

Responding to employee fraud

By **Anand Nalachandran**



An employer is entitled to expect an employee to perform duties and obligations with probity and integrity. However, there may be instances where the conduct of an employee falls short of these standards and descends into criminal acts, including fraud or dishonesty.

The use of deception to obtain an unjust advantage, evade an existing obligation or cause an unfair loss can manifest in forms that range from stealing petty cash to embezzlement of millions of dollars and include acts of collusion and corruption, usually to the detriment of the employer or client, or both.

Despite best efforts, these transgressions might not be eradicated from the workplace and while an employer's reaction to such impropriety is necessarily fluid, it would be beneficial to consider the basic principles in managing these situations.

Detection generally occurs by reviewing breached controls, by random or routine audit checks or by a complaint from another employee or a client. Thereafter, an employer may be required to manage the situation internally and externally.

At the outset, the allegation should be evaluated for credibility through an unbiased review of the facts, documents and processes while preserving information that may be necessary as evidence. Interviewing the complainant or suspected employee can be a delicate process and, if conducted, any explanation proffered should be considered objectively.

If the allegation is deemed credible, there should be a determination of any statutory duty or obligation to make a report or disclose the matter to regulatory authorities and/or enforcement agencies. For example, in Singapore, the Criminal Procedure Code creates an obligation to report certain offences and the failure to do so is in itself an offence under the Penal Code.

An external investigation may take precedence over an internal inquiry, particularly when the assets or rights of an innocent party may be compromised by delay. The culpable employee may face internal disciplinary action or interim suspension pending an external investigation but any decision to terminate or dismiss summarily should be justifiable so as to avoid subsequent allegations of bias or wrongful termination.

The financial loss ensuing from employee fraud may be consequential so it may be prudent to assess this exposure. The legal risk may include contractual or vicarious liability so it may be advisable to evaluate sanctions and causes of action. After this, mitigating steps may be implemented.

Where an internal review exposes flaws or deficiencies in existing systems and processes, it may be necessary to take remedial action to improve upon working practices and procedures while considering the merits of training or counseling for existing employees.

Regular fraud and risk assessments and an independent audit and reporting mechanism would promote early detection, while a consistent response to misconduct and training to encourage

reporting of misconduct or suspicions would raise the standards of working practices.

If an employer tolerates fiscal misconduct, an employee may indulge in fraud or dishonesty due to the perceived lower risk of penal consequences. Accordingly, an employer should consider the judicious adage that "prevention is better than cure" and promote an ethical organisational culture.

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