

ALLEGATIONS & MISDEMEANOURS

Clare Murray sheds light on responding to misconduct allegations

Mark Hurd's abrupt resignation from Hewlett Packard has thrown into stark light the perils that face senior executives who evidence a lack of professional judgment. It followed an internal sexual harassment inquiry, which, whilst vindicating Hurd of any sexual impropriety, revealed his falsification of expenses designed to conceal a personal relationship with a female contractor.

We have set out below a number of key issues and practical steps to be borne in mind by any senior executive who faces damaging professional consequences as a result of alleged misdemeanours.

True Allegations

Fully understand and consider the allegations being made and gather together and request all relevant documentation. If the allegations are groundless and you are still dismissed, you are likely to have a number of potential claims against the company.

Mitigating Circumstances

If the allegations are true, are there any mitigating circumstances, such as an exemplary record and performance, long service or other relevant factors?

Consistency

How has the company previously dealt with misconduct situations? If the allegations are also made against a number of your colleagues, are all involved being treated the same way? Is there any apparent discrimination in the different treatment (e.g. sex, race, sexual orientation, disability etc)? If so, any subsequent dismissal could be found to be unfair and discriminatory.

Options Available

You may have a number of options: whilst the company may choose to follow a formal process when dealing with a misconduct situation, you may, for example, also be given the opportunity to resign or to reach a settlement agreement.

Formal Process

If you face a formal process you should find out as much as you can about it, including checking any policy documents that explain the disciplinary procedure. There are certain procedural steps that any company should follow, including (but not limited to) fully investigating the allegations of misconduct, writing to you to invite you to a meeting to discuss the allegations, and allowing you to be accompanied.

Resignation

You can of course resign at any time, although that will not of itself clear your name or necessarily end the disciplinary process. It is also likely to affect bonus and unvested share entitlements.

Negotiated Resolution

A deal is often done to protect all parties involved. Any such settlement agreement should deal with what can be said about the situation by you and the company, internally and externally. Consider other issues too, including an agreed reference and the treatment of any financial and equity entitlements. Your negotiating position will depend on the strength of the evidence against you.

Criminal Liability

Regardless of how the company approaches any possible exit, it is vital that if criminal allegations have been made against you, that you seek specialist criminal law advice.

Regulatory Issues

If you are regulated by the FSA or another body, will the company be obliged to report it and, if so, in what form?

PR Help

Finally, very senior executives should consider PR assistance to limit potential damage to their reputation.

Whilst most executives will not find themselves walking away with a package in excess of £7.6 million (as Hurd did), situations can – with the right guidance and approach – be, salvageable. ■

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