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Administrative Authority and Perspective: External Misconduct of Employees

We now reside in a world in which public access to video and photos of misconduct is unprecedented whether by employees, athletes or the police. Social media and ever-expanding electronic communication capabilities permit widespread dissemination of these materials within minutes. From elevator cameras to smart phone video, from computer hacking to sharing intimate photos, citizen conduct has never been more exposed. This environment has created incredible pressure on administrators, especially those involved in high public interest activities such as collegiate and professional sports, to address employee, volunteer and athlete misconduct outside the workplace or playing field.

The recent plight of the NFL Commissioner having to deal with athletes involved in domestic violence or child abuse is not limited to professional sports. When college and high school athletes and coaches are stopped or arrested for possible violation of laws, the media turns to the sport manager and asks how the transgressor will be penalized. The media is quick to compare police treatment of athletes with similarly situated non-athlete citizens and quicker still to criticize the administrator who waits for police or court determinations and doesn't immediately suspend an employee in the face of misconduct. It is at this point that many sport managers experience confusion.

Most people have been taught from civics lessons at an early age that "everyone is innocent until proven guilty" and that guilt must be "proven beyond a reasonable doubt". We may have also been taught that citizens have a constitutional right to due process including a right to confront our accusers. But we may not have been taught that these standards are criminal law standards. As administrators, we must also understand civil or administrative law standards. Civil or administrative law recognizes that it is reasonable for a manager to act to protect the reputation or brand of a sport business or educational sport program. If our sport program or non-profit business is dependent on gate receipts, corporate sponsorships or donor revenues, we may also have a duty to protect the financial integrity of our organization.

The sport manager must first understand the difference between making an administrative determination that the individual's conduct has damaged the reputation of the institution or business or poses a

danger to the commercial success of the organization. The police and courts have a separate obligation to determine whether a state or federal law has been violated. Educational institution and sports business employers do not have the same stringent obligations as the police and court systems who must prove their contentions “beyond a reasonable doubt” in order to find an individual guilty of violation of state or federal criminal laws for which his or her freedom may be revoked and imprisonment required. These managers may take action using the lower standard common to civil wrongs – that damage is being done to the reputation of the institution or business and/or potentially harming its commercial success. This administrative or civil law standard is “preponderance of evidence” which is the administrator’s determination that the individual is more likely (more than 50% sure) to have engaged in the alleged misconduct than not. Removing playing privileges, suspension or termination of employment or similar administrative responses to policy violations are based on this administrative standard.

If our sport program is associated with a public institution like a school or college supported by city or state funds derived from citizen taxes, we may be expected to uphold certain societal values such as honesty, non-discrimination, respectful treatment of others, etc. Even if our business is not a publicly financed program, we may believe that the consumer’s support of our business is dependent on trusting our employees or sport participants and respecting how they conduct themselves. Thus, the sport manager’s perspective should be far removed from the police and court system that focuses on violation of state and federal criminal laws. Most sport managers are in the business of upholding high educational and business value standards that are deserving of the public’s support. We uphold these standards when we evaluate the credentials and reputations of those we hire and tell them orally and by written policy they are expected to conform to the highest standards of professional and personal conduct.

Important Notes:

1. Federal laws like Title IX of the Education Amendments of 1972, Title VII and the Ted Stevens Olympic and Amateur Sports Act have heightened administrative responsibility related to obligations to prevent sexual harassment and abuse. Such misconduct may occur inside or outside the classroom or gymnasia and may also involve activities engaged in by teams or individuals on university property or during off-campus trips of student groups. In the case of Title IX, if the school or college has control of either the place or the actors, it is required to address sexual harassment, violence and abuse in off-campus settings.
2. For policies specifically regarding school or college athletics staff or student-athlete misconduct, see Lopiano, D.A. and Zotos, C. (2013) Athletics Director’s Desk Reference. Champaign, IL: Human Kinetics.
3. The purpose of this article is more expansive in that it specifically addresses the right of any sport organization – national sports governing bodies, professional sport organizations, non-profit sport organizations or sport businesses – to establish and enforce standards for off-campus conduct that may or may not be directly related to work responsibilities.
4. Like all SMR recommended policies and procedures, they should be considered as model templates and should never be adopted without careful review by the organization’s legal counsel for consistency with local, state, and federal laws, organization or institutional policies or conduct codes, collective bargaining agreements or other employment agreements. Obligations regarding employment and compensation of personnel vary significantly depending on many factors.

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