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Pro basketball to adopt compliance programs: A case study

by David D. Dodge

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Whether it was by design or happenstance, the Dallas Mavericks and the National Basketball Association (NBA) responded quickly earlier this year to an explosive story about the corrosive culture in the Mavericks' front office. The results are remarkable. Not only did the Mavs promptly engage an independent law firm to investigate all allegations of wrongdoing, but the NBA seized the opportunity to put its stamp of approval on the recommendations in the investigators' report. The NBA soon followed up by directing all of its league members to develop programs that have many of the essential elements of a model compliance and ethics program. Here's the story.

What happened

On February 20, 2018, *Sports Illustrated* (SI) published an article, "Exclusive: Inside the Corrosive Workplace Culture of the Dallas Mavericks." The article chronicled multiple allegations of sexual harassment and other workplace misconduct by current and former employees on the business side of the Mavericks.

In the article, allegations were made against the Mavs' former president and CEO, its then senior VP of Human Resources (who was subsequently suspended), its then beat writer (who was immediately terminated), its former VP of Marketing, and its former senior ticket sales employee.^[1]

The Mavs' response

Within days of the article's publication, the Mavericks retained an outside law firm to conduct an independent investigation into these allegations and any other allegations of serious workplace misconduct the firm might uncover. Ultimately, the investigation included a review of misconduct spanning the past 20 years.

In conducting the investigation, the law firm reported it had received the full cooperation of the Mavericks and its owner, Mark Cuban. Throughout the investigation, the law firm was in regular communication with the NBA and its outside counsel, which had been retained to lead the NBA's oversight function. Near the end of the investigation, investigators met with NBA Commissioner Adam Silver to review their findings.

The law firm's report

Following its seven-month investigation, the law firm released its report of the independent investigation on September 19, 2018. The 43-page report contained 13 key recommendations as referenced below:

1. Increase the number of women throughout the organization, including in leadership and supervisory positions.
2. Improve formal harassment reporting processes and create new paths for victims to report misconduct.
(Note: the NBA, shortly after the SI story broke, announced that it had established a league-wide "Respect

in the Workplace” hotline.)

3. Evaluate, and hold accountable, all executives, managers, and supervisors on their efforts to eliminate harassment and improve diversity of all kinds throughout the organization,
4. Conduct anonymous workplace culture and sexual harassment climate surveys on a regular basis to understand the culture of the organization and whether problems exist.
5. Establish clear hierarchies and lines of decision-making authority within the organization.
6. Clarify what role team owner Mark Cuban will play in the business organization. If Cuban intends to hold a management role, he and the CEO should explicitly define what his role will be, along with rules for when and how Cuban engages on issues.
7. Strengthen and expand Human Resources, and implement clear protocols and processes for evaluating and adjudicating workplace misconduct issues. This should include providing clear communication to employees on the anti-harassment policy and how to report harassment.
8. Provide “prompt and proportionate” and “consistent” discipline across the organization when harassment or misconduct has been substantiated.
9. Provide regular training for all employees on sexual harassment (including bystander intervention training), and special training directed at managers and supervisors. Leaders across the company should participate in the trainings and take an active leadership role in providing trust and safety in the workplace.
10. Adopt clear, transparent, office-wide processes for hiring, onboarding, promotions, lateral transfers, performance evaluations, salary increases, and discipline within the organization. This should include centralizing key employment functions within the Human Resources department.
11. Collect and use data to add value to the company and to identify weaknesses.
12. Require that all leaders, managers, and supervisors engage in efforts to improve workplace culture and to ensure a diverse, inclusive workplace.
13. Employ a full-time, in-house general counsel.

Summary and conclusions

The law firm’s investigation substantiated numerous instances of sexual harassment and other improper workplace conduct within the Mavs’ organization over a period spanning nearly 20 years. Since the investigation began, the Mavericks have implemented several organizational, personnel, and structural changes that overlap the investigators’ recommendations.

Although the investigators did not specifically recommend that the Mavs establish a formal compliance/ethics/integrity program, their recommendations and actions already taken by Mavs’ management reflect in many respects the essential elements of a compliance program, notably:

1. The employment of a full-time, experienced, professional chief ethics and compliance officer.
 2. The creation of a new code of conduct.
 3. Formalization and expansion of their employee training program.
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4. Establishment of an “Ethics Line” (hotline) staffed by a third-party company that allows employees to report their concerns anonymously.
5. The creation of policies and procedures for investigating, evaluating, and adjudicating workplace misconduct issues.
6. Formalization of their plans to conduct anonymous workplace culture and sexual harassment climate surveys.
7. Implementation of clear protocols and processes for evaluating misconduct issues.

Following the conclusion of the investigation and the release of the law firm’s report, Commissioner Silver sent a memo to the league’s 30 teams, asking all of them to adopt the 13 recommendations put forth by the investigators. The memo also reminded teams of the steps the league took in February, in the wake of the *SI* story, detailing allegations of sexual harassment and misogyny in the Mavs’ organization. These included the league-wide confidential hotline, an updated “Respect in the Workplace” policy, and mandatory small-group meetings with professional experts on issues related to sexual harassment and proper workplace conduct. It also “strongly encouraged teams to organize discussions to go over the investigation’s findings to create better dialogue on the issue.” Silver went on to say that his expectation was that all NBA teams would adopt those policies. “I had a strong desire to move very quickly and take advantage of an otherwise ugly moment to laser-like focus on teams on these issues,” he said. “It is my expectation every one of our teams will follow these guidelines. My sense is, having sent that memo out, to the extent that they are not exactly compliant in substance, they will be.”

As the sports industry in the US has grown and prospered over the past few decades, what’s remarkable is that the professional leagues have not yet established effective compliance programs designed to protect their employees, their assets, and their reputations. What’s also remarkable is that the NBA responded as quickly as it did to make it clear to its teams that now is the time for change.

Takeaways

- The Dallas Mavericks (Mavs) responded quickly to the *Sports Illustrated* story by engaging an independent law firm to conduct an investigation.
- The Mavs and the NBA were in close communication during the investigation.
- The law firm’s report included 13 key recommendations addressing allegations of wrongdoing within the Mavs’ front office.
- The Mavs hired its first chief ethics and compliance officer.
- The NBA commissioner established a hotline for member teams and directed them to adopt the policies included in the law firm’s report.

¹ Jon Wertheim and Jessica Luther, “Exclusive: Inside the Corrosive Workplace Culture of the Dallas Mavericks,” *Sports Illustrated*, February 20, 2018, <https://on.si.com/2z2IzHx>.

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