

## How to Handle Employee Misconduct When It Impacts Your Business

**Sarah Sawyer:** Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about when employees do something wrong that hurts the business. So either they don't do their job properly or maybe they do something criminal while they're employed.

Something that hurts the reputation of the business varying different things that employees might get themselves into while working for your business. And a lot of times we'll get calls from clients saying. This employee went rogue and did something, or they didn't do their job properly and then caused me all this damage and this harm.

And what can I do about it? Can I go after them for it? And obviously I'm being very general here, Russell, there's a lot of different things that could mean. Obviously, we see embezzlement or we see someone's driving a work vehicle and they get in an accident. This is a really broad category.

It's very [00:01:00] specific to what people you did, but what's general rules for the road when you're angry at that employee because they've done something to harm you.

**Russell Berger:** Yeah in most cases it's probably not that economical to chase down employees for misconduct and, try to pull cash out of an employee.

Embezzlement, is probably the one exception. If someone has access to your finances and, pulls 25, 50, a hundred thousand, whatever out of your bank account. One you probably do have insurance, which would be the best way to start that scenario. But, that may be something you can go after, you can actually get a recovery on.

A lot of things that we would generally classify as negligence of employees. You're likely, going to be covered by insurance for that. At least with respect to third party claims. So if an employee does something wrong and it can causes damage to a third party both you, the company and the individual employee are likely to be insured under that policy, which means you can't turn around and sue them.

Also, you're insured, so your loss is limited to your [00:02:00] deductible. I have seen policies driving policies, for example, where, an employee can be held responsible for the deductible on an auto claim if it's an employee's fault and the company has to pay the deductible on an insurance policy.

I have seen a little bit of that. I think that's probably pretty rare. I would say in general, obviously the first thing that employers could do is take employment action. That's where the primary remedy exists. But if you terminate someone and you cut off income stream, it's a lot harder to collect money from them and chase them down for cash.

**Sarah Sawyer:** Another one that we see a lot of and that's, when you say being proactive and taking action is around reputational harm. And so if they're doing something to harm the reputation, the employment action potentially getting them out of the business and, stopping the harm, that might be happening is one thing, but if it continues after the fact either in the way

that they're contacting people and trying to hurt the business' reputation or they're putting messages or statements out [00:03:00] there, that's another area where, to your point, Russell, they may not have money to go after, or they might not have means to pay for those damages, but you want to stop the behavior. That's something that we deal with most frequently because a lot of employers will say I know that, even if they're causing me X amount of harm, I don't know that they're going to ever be able to pay me for that, or that it's really worth the legal fees to chase them for that.

But I need them to stop the behavior. And one way to stop it is when they're still under your control and they're an employee. But another way is obviously to do like an injunction or try to do a demand letter or do certain things after their employment, if that harm is ongoing. When you see that in violations of certain agreements but also if they're out there causing additional harm after they've been terminated.

**Russell Berger:** Yeah, certainly. And I know we've talked about it here before, the idea of non-disparagement and severance agreements. But in the absence of that, if someone's defaming you that's a separate category. I'd put that closer to the embezzlement category that, whoops, I screwed up, I made a mistake, it cost my company money.

**Sarah Sawyer:** Yeah, and how high up an [00:04:00] employee is, will make a difference probably in the calculation as well. And how much responsibility they had, whether they were an officer. Well, thanks Russell. We'll see you next time.

**Russell Berger:** Thanks, Sarah.