

UC IRVINE VOICES

Dolphins' scandal offers lessons in compliance

Whether it's an NFL team or an average employer, workers are entitled to protection.

A fiercely competitive game mixed with physical and emotional intimidation, youth, inexperience, big money and a loyal fan base is fertile ground for scandals. The NFL has had its share – and Commissioner Roger Goodell already had a full plate entering the 2013 season. The Miami Dolphins' so-called “bullying scandal” involving Jonathan Martin and Richie Incognito raises the issue of whether workplace compliance programs can prevent such human and organizational tragedies going forward.

Why is Roger Goodell managing the investigation into the bullying scandal and not the Dolphins franchise? The simple answer is that the NFL constitution and bylaws give the commissioner the authority to resolve disputes among players. The larger and more troubling question is why the misconduct wasn't identified and resolved before it blew up, requiring the commissioner's intervention? The investigation by the commissioner's designated attorney, Ted Wells, is still underway and all of the facts are not determined, but the answer may lie in whether or not there was an effective workplace compliance program in place.

Like any other employee, professional football players are entitled to protection in the workplace from harassment. Labeled “hazing,” “harassment” or “misconduct,” unwelcome values can creep into an organization at any time. The misconduct alleged by Martin involves a physical assault, sexually explicit language, racial slurs, threats of violence and vulgar statements toward Martin and his family. Whether this was a case of hazing or something more sinister remains to be seen.

The role of the general counsel is to make sure effective compliance programs are in place. They reduce the likelihood of tragedies, minimize legal exposure, and help shape the culture of an organization by instilling important values. An effective program would include

appropriate policies and procedures, regular training for employees, and a discipline structure that is enforced fairly and consistently. The training should be engaging and keep up with important changes in the law.

Successful compliance programs depend upon many factors, but it is critical that members of the organization's legal and executive leadership teams demonstrate the values outlined in

the program. In addition, publicizing and rewarding positive examples of employees living the values expressed in the compliance program can also be effective in bringing about the desired changes within an organization. Positive reinforcement is an important tool.

Workplace harassment claims are costly to employers and can lead to morale problems, lost productivity and increased employee turnover, all of which erode profitability. The Dolphins' scandal has already resulted in one player on indefinite leave and another on suspension.

The franchise could face liability for the alleged harassment under federal and state employment laws depending on what the pending investigation reveals. Franchise liability will likely depend upon what preventive measures were in place, how effective those measures have been, who participated in or knew about the misconduct, how long they knew about it and what was done about the misconduct after they discovered it.

The Dolphins' bullying scandal is a good reminder for all employers and their in-house legal teams to take the time to examine the effectiveness of their workplace compliance programs.

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