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## **What Employers Can Learn From Ray Rice and the NFL**

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Employers who discover off-duty misconduct of one their employees often wonder what course of action they should take to address the situation—or, sometimes, if they should take action at all. For some employers, their actions and reactions may be governed by a collective bargaining agreement that prescribes the process for handling off-duty misconduct by bargaining-unit employees. When the alleged misconduct is by an executive or highly placed administrative employee, the degree of employer reaction may be addressed in an individual employment agreement. In other situations, the impact of a rank-and-file employee's off-duty conduct may be insufficient to trigger any action.

By taking a closer look at the timeline of the Ray Rice incident and the events that unfolded after it happened, many employers can learn some best practices for how to deal with potentially serious off-duty incidents that may happen with their own employees.

*Event: On Feb. 15, 2014, the media reported that Ray Rice, former running back for the Baltimore Ravens in the National Football League, and Janay Palmer (his then-fiancée, now wife) were arrested on simple assault charges, charged and released from jail. The reports indicated that Rice and Palmer had gotten into a fight at a casino in Atlantic City, New Jersey, but there were no additional details at the time.*

**Employer Response—Take Prompt Action:** The first step for employers is to begin an investigation as soon as they learn of serious off-duty misconduct of one of their employees that might negatively impact the employer's business or the employment relationship. Investigations should consist of interviews with the employee and/or other witnesses about the incident. These interviews should be clearly documented with reports of the interview, including a date and time, names of all present for the interview and a summary of the information discussed.

One important consideration for employers is the identity of the individual(s) they choose to conduct the investigation. It is critical that the investigator(s) be unbiased and objective. In most cases involving relatively large and well-organized employers, a representative from human resources will be the appropriate investigator. But in more serious situations, or in the case of smaller, less-organized companies, the employer may want to consider using outside counsel or a third-party investigator.

*Event: On Feb. 19, 2014, a video of a scene outside an elevator was released by media outlet TMZ.com. The video showed Rice dragging his unconscious fiancée by her shoulders from an elevator. Police later indicated that there was a video depicting Rice*

*knocking Palmer unconscious, but the footage of that video was not released at this time.*

**Employer Response—Acquire Complete Picture of Incident:** When an employer becomes aware that there is physical evidence of the event, it should begin collecting the evidence and documenting the process it took to obtain it. The goal is to achieve a complete picture of the incident. In some cases it may be difficult to obtain additional evidence—when, for instance, it is in the possession of the police. However, employers should attempt to collect all proof about an incident that would help paint an accurate picture of the events. It is important for an employer to document a thorough investigation to support any decision it ultimately makes concerning the affected employee. Similarly, an employer should document attempts to obtain information that are not successful, in order to explain why such information was not considered.

*Event: In March through May 2014, the legal case against Rice proceeded. Rice was indicted on aggravated assault charges (and the simple assault charges against Palmer were dropped). Rice rejected a plea deal that offered probation and anger management in exchange for no jail time. Instead, he applied for and was accepted into a pretrial intervention program for first-time offenders. Typically, this program is available for nonviolent crimes.*

**Employer Response—Weigh Outcome of Legal Action:** When an employee's off-duty misconduct results in legal action, an employer may wish to wait until the legal action is resolved in order to take into account the outcome when making its own decision about disciplinary action for the employee. Employees may be suspended or placed on leave during this time if the nature of the charges would make it unwise for the employee to remain at work. It can be a good practice for an employer to consider the outcome of a legal action as part of its investigation into an employee's misconduct. For example, if legal charges are dropped against an employee, the employer may take that into account when considering proper disciplinary action.

The results of a legal action should be only one component of an employer's investigation, however; it should not take the place of an employer conducting its own independent investigation into the incident or making its own determination as to the appropriate consequences. Just because an employee's behavior does not reach the level of a violation of the law does not necessarily mean that the employee did not violate one or more of the employer's policies or create an unacceptable risk for the employer.

*Event: In June 2014, Rice appeared for a disciplinary hearing in front of Roger Goodell, commissioner of the NFL. Following the June hearing, on July 24 the NFL announced that Rice would be suspended for two games. Even though the suspension was in line with what other first-time offenders had received in the past, many in the public reacted negatively to the punishment, feeling it was too light. The Ravens did not impose any additional punishment on Rice.*

*In late August 2014, the NFL announced a new policy for domestic violence offenders in the NFL. First-time offenders would receive a six-game suspension with no pay, and second-time offenders would be subject to a lifetime ban. At this time, the NFL did not revisit its punishment of Rice.*

Employer Response—Reexamine or Put Policies in Place: Employers should have policies in place that lay out the consequences for off-duty conduct that affects the employer's legitimate interests. The employer's policy should address the fact that off-duty conduct can contribute to a violation of one of the employer's policies. Unlike the Ravens or the NFL, most employers will not create fixed "punishments" for offenses, but will prefer to leave the appropriate discipline open. Despite this, employers need to be sure that they treat similarly situated employees consistently.

*Event: Within two weeks of the NFL's announcement of its new policy, TMZ.com leaked a second video of Rice and Palmer, which showed the altercation in the elevator and Rice punching Palmer and knocking her out. Within hours of the video's release, the Ravens cut Rice and, following that announcement, the NFL indefinitely suspended him. The NFL announced on Sept. 10 that it was commissioning an independent investigation. Additionally, Rice decided to appeal his indefinite suspension with the NFL. There has been a great deal of negative publicity, especially surrounding the release of the second video, some of which has focused on the earlier investigation. The media particularly criticized Ray Rice's initial two-game suspension as too lenient, given the nature of the second video.*

The Rice incident involved a public figure and serious allegations of domestic violence—a combination that surely would have resulted in media coverage under any circumstances. While most employers are not likely to face the same level of scrutiny as the Ravens and the NFL, any serious off-duty misconduct by an employee has the potential to impact an employer. The situation presents an excellent opportunity for employers to reexamine the policies they have in place governing employees' off-duty misconduct, and to consider how they would handle a similar situation if it arose with one of their employees.

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