

What Happens After the Whistle Blows : How We Handle Whistleblower Complaints at UC

A Webinar Panel Presentation by

EPIC – Employment Practices Improvement Committee

The presentation will start at **10:00 a.m.**

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- PLEASE MUTE YOUR PHONE
- PLEASE DO NOT PUT US ON HOLD

**What Happens
After the Whistle Blows:
How We Handle Whistleblower
Complaints at UC**

September 8, 2011

Panel Members

- **Speakers**

- **John Lohse** - *Director of Investigations, Office of the President*
- **Wendi Delmendo** - *Chief Compliance Officer and Locally Designated Official (LDO), Davis Campus*
- **Deborah Maddux Allison** - *Shareholder, Van Dermyden Allison Law Corporation*

- **Moderator**

- **Stephanie Leider** – *Senior Counsel, Litigation, Labor & Employment, Office of the General Counsel*

Overview

- UC's Whistleblower Policy
- Reporting Whistleblower Allegations
- Processing Whistleblower Reports
- Investigating Allegations of Improper Governmental Activity (IGA)
- Discussion Questions
- A Cautionary Tale

UC's Whistleblower Policy



UC's Whistleblower Policy

- Systemwide policy
- Acknowledges UC's "responsibility for the stewardship of University resources and the public and private support that enables UC to pursue its mission."
- Affirms UC's "commitment to comply" with applicable laws and regulations.
- Affirms UC's "responsibility to investigate and report to appropriate parties allegations of suspected **improper governmental activities** and the actions taken by the University."

Key Definitions in the Policy

- Improper Governmental Activity (IGA):

“any activity by a state agency or by an employee that is undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.”

Definition is based on California Government Code section 8547.2

Key Definitions in the Policy

- Protected Disclosure:

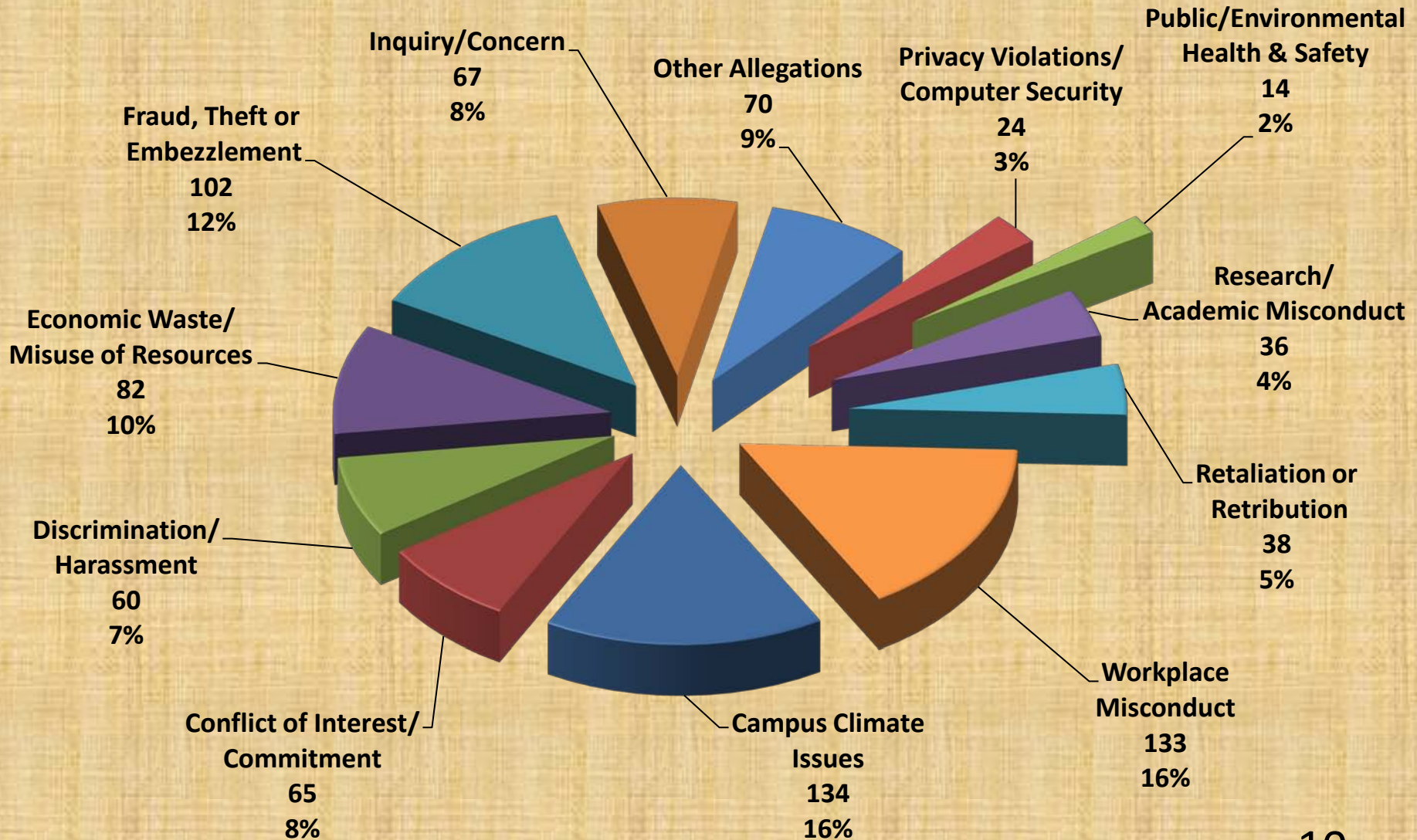
“any good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or (2) any condition that may significantly threaten the health and safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.”

Definition is based on California Government Code section 8547.2

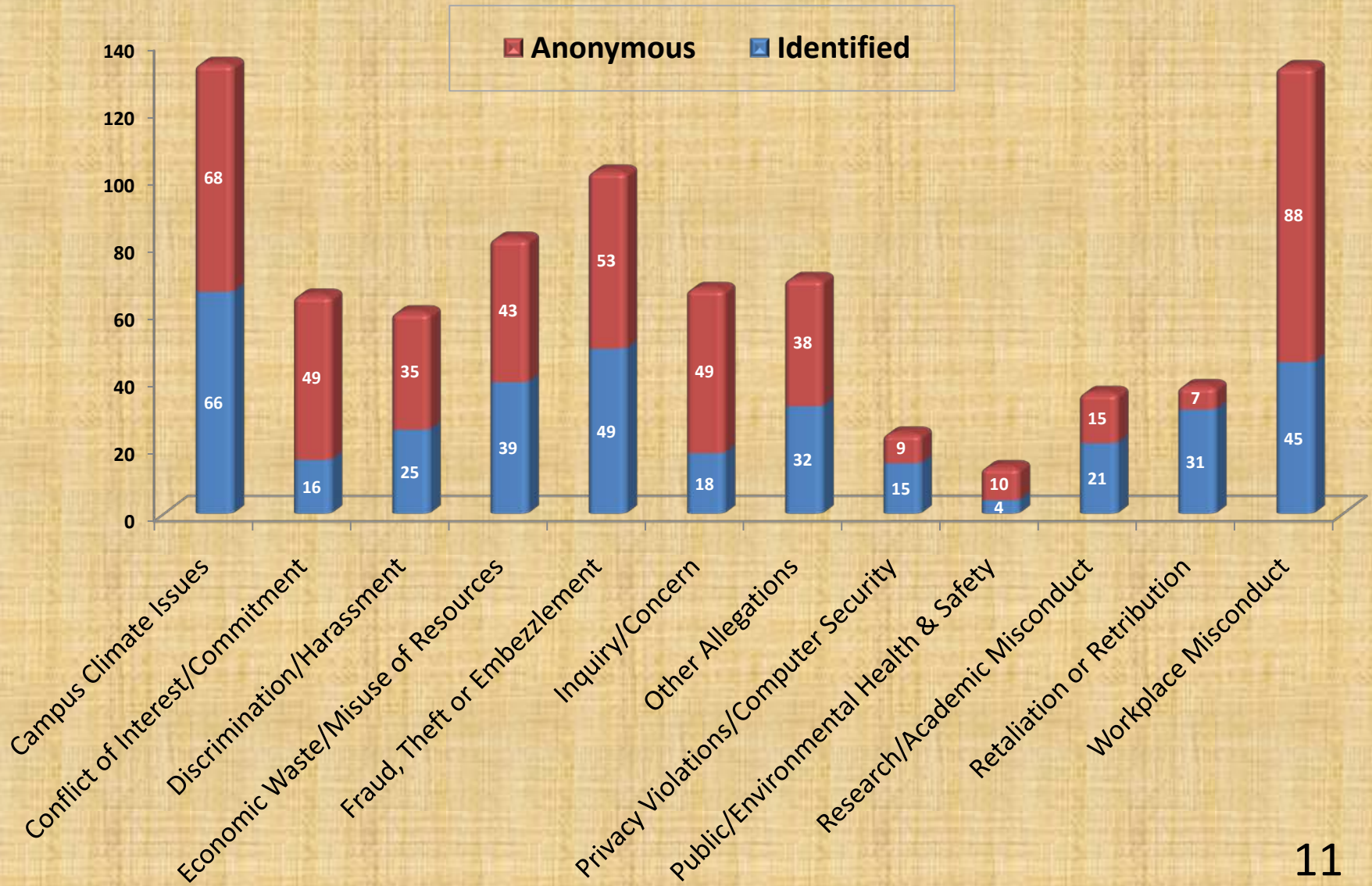
Allegations by Type (FY 2010-11)

Allegations by Category (System-wide)	Total
Campus Climate Issues	134
Conflict of Interest/Commitment	65
Discrimination/Harassment	60
Economic Waste/Misuse of Resources	82
Fraud, Theft or Embezzlement	102
Inquiry/Concern	67
Other Allegations	70
Privacy Violations/Computer Security	24
Public/Environmental Health & Safety	14
Research/Academic Misconduct	36
Retaliation or Retribution	38
Workplace Misconduct	133
Grand Total	825

Allegations by Type (FY 2010-11)



Allegations by Type (FY 2010-2011)



Reporting Whistleblower Allegations



Reporting Whistleblower Allegations

- Reports of IGA may be made to:
 - Your supervisor
 - Another University administrator
 - Human Resources
 - Academic Personnel
 - Internal Audit
 - The Locally Designated Official (LDO)
 - University-wide Whistleblower Hotline:
 - 1-800-403-4744 or
 - universityofcalifornia.edu/hotline

Attention! This web page is hosted on EthicsPoint's secure servers and is not part of the University of California System website or intranet.

Confidential Hotline 800-403-4744

UNIVERSITY of CALIFORNIA



Standards of Ethical Conduct

Faculty Code of Conduct

Statement of Ethical Values

Locally Designated Officials

Campus Ethics & Compliance Officers

Whistleblower Policies

Office of Ethics, Compliance & Audit Services



Please note: This is not a 911 service. If you are concerned about an immediate threat to life or property, or need to report a criminal activity in progress, please contact 911 or your local emergency service.

The University of California takes violations of federal and state laws, and of University policy, seriously. We have selected EthicsPoint to provide a confidential means for reporting suspected misconduct. You may report your concerns by calling our hotline, at 800-403-4744, and speaking with an EthicsPoint representative.

Or, simply click on the the location where the incident took place: one of our ten campuses, five medical centers, our national laboratory, the Division of Agriculture & Natural Resources, or the Office of the President.

To check the status of a report you previously made, please click on the location.

With either method of reporting, you can choose to remain anonymous. You will receive a report key and password that will allow you to continue to communicate with us anonymously.

This hotline service allows you to report incidents of the following nature:

- Fraud, Theft or Embezzlement
- Economic Waste, or Misuse of University Resources
- Conflicts of Interest or Conflicts of Commitment
- Computer Security and other Privacy Violations
- Public or Environmental Health and Safety
- Discrimination or Sexual Harassment
- Research or Academic Misconduct

CAMPUSES

- Berkeley
- Davis
- Irvine
- Los Angeles
- Merced
- Riverside
- San Diego
- San Francisco
- Santa Barbara
- Santa Cruz

MEDICAL CENTERS

- Davis
- Irvine
- Los Angeles
- San Diego
- San Francisco

NATIONAL LABORATORY

- Lawrence Berkeley Lab

AGRICULTURE AND NATURAL RESOURCES

OFFICE OF THE PRESIDENT

universityofcalifornia.edu/hotline – report in English or Spanish
800.403.4744 – report in any language

Reporting Whistleblower Allegations

- Key concepts:
 - Reports can be oral
 - Reports can be made to line management or to a University official with implied authority to act
 - *“for the purpose of remedying that condition”* is normally assumed
 - If not recognized as a report of IGA, danger of recharacterization as a retaliation complaint
 - Malicious intent does not nullify the potential validity of the allegations
 - Intentionally false reports may themselves be IGAs

Reporting – What you should do

- Learn UC policy and reporting channels
 - Locally Designated Official
 - Internal Audit Director
 - Human Resources Director
- Recognize and be alert to informal communications of allegations (protected disclosures)
- Contact Internal Audit and Human Resources (or Academic Personnel, if applicable) before taking any personnel action
- Act with speed
- Keep the matter confidential

Reporting – What you should not do

- When the allegations are made to you, don't dismiss the matter out of hand
- Don't launch your own investigation
- Don't confront the Subject of the allegations or otherwise tip them off
- Don't disclose the matters to unnecessary parties
- Don't try to settle or resolve the matter yourself

Processing Whistleblower Reports



Processing Whistleblower Reports

- Who decides how a complaint will be handled?
 - Locally Designated Official (LDO)
 - Role of Investigations Work Groups (I-Groups)

LDO and I-Groups may draw on other expertise from the location, such as:

- Academic Personnel
- Animal Research Office
- Institutional Review Board
- Environmental Health & Safety
- LR/HR/ER/Disability Management
- Health Sciences Compliance Officer
- Internal Audit
- Student Affairs
- EEO/AA or Title IX Officer
- NCAA Compliance Officer
- Risk Management
- Medical Staff
- University Police

Processing Whistleblower Reports

UC Davis Investigations Workgroup

- Standing committee charged by Provost/EVC
- Committee composition
- Monthly meetings
- Other consultation

Processing Whistleblower Reports

- What factors are considered when determining whether a complaint will be investigated:
 - If the allegations were true, would it constitute an IGA?
 - Do the allegations provide a sufficient basis to investigate?
- Requesting additional information from the Whistleblower in order to make this determination
 - But what if it was an anonymous report?

Processing Whistleblower Reports

- What happens if the allegations are serious but would not constitute an IGA if true?
 - Report to management and others, as appropriate

Processing Whistleblower Reports

Hypothetical:

- An anonymous report is received via EthicsPoint. The whistleblower states that a very senior research scientist (not identified by name) in a particular department has been falsifying his research results for years and has “trumped up” reasons in order to terminate 2 research techs who inadvertently stumbled onto this information. The whistleblower writes that she is afraid to say more because she fears for her job.

Processing Whistleblower Reports

- What factors do you consider when selecting an investigator?
 - Internal vs. external
 - Subject matter
 - Other considerations

Investigating Allegations of Improper Governmental Activity (IGA)



Investigating Allegations of IGA

- Who is interviewed?
 - Whistleblower (if known)
 - The Subject
 - Opportunity to respond to each of the allegations
 - Informational witnesses
 - Including those identified by the Whistleblower and the Subject
 - Probe: What will this person tell me?
 - Decision regarding potential usefulness of the information is up to the investigator

Investigating Allegations of IGA

- Who is interviewed? (cont'd)
 - Other witnesses, as appropriate
 - Character witnesses
 - Similarly situated witnesses
 - Experts

Investigating Allegations of IGA

- Arranging the interviews and other logistical considerations
- Best order of interviews
 - Depends on the facts and circumstances
 - Typical approach
 - Interview the Whistleblower first
 - Two theories concerning Subjects
 - Interview him/her after Whistleblower
 - Gather information from witnesses first and then interview the Subject

Investigating Allegations of IGA

- Repeat interviews are not only permitted, but encouraged
 - Preview your anticipated findings with whomever is not getting desired outcome, to provide opportunity to respond
- What evidence is considered besides witness interviews?
- Investigation Report

Investigating Allegations of IGA

- Key elements of an interview
 - Introductory remarks
 - Advisories
 - Policies prohibiting retaliation and witness's rights
 - Obligation and importance of confidentiality
 - Investigator's inability to promise confidentiality
 - Whistleblower and Subject are not to influence, coach, or intimidate witnesses or potential witnesses
 - Set future expectations

Investigating Allegations of IGA

- Question: How do you handle reluctant witnesses?

Investigating Allegations of IGA

Question: How does the investigator satisfy the policy requirement that “[u]nless there are compelling reasons to the contrary, subjects should be given the opportunity to respond to material points of evidence contained in an investigation report”?

Investigating Allegations of IGA

Hypothetical:

- You are asked to investigate a claim that Meredith, a high level administrator at one of the campuses, is discriminating against job applicants on the basis of national origin. The anonymous whistleblower reported that, in the last 3 recruitments in the department, Meredith has “screened out” applicants who have ethnic names and has said she will only consider hiring US citizens for the job.
- During your investigation of these allegations, witnesses tell you that that Meredith has been using UC funds to purchase office supplies for her husband’s business.
- What do you do?

Investigating Allegations of IGA

Hypothetical:

- During the same investigation of Meredith, witnesses who report to Meredith complain about her management style. In particular, several of them tell you that she has a practice of assigning performance objectives to direct reports at the beginning of the year and then changing them – to make them much more difficult – 3/4 of the way into the year. Meredith reportedly rates employees in their annual performance evaluations using the revised objectives. As a result, employees who expected positive reviews are receiving poor evaluation ratings and believe this is unfair.
- What do you do?

Discussion Questions



Discussion Questions

- The policy states that “[n]o allegations of wrongdoing against a subject shall be considered sustained unless at a minimum, a preponderance of the evidence supports the allegation.”

What does “preponderance of the evidence” mean?

Discussion Questions

- How do you deal with witnesses who change their story?
- What happens if the University decision-maker doesn't agree with the investigator's findings?

Discussion Questions

- What is the Whistleblower told about the outcome of the investigation?
 - Does he or she receive a copy of the Investigation Report?
- What is the Subject told about the outcome of the investigation?
 - Does he or she receive a copy of the Investigation Report?

A Cautionary Tale



Case Study

Background

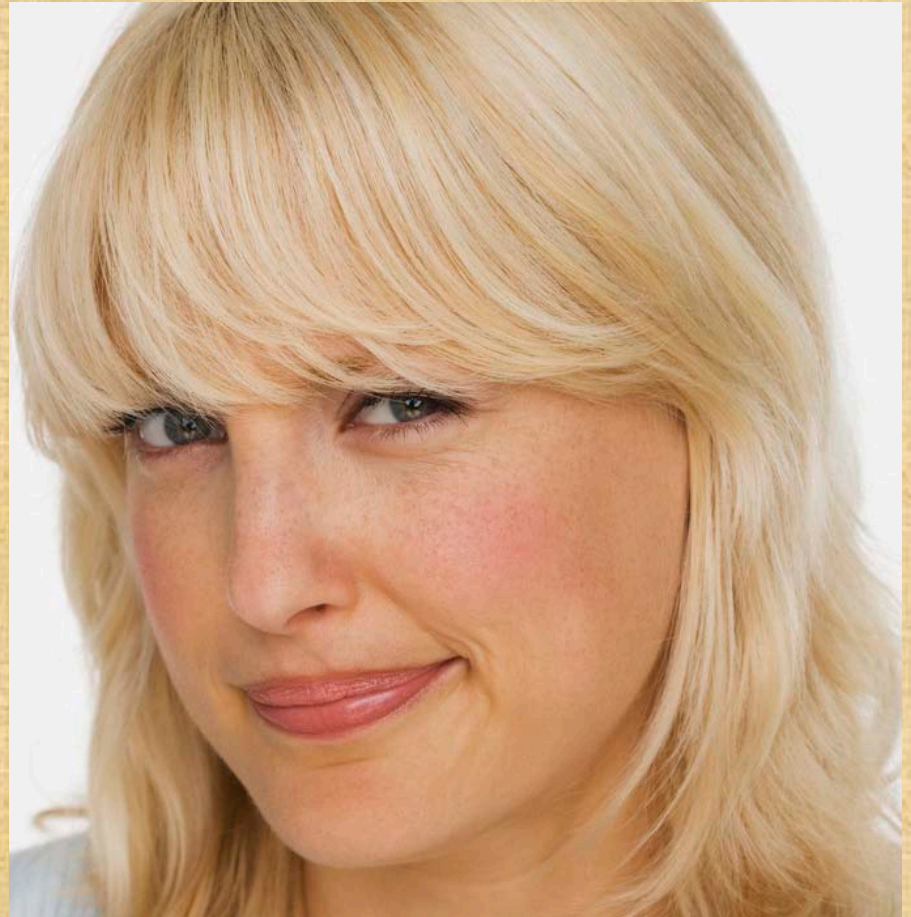
- A large University department has a small unit that operates fairly autonomously & with very limited oversight.
- This unit is involved in procuring services from outside vendors and re-charging various University organizations.



Case Study

Background

- A temporary employee was assigned to assist with a backlog problem. This employee reported to her supervisor that a substantial amount of expenses had not been re-charged.
- Senior department management became suspicious at this report and noticed that none of the bills for a particular vendor had been re-charged in over a year.



Case Study

Decision Point:

- 1) Has a protected disclosure been made?
- 2) Does this matter meet the criteria for reporting to the LDO or another appropriate office?



Case Study

Inquiry

- The senior department manager called the phone number listed on the invoices and got an answering machine. The call was not returned.



Case Study



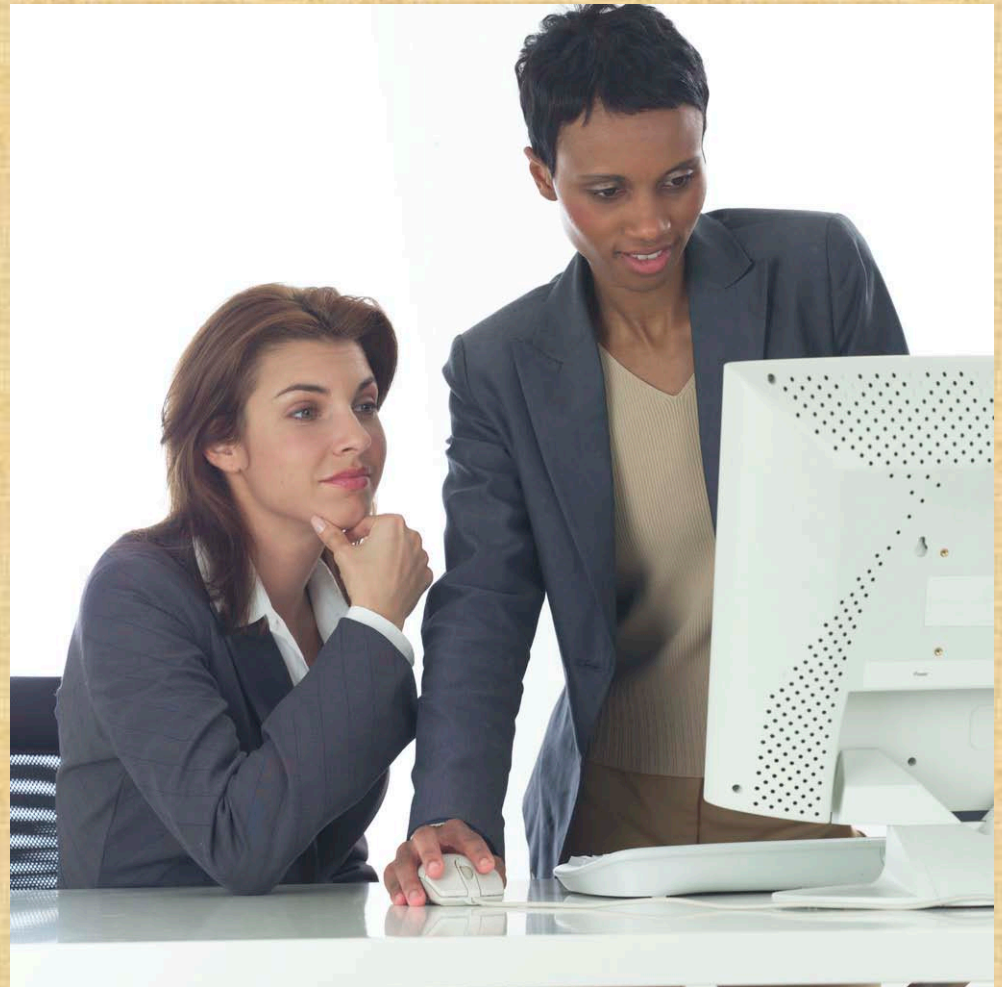
Drive By

- The manager drove by the address on the invoice and found that it was a UPS mail box store.

Case Study

Research

- The manager called the Better Business Bureau and conducted a Dun & Bradstreet search without finding any information on the business.



Case Study

Amount at Risk

- The manager's research found that the University had paid this vendor in excess of \$250,000 over several years.



Case Study

Considerations

- 1) Did the manager go too far?
- 2) Is this matter now reportable to the LDO or another appropriate office?
- 3) What should the manager's next steps be?



Case Study

Action Plan

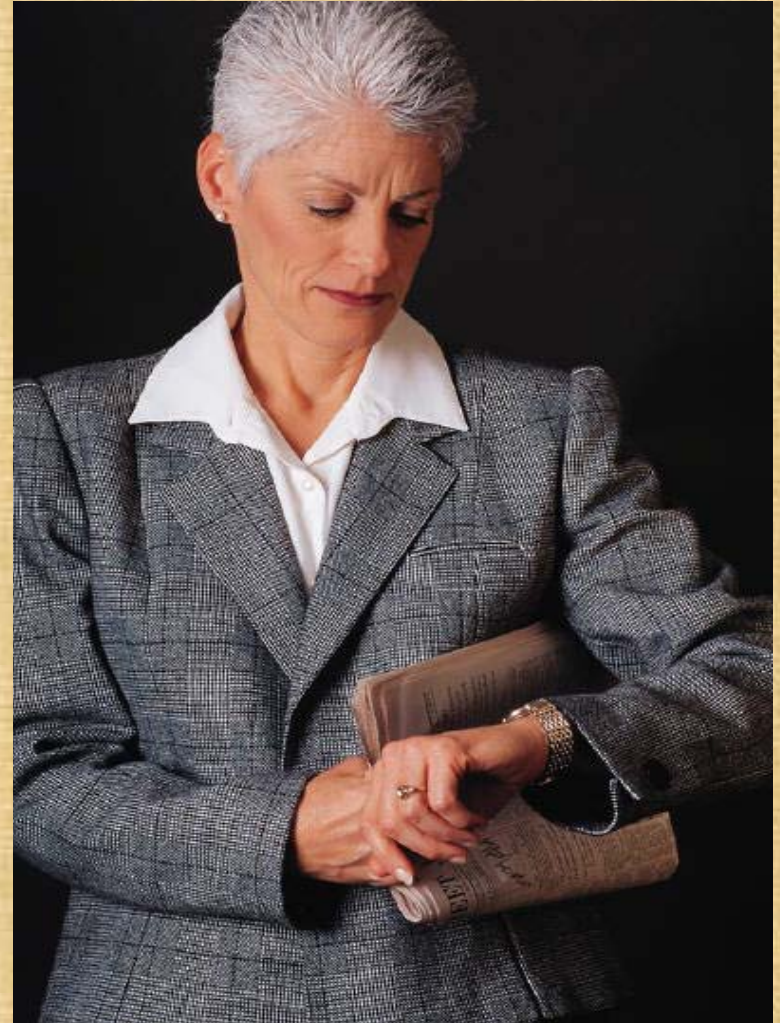
- With this information, the senior manager and another department supervisor confronted the employee on a Friday afternoon about the vendor and the failure to re-charge for their services.
- The employee was perceived as being evasive but did not admit to any wrongdoing.
- She was told to be available on Monday to go over in detail the operation of her unit.



Case Study

Reflection

- 1) Should the manager and the supervisor have confronted the employee with questions about the vendor and the failure to re-charge for the billed expenses?
- 2) Is this matter now reportable to the LDO or another appropriate office?



Case Study

Outcomes

- On Monday, the department found that all of the records in the unit had been removed over the weekend and information had been deleted from the employee's computer.
- The employee had left a message saying that she could be contacted through her attorney.
- ***...Then they called Internal Audit.***



Questions?

