Diversified Risk Management[sm] *Inc.*

www.DRMInc.us - (800) 810-9508

CORPORATE INVESTIGATIONS AND
RISK MITIGATION CONSULTING SERVICES

We offer real solutions for theft, substance abuse and other misconduct in the workplace.

A well-planned investigation yields dividends for years.

Learn about our Six Phases of conducting effective internal investigations and how their implementation prevents future policy violations.

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CONTENTS

A SIX PHASE APPROACH TO SOLVING INTERNAL INVESTIGATIVE PROBLEMS:

3 PHASE ONE: Policy and Procedures Review and Analysis

5 PHASE TWO: Information Gathering

12 PHASE THREE: Interviews

16 PHASE FOUR: Presenting Results

17 PHASE FIVE: Determining Disciplinary and Corrective Action

18 PHASE SIX: Prevention

"DEDICATED TO EXCELLENCE, INTEGRITY AND INNOVATION" sm

Diversified Risk Management, Inc. (DRM) is at the forefront of the detection, elimination, and prevention of workplace misconduct with a 6-phase investigative approach.

Internal employee misconduct is often illuminated by on-the-job accidents, evidence of drug and alcohol abuse, poor productivity, diminished quality control, poor attendance and theft.

DRM's program is comprehensive, and it helps you regain control of the workplace to increase profitability, improve morale, and, importantly, to minimize the chances of costly legal problems.

Here, we present the essential steps necessary to combat employee misconduct and gain a competitive edge in today's business environment. It is important this material be read thoroughly and referred to throughout implementation of our six-phase program.

We've prepared this outline to help you understand the investigative process and to help you anticipate our needs as your partners in eliminating the concerns that brought us together. It is in your best interest, and ours, that we're all "on the same page" throughout this endeavor.

Our primary mission is providing you with accurate information involving the behavior of your employees, and to share with you information on how you might improve your policies and the conditions of the work place. This is usually done via privileged communication with your lawyer (internal or external Labor and Employment Counsel).

Decisions about how your company responds or reacts to the information should be made only between yourselves and your Legal Counsel.

PHASE ONE - Policy and Procedures Review and Analysis

Employers should first ensure they have in place the following programs and policies to mitigate incidents of workplace misconduct:

1. An effective employment background screening and drug testing program,
2. Clearly defined and published policies and procedures,
3. A program for the ongoing detection and prevention of misconduct, and
4. Well-publicized access to an anonymous reporting system where employees can provide information regarding misconduct of their peers without fear of reprisal.

An Effective Employment Background Screening and Drug Testing Program

Backgrounds for potential new employees should be thorough and relevant to the industry and applicants' positions. It is of utmost importance this is done in full compliance with all local, state and federal laws and regulations. This allows you to screen out undesirable applicants while avoiding expensive claims of discriminatory hiring. For these reasons, it is often desirable to hire a third-party background screening company to handle background screening.

Your policies should include provisions calling for mandatory drug testing for new hires and substance abuse testing for cause.

Clearly Defined Published Policies and Procedures

Most companies have written policies and procedures reciting performance expectations and disciplinary practices. In our experience, these sometimes need review and updating to ensure they're enforceable and meet the requirements and standards of ever-evolving workplace and state or federal regulatory compliance laws.

The audit of the employer's existing policies and procedures should be thorough; great scrutiny should be given to areas that could trigger legal exposure, such as sexual harassment policies, complaint handling and reporting procedures, etc.

As soon as the review is done, recommendations for improvement will be made, if necessary. Simultaneously, clients are encouraged to discuss their concerns with the workforce in general, regarding potential problem areas which are showing telltale signs of negatively, which may be affecting the company and its profitability. Not only is this a morally and professionally sound approach, but in the aftermath of a major investigation, the majority of those employees who remain employed will view their employer with a higher degree of respect for having clearly communicated its concerns prior to launching the investigation.

A Program for the Detection and Prevention of Misconduct

This section deals with our recommended strategy for identifying and preventing workplace misconduct: the use of undercover Operatives. For details, please refer to **Phase Two**.

Access to Anonymous Reporting of Misconduct without Fear of Reprisal

WE TIP (WeTip.com) is the "grandfather" of all anonymous malfeasance reporting programs and has been a huge asset to all levels of employers in the United States for decades. WE TIP, in conjunction with DRM, is a national, toll-free, 24-hour tip line giving employers a vehicle by which their employees anonymously report information regarding any workplace issues. One should never regard WE TIP as a "snitch" program, but rather as an enhancement to your ability to understand internal problems from the perspective of your work force, an opportunity to provide the safest and most cost-effective workplace possible, and as a type of economical insurance for future economic viability. Some specific areas targeted in the WE TIP program are: corporate crimes, discrimination, drug trafficking, expense account abuse, internal theft and fraud, gang activity, sexual harassment, OSHA violations, and deficiencies within the company's security system.

The program can be publicized to your employees through paycheck stuffers, e-mail, bulletin board announcements, and metal parking lot signs. It can be part of your new-hires' initial employee orientation, and a topic for periodic employee safety meetings.

PHASE TWO - Information Gathering

Undercover investigations require the highest degree of skill and planning on the part of our Operatives, our Case Manager and you. When implemented in a timely manner with requisite care, such investigations can produce results achievable in no other way.

Members of management often feel "something just isn't right" with their work force, but are unsure as to how to identify the problems. By utilizing an undercover investigator (known as an "Operative"), DRM provides information from actual interaction with your employees and vendors. This usually forms the basis for taking additional steps aimed at eliminating workplace problems. Undercover investigations, unlike covert surveillance, allow for interactive, rather than passive, observation by an investigator. Our people can therefore testify as credible, direct witnesses at any subsequent disciplinary proceedings, if necessary.

An Operative is surreptitiously placed into the workforce. In addition to doing a normal job, such as Delivery Assistant or Janitorial Staff Member, this person is also highly trained to gather information and interact with employees. The investigator develops vital evidence which may be used in a number of ways valuable to your Company.

Undercover investigations require special considerations, such as the best placement and the daily supervision of the Operative. DRM is fully aware of labor law and penal codes implications, and pays particular attention to such issues. We carefully avoid unfair labor practices, entrapment, or any illegal forms of information gathering.

We make every effort provide accurate, actionable information while minimizing the risks of litigation.

Our investigations have several objectives. We will always attempt to obtain evidence of past or future crimes, and to ferret out any employees currently engaged in serious violations of the law or company policies at work, particularly those involving drugs, alcohol abuse and theft.

During the investigation we will attempt to establish the methods of theft, and the location to which diverted materials are being sent. If company materials or information are being sold to outside sources, be assured these, too, will be investigated, identified, and if you choose to do so, to see that these people or entities are civilly or criminally prosecuted, to the fullest extent of the law.

Although information directly linking employees to misconduct is often developed during Phase II of the investigation, most of our cases are not fully developed until completion of Phase III, the interview process. The object of Phase II is to obtain information with which to catapult the investigation to Phase III, where 80%-90% of the total information ultimately provided to you is usually developed.

The information necessary to move into Phase III of the investigation need not be violation of criminal law or serious violation of company policy; simply procedural violations are often sufficient for our purposes. It is for this reason that our standard recommendation to all clients is that interviews be conducted even if the only information gained during Phase II seems to be administrative in nature.

When dealing with less significant violations of company policy, such as procedural violations, the investigation will help determine which employees are engaging in improper behavior or activities that otherwise merit disciplinary action. Establishing and clearly documenting these facts permits you to take disciplinary action up to and including termination (if that is desired), with little fear of administrative or union reprisals or claims of wrongful termination.

It should be clearly understood that some situations which might yield information useful to you would be among the most inappropriate for an undercover investigation. The best example of this is an investigation to determine the relative strength of the union organizing a campaign by identifying the workers sympathetic to the union. This information is not lawfully available to an employer, and any covert effort to obtain such information is a violation of the law and an unfair labor practice. Our company does not conduct such investigations.

Operative Training

All of our investigators are well screened, trained, and supervised. Our Undercover Operatives, Senior Investigators (Interviewers) and Surveillance Specialists are almost always our own, in-house, full-time employees, not subcontractors. Only trained Operatives are placed directly on an assignment, and this is done only after they become full-time employees of Diversified Risk Management.

Many of our new investigators received formal and on-the-job training. Some have backgrounds in the military, espionage, or law enforcement and some have degrees in criminal justice. Our investigators have the requisite communication skills, basic investigative acumen, reliability, and most importantly, the ability to closely follow their supervisor's direction, before they are deployed in critically important assignments such as Undercover Operations.

Operative Placement

Once a decision has been made to conduct an undercover investigation, the first steps are to select the most appropriate investigator and to determine the least obtrusive method for placement. There are several options for the employment of an investigator in your workplace. We will discuss with you whether our Operative should simply apply for employment through normal channels, or if we should attempt a more controlled entry such as employment through a temporary placement agency.

Pre-investigation Environment

The length and success of our investigations are most affected by the complacency of the workforce, i.e. the subjects of the investigation. It is extremely important therefore, that you do not alert employees that management is launching in internal inquiry of any kind. Knowledge of the investigation must be on a strictly guarded "need to know" basis. Everything possible should be done to limit the knowledge of an impending investigation. Informing managers who do not need to know about the undercover operation, abruptly changing locks and security procedures, installing overt camera systems or prematurely firing potential suspects before they can be interviewed to gain access to their treasure trove of knowledge of employee malfeasance… these are common errors made by some clients prior to or after commencing an investigation. We want your results to be the best possible, so please take advantage of our advice about these issues. Sometimes it's difficult to withhold information from very trusted management subordinates, but after the investigation is complete you can share with them the fact that they were protected from having such knowledge so they could, with integrity, tell their employees they knew nothing about the operation until it was in the final stage of completion. This can help build trust, employee morale and relationships with the good employees who were not involved in the investigated malfeasance, and who remain in place long after the investigation is over.

Operative Supervision

One of the key advantages of our undercover program is the supervision of our Operatives. Our Case Managers are directly responsible for the daily supervision of their assigned Operatives, and are required to speak with each of them on a daily basis. During this interaction with each investigator, the Case Manager discusses the Operative's report for the previous day and reviews action items for the coming day. This daily interaction assures continuity and quality throughout the course of the investigation.

Operative and Client Summary Reports

Once our investigators have finished their daily assignments, they return home where they immediately prepare structured daily reports.

All reports submitted by our Operatives cover several categories, depending on the elements of each investigation. Categories can include dishonesty, policy violations, safety issues, talk of drugs in the workplace, employee misconduct, employee and management relations, inappropriate sexual or other potentially harassing behavior, supervision practices, and more.

Using the Operative's daily reports, the Case Manager groups the Operative's findings into categories, and then reports these incidents chronologically within each category, sending a biweekly comprehensive account to your Legal Counsel as an Attorney Client Privileged communication. With instruction from your lawyer, we also send duplicate copies to your designated management recipient.

Substance Abuse Investigations

Due to the prevalence of drug abuse in society, illegal drugs are often discovered during our undercover investigations. This usually comes to our attention through observation of the usage or sale of marijuana, methamphetamine, or cocaine; although prescription drug abuse and alcohol are also often discovered.

There may come a time you wish us to gather absolute proof of drug sales in your work place by buying illegal drugs from an employee who is known to be selling them there. Because it is illegal for any private investigator to buy or use controlled substances unless working as an agent of a police agency, this can be done legally using our existing police contacts; we've successfully done this many times in the past, and our track record is such that there has never been a controlled purchase of illegal drugs by our investigators that did not result in a successful prosecution of the perpetrators. With your permission and under the direction of law enforcement, should you wish to proceed in that direction, we can build criminal cases against the dealers of illegal drugs at work.

The decision whether or not to prosecute is entirely yours; however, should you decide to involve a police agency partnered with our firm to investigate the sales of illegal drugs at work, there is no backing up…. The police will expect to arrest the offenders when we're done. This can send a strong message to the work force that you have "zero tolerance" for drug trafficking on your property or company time.

Entrapment

Simply defined, entrapment is when one is persuaded to commit an act they would not have otherwise committed had they not been enticed to do so. We avoid entrapment very carefully by making sure we have evidence the employees were already previously involved in the malfeasance we're investigating before we seek to buy drugs from them, receive stolen merchandise from them, etc. This is covered at great length in our Operatives' training, and we have never sustained a claim of entrapment due to our great precautions in this area.

We do not knowingly accept cases from clients who measure the success of an investigation by a "body count." Nor would it be prudent to take "borderline" employees who are easily tempted, and then encourage them to become involved in violations of the law. Rather, our goal is to help clients identify inappropriate acts that have occurred in the past, which are occurring in your work place, and to document them in a manner allowing you to safely administer disciplinary action against the malefactors.

For these reasons, we very carefully "qualify" all potential drug dealers and thieves in your midst to assure that if they should interact with our Operatives in controlled, documented "sting operations" that we can demonstrate through previous investigative reports, that the acts have occurred on company time or on your property the past. The truth is the best defense against potential allegations of entrapment.

Investigation Disclosures

Of equal importance is the issue dealing with relations inside your management structure. The paramount requisite for our program is confidentiality. No person, regardless of rank in the company, should be informed of, or involved in, the investigation unless it is essential. This means that routine briefing of senior people not directly involved should be avoided. When the case has developed to a point where informed assistance from other management personnel is required, they should be brought into the loop very selectively.

Special Considerations

Prosecution

Prosecution under the criminal justice system, in most states, can be a double-edged sword. A criminal conviction for violation of state drug or theft laws against your employee for violations on your property is irrefutable evidence in any subsequent civil claim regarding termination. While there is no better evidence, we are neutral regarding this issue. We can, and often do, work cases without our Operatives making drug or theft buys. The advantage of making a controlled drug purchase is that it reduces mutual exposure to potential litigation costs, should a drug dealer later deny involvement. The client is charged for the time and expense incurred when our investigators and Operatives are subpoenaed to testify in criminal court. While this occurrence is relatively infrequent, it may become a lengthy process necessitating multiple appearances by everyone involved in the investigation. Under most circumstances, the evidence is overwhelming and counsel for the offenders recommend plea bargain deals which limit out exposure to the costs associated with trial preparation and testimony.

As in all cases, the final decision regarding prosecution is made by you, the client, at the inception or during the course of the case. Once you choose to involve the police in your matter, all future decisions about how the criminal case plays out will rest with law enforcement and the District Attorney's Office. If we receive subpoenas in this matter, we will respond; of course, our professional fees apply for the time required of us for preparation, meetings with the police or DA's office, travel, etc.

We are proud of our track record: in all the years in which we've been conducting drug and theft investigations, every case we've ever filed has resulted in a guilty plea or a conviction, without exception. This, of course, is no guarantee… but it should be reassuring to our clients to know we have achieved such a high level of performance.

We fully respect, however, your decision to not involve the police in investigating your internal drug or theft problem, if that is your preference.

Pros and Cons of Prosecution

In our opinion, our clients should always seek to make a "dollars and sense" decisions regarding prosecuting employees involved in illegal activities such as theft and drug abuse. Sometimes, the deterrent value of prosecution justifies the expense involved. Courts can award victims restitution in criminal matters involving theft and conspiracy to commit theft… and when other outside businesses are preying upon your firm by soliciting and purchasing stolen property from your employees, for instance, this can result in a large recovery for your firm. We have seen cases in which our clients recovered many times the cost of the investigation. We have also seen prosecutions become too costly. Again, the choice is yours, and we will give you the best input possible, based upon our decades of experience with these matters, so we can help you and your legal counsel make the most informed possible decision.

Fidelity Insurance

Insurers who provide fidelity coverage need to be informed of a loss (especially from internal theft) at the time of discovery, or as soon as practical thereafter. If an investigative goal is proof of an insurable loss, then, of course, all the terms of the policy and conditions of the coverage must be met. We will review the limitations of your fidelity insurance to ensure that the structure of our case does nothing to limit your potential loss recovery. If a client is uncertain of the benefits or existence of their current fidelity program, the client should contact us as soon as possible. A sizable recovery through fidelity insurance, restitution or judgment may indeed cover the cost of the investigation and attorney fees. After the insurance company is involved and has become responsible for coverage of a theft claim, they share "victim" status with the insured and have equal rights to criminally prosecute thieves and their accomplices, as well as to sue for damages any employees or outside entities who contributed to the theft loss. In such cases, when we are called by subpoena to testify or provide information to the insurer, the police, the DA, or to whomever necessary, of course our normal professional fees are engaged for the work required, even though the client hasn't instructed us to testify or cooperate. We have moral and legal requirements to fulfill in such matters, and we will honor them to the letter of the law.

Union Environments

Any employer interference, restraint, or coercion of employees in the exercise of their collective bargaining (union) rights creates an unfair labor practice. We don't do that.

Among the prohibited activities established by law is the interference, restraint, surveillance, or investigation of the action of workers in the exercising of such rights. Actions prohibited by laws which our investigators will never violate include the reporting of Union business of any kind. This includes reporting on the attending of meetings or organizing procedures, discussing the attitudes and sentiment of the workers being organized in an attempt to create a Union environment, or picking up, reading and then reporting on the contents of any Union organizing literature. If our undercover investigator was to observe any of these activities and report them to us or our client, this would constitute prohibited restraint or interference. Even if the employer did not request such information, but accepted it when offered by the investigator, the result would be the same. It is therefore most important that you understand why investigators cannot become involved in collective bargaining activities. Moreover, Case Managers will not accept such information from our Operatives, nor will we transmit such information to you. As with all other aspects of our work, we only perform legal and wholly defensible investigations.

PHASE THREE - Interviews

Your case may result in finding that you do not have theft or drug problems in your workplace. We are sure that would make any client happy, and we would be pleased to give your company a clean bill of health after an in-depth internal undercover investigation. That has happened very, very rarely in the several decades we have spent doing this.

Once we have evidence of an adequate number of violations regarding a sufficient number of your employees, we will let you know we feel it is time to move on to the next phase of the investigation… interviewing your employees. Senior investigators from our main office will structure a specific interview format. This is a crucial part of our investigation, and it is done with a very high level of experience, competence and expertise.

Interview Structure

The Interview Team Coordinator will compile an interview summary sheet, from which the Interviewers can quickly find all pertinent information concerning their respective interviewees. This is mostly based upon information developed during the undercover phase of the investigation. Additional information needed for the interviews will be obtained from the client by the Coordinator prior to the scheduled interview date (full names, hire dates, job descriptions, prior warnings, attendance records, etc.). Further, all arrangements such as office space and provision of the specialized recording equipment and forms used for taking declarations are the responsibility of the Coordinator.

Finally, during the interviews, the Interview Team Leader will document the timeframe of each interview, relay any new information obtained to the appropriate Interviewers, gather and file the written and oral declarations (admissions), and notes from each interview, and begin compiling data for submission to the Coordinator for the final report.
Not all employees tell the truth to the investigators about their own involvement in violations, but, surprisingly, the vast majority of them do. This is totally counterintuitive for people outside our field of expertise; however, conducting interviews over and over for dozens of years has taught us what works best. In the case of employee malfeasance interviews, we have discovered that the best approach is the one which is most disarmingly comfortable for the interviewee. In an unthreatening, relaxed manner, the interviewer gives the employee freedom to leave at any time, to lie if he so wishes, or to tell the truth and to explain his actions to the company. When this is done skillfully enough, a huge percentage of workplace interviewees will choose the latter. Having a Union or other representative present throughout the entire process does absolutely nothing to negate our results, and in fact, provides an additional witness to the un-coercive and relaxed manner in which the interviewers are treated. We always welcome involvement of the Union if an employee feels the need to have a representative present.

Written Declarations

Once an interviewed employee has admitted to any transgression, a written declaration is usually taken from that employee by the Interviewer. In the written declaration, the employee will be asked to truthfully lay out the conditions of the interview for all posterity. Most will acknowledge they were offered appropriate representation, had not been misled, and will articulate that the interviewee realizes our Interviewer is a private investigator hired by our client. The written statement will then set forth the offenses that had been admitted to the interviewer verbally. In addition, the culpable employee will further detail the involvement of other employees and procedural violations, and each will then be asked to state how they would like to see the company handle their transgressions; many express remorse for their malfeasances. This is almost always coupled with a commitment to the company to not commit the same violations in the future, regardless of whether they are terminated or prosecuted subsequent to their admission of wrongdoing.

The written statement is excellent proof that the interview and the declaration were obtained by us on a voluntary basis, that nobody has been held against his will, and that all the rights of the employee were clearly addressed prior to obtaining a confession, if any.

Finally, interviewed employees will state why they willingly confessed, even though they knew they could possibly lose their job, be prosecuted, or both. It should be pointed out that during the interview process, our investigators never promise to save an employee from termination, or possible prosecution, in return for an admission of wrongdoing. Our investigator simply informs the employee being interviewed that as investigators, we do not have the power of decision in these matters, nor do we have any control over the destiny of the employee. Thus, false allegations of coercion usually are not subsequently made by interviewees, since coercion is clearly defined as a threat or promise made to an employee by another who has control over, or who can wield influence regarding, that employee's destiny. When your employees clearly understand our Interviewers are simply information-gatherers and not decision-makers, the issue of coercion is moot.

We take great care to preserve each person's rights throughout this process, and, again, we simply do not take written statements from those who voluntarily choose to not provide them. Because of the conditions of the interviews, the relaxed and comfortable environment in which these meetings are conducted, the vast majority of our interviewees choose to provide a written declaration to the company.

Oral Declarations

After written declarations are obtained, representatives of the Company are invited to join the meetings. From this point forward, the interviews are then audio-recorded in the presence of the client representative who is brought into the process to discuss the written declaration with the interviewed employee.

One may question why we wait until after the written statement is completed before recording the meetings. The truth is, placing a tape recorder in front of someone tends to be a little unnerving to most and downright intimidating to some. In order to create the least hostile environment, to make sure the interview isn't tainted with intimidation or an unnecessarily fearful setup, we are forced to wait until after the significant questions are answered regarding malfeasance before proceeding to tape. Once the tape is on, we allow the interviewee to take as much time as they wish in describing everything that happened in the interview room prior to that time. We have a check list that solicits narrative responses to questions designed to bring out the truth in full: That the person stayed for a voluntary meeting and wrote a confession of his own volition free from the rigors of any possible coercion.

Indeed, once they have confessed verbally and in writing, employees very rarely object to having their interviews recorded, creating an "oral declaration" to supplement and explain the facts contained in their written statements.

There are two decided advantages to orally recording, with the subject's acknowledgment and permission, a declaration of facts:

Firstly, the recording clearly indicates the nature of the admission of guilt, the quality and integrity of the confession, which could later be much more easily refuted or disparaged if only a written confession was obtained. By accurately reproducing the questions asked, detailing the disclosures made by the interviewer prior to asking questions, delineating the interviewer's techniques, and allowing the subject to expound at length about how he was treated, the recording can be made available at any later date, should our process require further scrutiny under third-party review, and can successfully refute any potential false allegations regarding our interview.

Secondly, the tape contains the exact words in the actual voice of the subject making the oral declaration. When an admission of guilt is free and voluntary, that fact is accurately registered in the recording, thus substantiating the credibility of the confession. The integrity of the interview and the accuracy of the subject's declaration are thus a matter of record.

These effective and iron-clad precautions do not guarantee a dispute might not surface at a later date in the form of a grievance, arbitration, unemployment hearing, or some type of litigation. Once again, if any allegation occurs, we should be contacted immediately before any formal or informal hearings are scheduled to assist in the defense of any and all charges. Be assured you have armed the company with the best possible evidence that your investigation was conducted ethically, legally, and accurately, and that when Plaintiff's attorneys finally hear their clients' statements on tape, after forming skewed and slanted opinions based upon the collective false allegations of their clients, they often change their aggressive approach and even, sometimes, simply walk away from representation.

To ensure success, both our written and audio-recorded statements are taken as "declarations," (oaths) under penalty of perjury. We can thereby easily discredit any subject who, after admitting guilt, denies it or contends they were somehow coerced. If this is done in any hearing under oath, the client can simply put forth to the arbitrating body, "Which oath are we to believe, the current one, or the one given in writing and orally on the day of the original declaration which was also taken under the same onus of perjury?"

Some clients have their own in-house security personnel who wish to perform the investigative interviews, themselves. It is, however, a prerequisite of our process that we perform all investigative interviews based on the information we have developed during our investigations. Otherwise, we insist that such clients agree they will never use the information gathered solely during the undercover portion of our investigation for any disciplinary purposes.

Temporary Removal from Workforce

Once an employee has read the written declaration on tape in the presence of a client representative (usually a ranking member of Management), we recommend the client not make any disciplinary decisions until the full results of the investigation have been reviewed. We suggest you express gratitude to interviewed employees for their cooperation, and to inform the employee that no decisions will be made concerning their future at this time. We recommend that the interviewed employees are all sent home, with pay, pending the completion of the investigation.

This serves two purposes: First, other employees who are to be subsequently interviewed can be truthfully told that no one who has been in prior interviews has been disciplined. This relieves pressure, and they will be less likely to withhold information for fear they are going to inevitably be terminated, regardless of their level of cooperation. Secondly, this will allow our client to be better-prepared when we enter the fourth phase of our program, which deals with creating criteria for the fair and equitable disbursement of discipline. Disparate treatment is dramatically minimized when this technique is utilized. In other words, waiting until you see the "big picture" before making any disciplinary decisions is always more defensible than making "snap judgments" during the investigation.

PHASE FOUR - Presenting Results

During the fourth phase of our program, we prepare the evidence gathered during interviews (Phase Three). The data is shared as Attorney-Client Privileged and Confidential Material simultaneously for you and your attorney to review while engaging in decisions regarding employment matters.

Report Contents

This involves preparing all pertinent information on suspect employees that was developed during the undercover phase of the investigation. The report documents the date each employee was interviewed, their date of hire and current job title.

This data is combined with information gleaned during the interview process, including admissions of guilt. In addition, information about co-worker misconduct is gathered from each interviewee. When combined, our report provides a profile for each individual employee who may have been involved in workplace misconduct. The quality of the information should be taken into consideration, so we do not present as fact the allegations of co-workers, even though these are made under penalty of perjury. We present these allegations as material to consider, in concert with what we observed through the Undercover Operative's reports, and, most importantly, what the subject admitted to of his own accord. Of these three categories of evidence, the latter is the most compelling, of course. Therefore, a high priority is made to provide you with the most complete, truthful statements from employees who have violated your workplace policies, rules and regulations.

The Phase Four Report always includes, each time these things are obtained, the certified copies of each interviewee's declaration of facts as well as the audio recordings of their Oral Declarations.

Lastly, physical evidence obtained or recovered during the case (i.e. stolen property, e-mail messages, text messages, weapons, narcotics paraphernalia or even receipts from the Police Laboratory for confiscated or purchased illegal narcotics, etc.) is well documented in the Phase Four report.

The Phase Four report does not contain any subjective details; the data in the report is factual to the best of DRM's knowledge and will withstand the scrutiny of any objective third-party review. One thing it will never contain is any suggestion, no matter how slight, of how any individual should be disciplined. Those decisions always remain your own.

PHASE FIVE – Determining Disciplinary and Corrective Action

It is the policy of DRM to not provide recommendations to you regarding discipline, but to provide you with several general precautions as to pitfalls any company could encounter in determining discipline. It is our desire to be as helpful to you as possible throughout the entire process. Termination of employees as the result of an investigation is commonly regarded as the "capital punishment" of labor law. Accordingly, all such processes that might lead to this ultimate punishment should be considered under the most fair, moral and legal methods available. Meting out lesser punishment for management or senior employees can "cut both ways"; on one hand, you wish to treat everyone the same based upon their violations. This would mean, as an example, you might consider firing everyone who, for instance, bought or sold illegal drugs at work and admitted to it in the interviews. On the other hand, third parties reviewing such terminations have proffered the opinion the company should have given extra leeway to employees who admittedly violated policies or the law at work, but who had years and years of exemplary good service to their credit. These are tough decisions, and we gladly leave them to you and your counsel.

Beyond these broad guidelines, we step back and await further instructions should your legal counsel require clarification or the investigation of additional facts or allegations.

Employers should never lose sight of the importance of making certain all information considered for the purposes of determining disciplinary action is accurate, and that the most irrefutable evidence is that which a person admits to regarding himself, in writing and on tape, in the presence of witnesses, voluntarily, under the penalty of perjury. This is our most valuable work product.

At the close of the investigation

A matrix of information is put before you and your labor attorneys to aid in comprehension of not only the types of policy violations discovered about each employee in the investigation, but also the source of each piece of information. During the Phase IV meeting, we assist you by careful dissemination of this information, and will stay there as long as you need us to answer questions regarding the material before, or even during, your disciplinary decision-making.

PHASE SIX – Prevention

Some companies go through an entire investigation, learn of all the mistakes they made in the past, yet they fail to take reasonable steps to avoid the same problems in the future. Our firm, armed with the intelligence obtained from your investigation, can assist you in establishing specific and proprietary procedures to reduce the opportunities, temptations and the likelihood of errant propensities that foster employee malfeasance.

Of course, when dishonest employees are removed from the facility, replacements may need hiring.

We stress the initiation of proper recruitment techniques to avoid duplicating the problem by the subsequent hiring of an estimated 20% of the potential labor pool that statistically have a very high propensity toward dishonesty.

We recommend letting us conduct a management training seminar to show your core HR staff a program we call "The Synthesized Security Interview." This is a self-administered program to assist managers in better, safer recruitment. It teaches HR interviewers how to screen out undesirables by obtaining approximately 50% more truthful information on applications prior to setting up face-to-face interviews. It demonstrates how to quickly assess applications and identify a greater number of the "high propensity for dishonesty" applicants before final decisions for employment are made.

Post-investigation, it makes a great deal of sense to take the time to strengthen your screening polices to ensure you hire replacements that will not fall into the same cycle of behavior. It's also prudent to enact procedures to eliminate the conditions that allowed the temptation of otherwise honest employees in the past.

When all six phases of our program are followed, it will probably never be necessary to conduct as intense of an investigation in the future. Once a company has been through the investigative process, there is an intrinsic desire to move on and get back to business; this feeling not only permeates management, but flows through the work force equally. Done properly, employee morale is strengthened by the completed process. Management is often thanked by grateful members of a labor force once plagued with the discord of illegal drug and alcohol usage, safety and drug violations, etc. Lower level managers are grateful they have the luxury of telling their employees they were not involved in the investigative process, and had no knowledge of the investigation until it was brought to everyone's attention by the highest level of management, who initiated the process.

Labor Attorneys

One of the major civil exposures of any investigation in the workplace is the wrongful termination lawsuit. Since the awards and cost of defense against these suits can be substantial, it is obvious that requisite care should be used when conducting this type of program. Our program is designed to minimize the initiation of civil litigation, while maximizing the chance of a successful defense if a lawsuit is filed. Nevertheless, it is a prerequisite of our program to require you to seek the advice of competent labor council before, during, and after the initiation of our program. Differing environments, unions, and constantly changing labor laws dictate that no company not risk their assets in any manner without the sound counsel of both loss prevention experts and legal advisors. Remember, in most states, punitive damages are exempt from insurance coverage and are meant to do just that…. Punish the company.

TIME AND COST CONSIDERATIONS

Program Length

It is impossible to predict with any certainty the length of any investigation, particularly an undercover investigation; there are too many variables. We have, however, been able to identify some broad averages that you should take into consideration. It usually takes approximately 30 to 60 days for an undercover investigator to sufficiently gain the confidence of dishonest employees, to infiltrate theft conspiracies. Once this is accomplished, it normally takes another 30 to 60 days to successfully initiate a "sting operation" after which interviews are usually indicated. Normally, in all but the largest of companies, interviews do not take more than a few days. Obviously, the more departments and employees involved, the longer it will take to investigate the work force. Our investigation Manager or Supervisor assigned to your case will provide you with a detailed Rate Sheet and a Contract for Investigative Services. The Rate Sheet lists the costs of all investigative services provided by DRM. The Contract is self-explanatory. You will be requested to sign and keep a copy of both documents for your records. For undercover investigations, these documents must be signed prior to an Operative actually beginning his or her work at the “cover” assignment.

Clients should have a clear understanding that all investigative services, including interviews, are based upon the hourly rates set forth in the Rate Sheet. Time and cost estimates given at the beginning of the case are just that: estimates. There are many variables that could arise during the total investigative process that can increase or decrease costs. While we make every effort to expedite the process of investigating theft, drugs and other malfeasance in the workplace, please understand that it is usually a mistake to get into a heated rush. These matters involve people’s lives and careers, and rushing rarely leads to the best outcomes

Corporate Office

13202 Florence Ave

Santa Fe Springs, CA 90670

Office

800.810.9508

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562. 319.0411

Fax

562.319.0412

Branch Office

5026 Wilshire Boulevard, Suite 569

Los Angeles, California 90036

323.549.4646

Web Sites

www.DRMInc.us

www.DiversifiedForensics.com

CA PI 2329

CONCLUSION

Our investigative approach results from the successful culmination of years of experience in combating nationally-recognized workplace problems.

We strongly recommend that you carefully consider the contents of this narrative, and please feel free to contact several of our past clients to learn about their experiences with Diversified Risk Management, Inc.

The information provided in this White Paper is for informational purposes, and should neither be construed as, nor substituted for, the legal advice of your attorney.

Labor and employment law is a dynamic field, and often correct legal advice varies from state to state.

Diversified Risk Management, Inc. is a fully licensed Private Investigation firm headquartered in Southern California, although we serve clients throughout the United States and beyond.

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