

Unbiased Investigations Essential to Alleged Employee Wrongdoing

★ *Special to the Business Insider* ★
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It is now common sense to advise employers to have policies encouraging employees to report alleged harassment. These policies, of course, are intended to allow the company to investigate and deal with harassing conduct. Many employers, however, still fail to follow through with thorough, unbiased investigations and appropriate corrective action for wrongdoing. This can be a costly mistake.

In *Nestler v. Compass Group U.S.A., Inc.*, an employer's failure to undertake a proper investigation resulted in a \$15 million dollar punitive damage award, reported to be the largest punitive damages award ever for a single plaintiff sexual harassment claim. The plaintiff worked as a marketing coordinator for the company running the on-campus dining facilities at the State University of New York. Soon after she began her employment, her supervisor began making unwanted sexual advances and remarks to her.

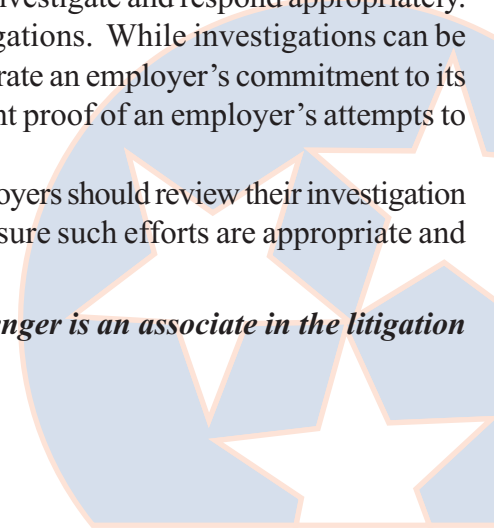
After enduring the harassment for some time, the employee lodged a complaint with the human resources department, pursuant to company policy. The company concluded the supervisor had an "inappropriate management style." It failed to conclude, however, that he had engaged in sexual harassment. The plaintiff was told the investigation had revealed no wrongdoing. The plaintiff subsequently resigned, citing the supervisor's harassment and the company's inaction.

The plaintiff's proof at trial indicated the company undertook only a limited investigation. She alleged the investigation was not geared toward helping her. Instead, the plaintiff claimed, the company's investigation was focused on preserving its \$15 million dollar contract with the university. The subsequent proof also disclosed information inconsistent with what the plaintiff had been told. By the end of the trial, according to media reports, the jury was visibly angry with the company for its failure to investigate and respond appropriately.

This is just one more example of the need for thorough, unbiased investigations. While investigations can be unpleasant, they are necessary. Thorough, good faith investigations demonstrate an employer's commitment to its Equal Employment Opportunity and harassment policies. They are excellent proof of an employer's attempts to prevent and remedy potential harassment.

As this case demonstrates, however, they can be a pitfall for the unwary. Employers should review their investigation procedures and train people responsible for conducting investigations to ensure such efforts are appropriate and accomplish the desired objectives.

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When President Bush signed the *American Jobs Creation Act of 2004* October 22, there was a collective sign of relief heard from manufacturers across Tennessee. There was also a resounding “thank you” to the entire Tennessee Congressional delegation.

While the Tennessee Chamber focuses much of its effort on state legislation and regulation, it utilizes its trade association partners in Washington to monitor, evaluate and impact federal legislation. The *American Jobs Creation Act* and its \$138 billion in tax relief, as well as repeal of sanctions on exports, is an example of our success.

The Chamber, working closely with the National Association of Manufacturers, pushed for legislation to repeal a U.S. export tax provision that had been ruled illegal by the World Trade Organization (WTO). As a result, the European Union (EU) was authorized to impose tariffs on U.S. exports of up to \$4 billion a year. The EU began imposing punitive tariffs on U.S. exports March 1 of this year, and these tariffs — currently at 12 percent — continue to rise one percentage point every month the U.S. fails to comply with the WTO decision.

The President’s signature on the bill laid the groundwork for a subsequent announcement that the EU Commission will recommend lifting current sanctions on some 1,600 American exports effective January 1, 2005. The Chamber has joined other associations in a letter requesting immediate lifting of the sanctions.

It is welcome relief to a recovering manufacturing sector. On behalf of the Tennessee business community and all its employees, the Tennessee Chamber thanks our two senators and eight House members for standing together to support manufacturing and the hundreds of thousands of Tennesseans who make things.

Manufacturing Champions

Tennessee’s two senators and five of its House of Representatives’ members are among the 279 lawmakers selected to receive the National Association of Manufacturers’ Award for Manufacturing Legislative Excellence in the 108th Congress. Each honoree compiled at least a 70 percent record on NAM-designated “Key Manufacturing Votes.”

The NAM “Key Manufacturing Vote” is designed to help employers and their employees across the country understand how his or her lawmakers voted on the issues that matter in the home and in the plant. The NAM “Key Manufacturing Vote” reveals which legislators support manufacturing and favor a pro-growth economy — and those who do not.

Senator Lamar Alexander and Representative Marsha Blackburn led the Tennessee delegation with 100 percent voting records; Sen. Alexander, on the 23 votes tracked in the Senate and Rep. Blackburn, on the 22 votes tracked in the House of Representatives. Senator Bill Frist was close behind with a 96 percent voting record, followed by Reps. Bill Jenkins and Zack Wamp, both



Mandatory Benefit Review Conferences Impact Workers' Compensation Programs

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The Tennessee Chamber has recently completed several workshops around the state regarding the new workers' compensation reform law. While the main thrust of the workshops is to prepare employers for the mandatory benefit review conferences (BRCs), other equally valuable information was shared. Our partner in these presentations was the Tennessee Department of Labor and Workforce Development. Employees from the Workers' Compensation Division included Sue Ann Head, Administrator of the Division, Teresa Bullington, Director of the Benefit Review Section, and Pete Halverstadt, the staff attorney responsible for enforcing the new penalties regarding timely payment of temporary total benefits.

Just as valuable to all the participants as learning about the BRC process was gaining an understanding of how the entire law will be implemented. It is one thing to learn the nuts and bolts of what the changes mean. It is quite another to learn the mindset of those who have the main responsibility for implementing workers' compensation law.

Court Not the Only Avenue

Stated simply, it is clear that the Division wants to make certain that all parties understand that employees and employers do not need attorneys and court hearings to settle claims -- even those of a serious nature. For those less serious claims, a BRC may not even be necessary. Through a careful process that insures all parties' rights are

The Chamber has scheduled an additional BRC Workshop and More November 30 in Chattanooga at the Reed House. The Chattanooga Manufacturer's Association is co-sponsoring this event. Contact Suzie Lusk at 615-256-5141 to register.

respected, settlements can be approved and made final without going outside the Workers' Compensation Division. While this element of the law has been in place since 1992, several provisions of the new reform act enhance this avenue for employers and employees.

For example, in "return to work" cases, when considering the newly reduced multiplier factor, there is not as much room for differences between the parties. Is the right multiplier 1.0 or 1.5 or somewhere between? That is an important change from the large gap between 1.0 and the former 2.5 multiplier. In addition, in cases where the benefits exceed 200 weeks in the settlement calculation, future medical benefits cannot be closed out as part of the settlement. Also, the new law prohibits the filing of a lawsuit until after the BRC process has been exhausted.

Given these features of the new law, it is likely that more cases can be settled without attorney involvement. Additionally, a BRC may only be necessary in the more involved and difficult cases. Only time will tell if more permanent partial disability cases will settle than do now without benefit review

or the courts. However, that opportunity to use an enhanced administrative system is real and employers can encourage the process.

Specialists Ready to Help

You can make your employees aware that the state employs specialists who can assist with their case. Give your employees this toll-free number to contact a state worker's compensation specialist: 1-800-332-2667. We would like to think that when we tell employees about workers' compensation laws we are trusted. As we know the legal issues surrounding these cases make all of us a little uncomfortable. It is natural then that sometimes employees feel a need to discuss their cases with someone other than their employer.

The workers' compensation specialist position exists for that purpose. Prior to making any change in the way you would handle a case, you should contact your insurance carrier or the attorney who handles your workers' compensation insurance. The specialists are there when employers need assistance as well. While they cannot give you legal advice about a particular employee's case, they can give you the information you need for understanding the law, and specifically how cases can be settled and approved.

Success Story

One of the presentations that has been made at all the Chamber workshops is a videotape of a story of an actual case that was settled through assistance of the

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New TABCOMP Administrator in Place

TABCOMP, the Tennessee Chamber's workers' compensation self-insured trust serving approximately 90 manufacturers, has announced the hiring of Canon Cochran Management Services, Inc. (CCMSI) to be administrator of the fund and to provide underwriting, claims, loss control and marketing services, effective November 1. Jerry Armatis, a partner in the company, will oversee the account, and Janet Bowman of CCMSI will provide marketing services. All TABCOMP services will continue to be handled by the same staff, ensuring that the same excellent underwriting, claims and personal service will continue.

"It is a win-win situation for everyone," said Deck Sachse, chairman of the TABCOMP Board. "We have one of the premiere companies in the nation administering our fund, and we are retaining those employees who have made our fund so successful."

"With our experience in third-party administration in 38 states, I think that CCMSI is in an excellent position to aid the Tennessee Chamber in growing the TABCOMP Fund, and in developing a menu of services to better meet the needs of today's workers' compensation market in Tennessee," added Armatis, vice president of CCMSI.

Deb Woolley, president of the Tennessee Chamber, said, "The availability of the fund to qualifying manufacturing members is a service that has immediate impact on the participating companies in terms of costs, safety and personalized workers' compensation insurance management. We are proud of the excellent record of TABCOMP and its participants, and we look forward to CCMSI's leading and growing the fund." CCMSI will operate out of the current offices on Old Hickory Boulevard in Brentwood and can be reached at 615-370-5964.

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Tennessee Manufacturers Win

with scores of 91. Rep. Jimmy Duncan had an 86 percent voting record, and Rep. Lincoln Davis, the lone Tennessee Democrat to earn the NAM's praise, posted a 77 percent voting record.

American manufacturers are the most productive, efficient producers in the world. They produce the best products made on Earth with the most efficient employees. This is done in a safe atmosphere that provides income for families and goods that make possible the quality of life enjoyed by Americans. True allies of manufacturing know that the spiraling costs for employee health care, regulatory compliance, taxes, energy, and defense against frivolous litigation must be controlled if American businesses are to continue competing successfully in global markets.

To those champions in our delegation who support manufacturing with words and action, we say "thank you for a job well done."

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Benefit Review Conferences

Division of Workers' Compensation. It is a case that could just as easily have ended up in a long and drawn-out legal battle. It did not, however, because the injured worker got the help he needed through the services offered by the state.

It was not an easy case. It involved the amputation of both of the worker's legs at the knee. While he reveals in the interview that he consulted an attorney, he states that he did not see the need to hire one. He and his wife explain that they received all the help they needed from a cooperative employer and insurance company with the assistance of a workers' compensation specialist. Employers who viewed this tape at the workshop have requested copies. You may order one from the workers' compensation division.

The new law is not the final word on reform. Much remains to be done. Definitions of what constitutes a workplace injury need to be addressed. The vast majority of employers would ultimately like to see the current court-based system swapped for an administrative one. Until these changes can be accomplished, employers have an excellent opportunity to reduce their costs especially in return to work cases with permanent partial disability. However, employees need to be educated about how the system can work for them and employers are in the position to do that with the help of state workers' compensation specialists.





Notice to the Membership

The members of the Tennessee Chamber of Commerce & Industry will elect officers and members of the Board of Directors, in accordance with the By-Laws, at a general membership meeting immediately following the board meeting at approximately 1:30 p.m. Central Time, December 14, 2004, at The City Center, 27th Floor, Nashville.

D. Lynn Johnson, chairman of the Tennessee Chamber and the Nominating Committee, said, “The Nominating Committee was very pleased with the openness of our process. We received nominations from the membership and were able to find slots for many of those nominated. As we make the transition to greater member leadership in the Tennessee Chamber, it is important that we find people to fill board seats who are willing and able to be involved in leading our organization toward greater effectiveness.

“While it is truly an honor to be asked to serve on the Tennessee Chamber board or Executive Committee, it is not enough to have board members filling honorary seats. More than ever, we need to have individuals fully engaged in leading the Tennessee Chamber to new heights while ensuring a balance among the Grand Divisions of the state and the various business sectors of the Chamber's membership.” The Nominating Committee included Johnson, Chris Karbowski, Bridgestone Americas Holding, Nashville; James Raines, Immediate Past Chair; Randy Kennedy, Procter & Gamble Co., Jackson; and Patsy Williams, Rhyne Lumber Co., Newport. Board of Directors are elected to three-year terms. Officers and Executive Committee members are elected to one-year terms and also serve on the Board of Directors. Here is the slate:

Officer Candidates

Chair: Christine Karbowski, Bridgestone Americas Holding Inc., Nashville

Chair Elect: Joe Internicola, DuPont – Old Hickory

Treasurer: Crawford Gallimore, Hamilton-Ryker, Martin

Executive Committee Candidates

Human Resources Committee Chair: Eva Lynne Disbro, McKee Foods, Collegedale

Tax Committee Chair: Andy Wagner, FedEx, Memphis

Manufacturing Excellence Council Chair: Darrell Corpening, Division Superintendent, Eastman Chemical Co., Kingsport

Public Affairs Committee Chair: Randy Kennedy, Procter & Gamble Company, Jackson

Environmental Committee Chair: Richard Holland, Packaging Corp. of America, Counce

At-Large Executive Committee Members

Tracy Woodard, Nissan North American, Inc., Smyrna

Jerry Dodds, Brother International Corp., Bartlett

Board of Directors Candidates

East Region:

Charles Floyd, Weyerhaeuser, Kingsport

Chuck Parke, Maytag, Cleveland

Patsy Williams, Rhyne Lumber, Newport

James Woroniecki, Denso Manufacturing

Tennessee, Inc., Maryville

Middle Region:

James Beard, Caterpillar Financial Services, Nashville

Dewayne Baskette, Grooms Engines, Nashville

Tracy Woodard, Nissan North America, Inc., Smyrna

Ted Welch, Ted Welch Investments, Nashville

John Van Mol, Dye, Van Mol & Lawrence, Nashville

Carter Todd, Gaylord Entertainment, Nashville

West Region:

Jim Davis, Goodyear Tire & Rubber Company, Union City

Andy Wagner, FedEx, Memphis

Ron Cooper, Southern Machinery Repair, Union City

At-Large:

Miles Burdine, Kingsport Area

Chamber of Commerce, Kingsport

Mark Palmeri, Falcon Plastics, Lexington

Andy Deakins, Young Touchstone, Jackson



Leaders Recognized at Conference

These industry leaders and Tennessee Chamber members received awards for their commitment to safety, efficiency and stewardship of the environment at the Tennessee Chamber's 22nd Environmental Awards Conference held at Montgomery Bell State Park near Dickson. Their collective efforts, often far ahead of regulatory requirements, in implementing changes to improve the quality of the environment and protect the health of Tennesseans was recognized as a tremendous service to future generations of Tennesseans as well as those who visit our state. To view each award in detail, visit the Chamber's website at www.tnchamber.org.



Weyerhaeuser Kingsport Paper Mill, Kingsport

Award for Water Quality
Award for Air Quality

*Lou Raasch, Environmental Manager;
Bill MacPherson, Engineering Manager*

(All Persons Left to Right)



Cytec Industries Inc., Mt. Pleasant

Achievement Certificate for Air Quality
Achievement Certificate for Water Quality

Achievement Certificate for Hazardous Waste Management
*Laida Williams, Environmental Engineer; Rick Hamilton,
Safety, Health, Environmental and Quality Assurance Manager*



Buckman Laboratories, Inc., Memphis

Award for Hazardous Waste Management

*Andrew Fondaw, Director of Safety, Health and
Environment; Pedro Bonilla, Senior Process Engineer;
Brad Walden, Associate Director of Procurement*



Alcoa Inc. Tennessee Operations, Alcoa

Award for Solid Waste Management
Award for Air Quality

*Chris Moore, Senior Staff Environmental Engineer;
Dale Huddleston, Environmental Manager*



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Environment



The Premcor Refinery Group Inc., Memphis Refinery
 Award for Air Quality
Mark Dinterman, Environmental, Health and Safety Manager;
Doris Boyd, Senior Environmental Supervisor;
Lisa Wheeler, Manager of Public Affairs;
Greg Bram, Refinery Manager



DENSO Manufacturing Athens Tennessee, Inc., Athens
 Achievement Certificate for Solid Waste Management
(Center) Jeannette Widman, Supervisor,
Environmental Engineering Department
DENSO Manufacturing Tennessee, Inc., Maryville
 Award for Hazardous Waste Management
 Award for Environmental Excellence
Bob Booker, Manager, Legal and Environmental Services;
Mike Fontinell, Staff Member, Environmental
Engineering Department



Bridgestone Firestone North America Tire - Warren County Plant
 Achievement Certificate for Environmental Excellence
Bridgestone Firestone North America Tire - LaVergne Plant
 Achievement Certificate for Water Quality

Bill Hawks, Plant Engineer; Sean Fisher, Senior Environmental Manager; Tim Bent, Director Environmental Affairs; Greg Morris, Senior Environmental Manager; Diane Scher, Manager Environmental Affairs, BFNT

Employers Must Get Behind High School Improvement

Ron Tepner, Bridgestone Americas' BFS Retail and Commercial Operations LLC

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With 195 million motor vehicles on the road today, there has never been a greater demand for highly skilled automotive technicians. For many years, automotive maintenance shops and dealerships have mumbled about a shortage of qualified workers. In recent years, however, that mumbling has escalated into an articulate roar. According to the Automotive Aftermarket Industry Association, which represents car repair businesses, the industry needs some 60,000 automotive technicians. Automotive Retailing Today, an association of major automobile manufacturers and dealers, projects a nationwide need for 35,000 new auto technicians annually between now and 2010. For anyone dependent on a car, truck, SUV or bus to get to work, these numbers should be alarming. These are good-paying, interesting jobs. With so many other types of positions disappearing, why is it so difficult to fill automotive technician slots?

The answer may lie in our high schools. We simply are not graduating enough students with the high-level math, physics, computer and problem-solving skills needed to deal with today's sophisticated vehicles. What sufficed a half-century ago, when only four out of 10 jobs required a high school diploma, is inadequate in an era when 80 percent of the fastest-growing occupations require formal education after high school. Poor student preparation foreshadows acute shortages in numerous industries in the next 10 years. According to the U.S. Department of Education, seven out of 10 students nationally graduate from high school without completing the courses needed to succeed in higher education or in the workplace. Health care, construction, and computer systems will compete vigorously for skilled workers.

The best way to equip young people is to encourage them to set their sights high and complete the Tennessee Scholars course of study: four years of math through and beyond Algebra 2; three lab sciences — biology, chemistry and physics; four years of English; a set of social studies courses that covers U.S. and world geography, government, and economics; and two years of a foreign language. These courses provide a stepping stone to higher education and a foundation for life-long learning.

To intervene when it can do the greatest good, Tennessee Scholars volunteers visit eighth-grade classrooms just before students make their high school plans. The volunteers draw a clear picture of the opportunities that await students who work hard and complete the right courses in high school. They explain the relationship between high school academics and future earnings potential. They encourage students who plan to enroll in vocational and technical courses to complete rigorous academic courses as well, because academics provide a foundation for workplace training and the flexibility to change careers. Presenters make sure students understand that a minimal diploma is not equivalent to completing rigorous coursework. Since the debut of Tennessee Scholars in May 2003, businesses and educators in 11 Tennessee counties and school districts have launched — or soon will launch — a long-term campaign to increase the percentage of students who complete the Scholars course of study.

They will need help from every sector of the business community to support young people who set high expectations for themselves. My industry desperately needs to motivate students to complete more challenging courses. With each passing year, it is likely that yours does, too.

Ron Tepner is vice president of human resources at Bridgestone Americas' BFS Retail and Commercial Operations LLC.



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