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34th annual WORKFORCE MANAGEMENT BRIEFING

High Stakes and High Priorities

Keep Calm and Focus on
Workplace Compliance

Thursday, October 15, 2015
New York Hilton Midtown
New York, NY

Your Workplace. Our Business.®

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Agenda

Introduction of Speakers

Workshop Topics

- Dodd-Frank and Sarbanes-Oxley Whistleblower Investigations
- Client Data Protection Security
- Fair Labor Standards Act (FLSA) Worker Misclassification Litigation
- National Labor Relations Board (NLRB) Developments

Some Compliance Conclusions

Dodd-Frank and Sarbanes-Oxley Whistleblower Investigations

An Initial Scenario

- An employee, Lena Landmine, walks into your office and hands you a piece of paper and says, “Look at this.” You read the following email:

-----Original Message-----

From: CL Ueless
Sent: Thursday, October 15, 2015 9:39 AM
To: Lena Landmine
Subject: RE: Wally Whistler

Lena,

Sorry for the belated notice, but we need the usual paperwork done to document Wally's termination, which we will notify him of today.

For this reason, put “performance issues,” I guess—you can fill in with the stuff that sounds right. I can give you more background when we talk; he's the guy who we hired into internal audit when he left his law firm. He never really figured out how to fit in here or how to stop being a lawyer. Just too much double-checking every little thing instead of keeping me and his other bosses happy. He works for us, not the shareholders of our parent company or the other companies that we are subbing for (though he keeps talking about them), for goodness sake.

And you should remember him. I think I told you about him after he raised that complaint about 3.5 months ago. If not, no big deal—even though he said it might violate some securities act or something to keep doing what we were doing. I don't think he really believed it because I told him I'd have Compliance look at it, and he never asked me about it again. Since he didn't seem to want to press it or even know how (because he said he'd go to SEC or OSHA; it's not like he tripped at work or something), I didn't bother Compliance with it. Just couldn't remember if I told you guys in HR or in Legal.

In the end, even if he wants to complain, I don't see how he could. He signed the confidentiality agreement, and he is a lawyer after all. He can't just go telling people about us and our stuff.

CL Ueless

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The Scenario Unfolds

- **Lena Landmine emails you a little bit later:**

-----Original Message-----

From: Lena Landmine
Sent: Thursday, October 15, 2015 10:27 AM
To: [You]
Subject: RE: Wally Whistler—Follow Up

Quick Update—Turns out that Wally had been complaining, among other things, about our lack of policies re cybersecurity and misplaced or unaccounted for laptops, etc., and how we were handling lots of personal information (health and credit card) of the customers of those companies we were subcontracting for (including our parent company). I guess providing shared back office services for large chains of plastic surgery centers, investment advisors, big box clubs, and computer stores isn't as easy as it looks.

Updating policy and getting report on cybersecurity audit was on our board committee agenda (or maybe parent's board, hard to tell) for the last two cycles but kept getting punted, or this would have become a non-issue, I think.

I know there is a spreadsheet with info on what was "compromised," which I think means misplaced for a while, and "lost," which may mean stolen and may just mean still misplaced, but IT still hasn't fixed my Excel (they said it is a malware issue, and others are in same boat).

Marketing and customer service have fielded some inquiries, but as of now, our spreadsheet info hasn't been disclosed to anybody outside the company, and we have no confirmed use of customer data by others.

I'd watch where our next step is. But I know that Wally is still being terminated today. (Heard that they are skipping his exit interview because Pat Sey is out, and nobody else wants to talk to him about his "issues.")

Lena Landmine

A Detour in the Scenario

- **Lena Landmine emails again in the early afternoon:**

-----Original Message-----

From: Lena Landmine
Sent: Thursday, October 15, 2015 11:31 AM
To: [You]
Subject: RE: Wally Whistler—Follow Up

I know that you said you needed all the relevant data pulled ASAP re the missing devices and the customer info, etc. Going to take a lot of clerical man hours. But we can make it work and not be too expensive.

I am sort of caught though—you want it all tomorrow and Penny Pincher last week said no overtime will be authorized for remainder of quarter because of budget issues. So, I will spread the assignment around.

Kelly and her group are hourly, but I will make them work through lunch instead of working overtime. They can get a lot done if they skip lunch and breaks.

We also have that IT IC group that does whatever we want anyway. They'd be happy to do it, and they are so used to taking orders from me that we don't even need to discuss it with their agency anymore. Really, it is just like having a second staff sometimes/most times.

Lena Landmine

Detour Leads to Not Unexpected Place

- **Lena Landmine emails again just before she leaves:**

-----Original Message-----

From: Lena Landmine
Sent: Thursday, October 15, 2015 4:31 PM
To: [You]
Subject: RE: Wally Whistler—Follow Up and New Problem (or Two)

Running out the door, but you should have almost all that info by first thing in morning.

Kelly and her group skipped lunch and breaks, but one of them (Mal Content) was really ticked off at my "request" and said so in a "Reply All" to some email that I had sent that group about donating to my son's school's Relay for Life drive. If she said that to my e-face, I knew she had to be saying worse behind my e-back. I know Kelly is her friend on Facebook, so I "asked" Kelly to show me what Mal was posting. (All them are connected to some "Unite!" page.) Well, when I saw her rabble rousing, calling me names, and saying I had cheated her and others out of overtime, I had enough—suspended her because she said those things about the work that I told her was part of your confidential investigation. Her posts violated policy and violated her agreement to keep stuff confidential.

That isn't the problem though. While she did say she was going to complain to NLRB, there's no union here so NLRB won't care. The problem is that one of these smart-aleck IT IC types started pulling the requested data as I "asked" and somehow found some of Wally's emails about this stuff (you know these IT guys; they find everything). Anyway, he starts repeating the same sorts of complaints that Wally had—I told this guy flat out to leave, and told the agency not to send him back. This was his only assignment, so they canned him. Turns out his brother is a lawyer, and he has already threatened to sue us and the agency for wrongful termination. I told the agency he was their employee and it is their problem.

Talk to you tomorrow.

Lena Landmine

PS Nobody escorted Wally out after he was terminated (short-staffed today). Saw him carrying out a big box, right after he stopped by IT for a couple of flash drives and asked that pain-in-the-neck IT guy for his brother's card.

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