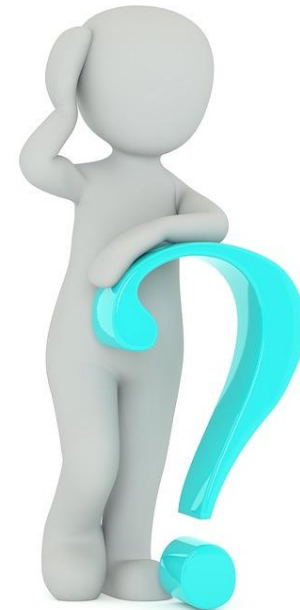
What's the difference?

- Anonymous means that the hotline does not collect any unique identifiers which would identify the caller eg the phone number or IP address; and,
- Confidential means that the vetted information will be provided to the organization only for the purpose of reporting ethical breaches

CONFIDENTIAL

Why Do We Need a Hotline?

- The average organization loses 5% of its revenue to fraud.
- Organizations tend to over rely on audits.
- Asset misappropriation is the most common offence.
- Corruption and kick-backs cause legal and reputational risks for businesses.
- Fraudsters typically display warning signs that they are engaging in illicit activity.

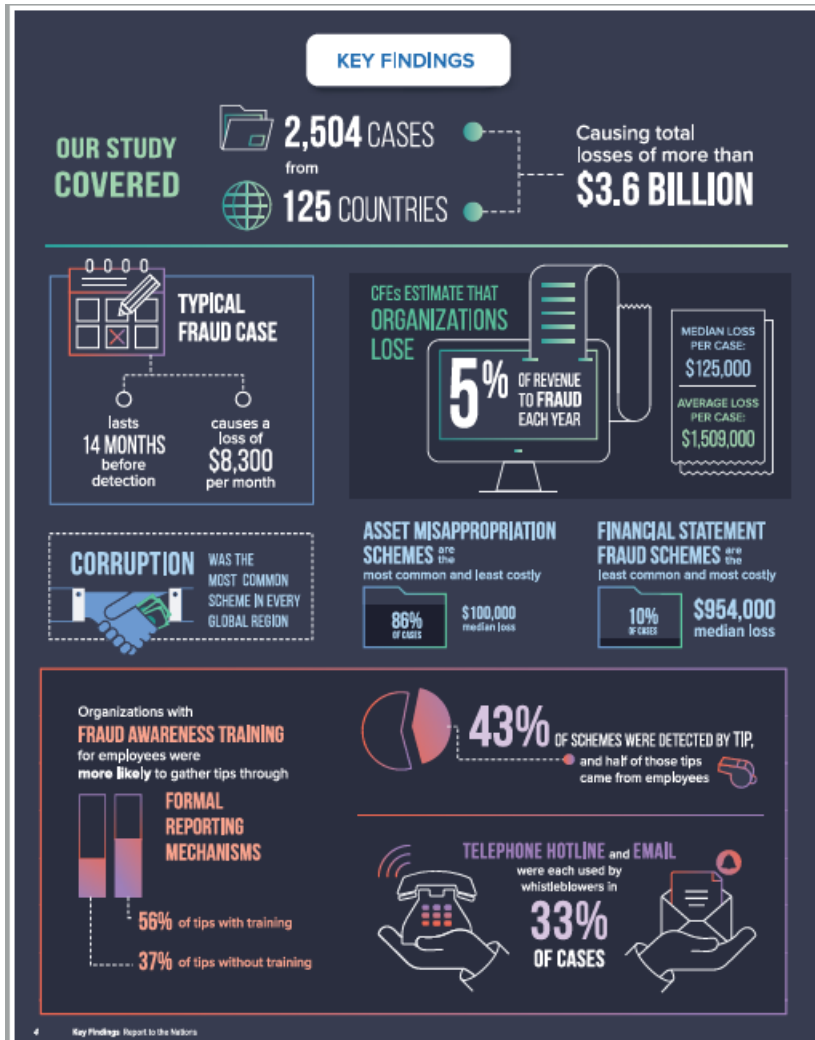


Why do we need a hotline?

- Smaller organizations suffer greater losses when victimized by fraud by an employee
- Lets your employees know you are an ethical employer
- Gives a place for people to voice their concerns
- Other employees are less likely to speak up:
 - Fear of losing ones job
 - Fear of speaking up about a superior
 - Small community everyone talks
 - Reputation in community



Report to Nations 2020 - Global Fraud Study



- 43% of schemes detected by tip
- Telephone and email used in 33% of cases
- Employees more likely to submit tips when combined with training

Checklists

- Make sure the alarm company is aware of changes and access is denied immediately for entry.
- Provide information immediately to HR so that direct deposit is stopped.
- Make sure that all remote access capability is turned off.
- Do not allow individual(s) to go back to their offices without an escort.
- Do not physically remove any property from their person.
- Tell them personal items will be boxed and shipped to them.
- Tell them that if they have any of the organization's equipment or materials at their residences it must be returned immediately



Checklists

- Ensure there is a communication strategy for the organization; external and internal – do not let rumours start or fester – your organization is spread across the country so you will need to ensure your staff are aware. You may have to make vendors aware of the situation.
- Consider changes to the organization website – be prepared to hear from media, community and third parties.
- Secure any parking passes



Questions?

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Thank you for your time



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