



## Think About How It Will Look!

### Insights

1.22.14

OSHA is investigating its Compliance Officer who led the highly visible investigation of and citation of SeaWorld after a trainer was killed by a whale. I have linked to [news reports](#) which report that the Compliance Officer was photographed attending the premier of the documentary “*Black Fish*” at the Sundance Film Festival. Unfortunately, for the Compliance Office, the film “*Black Fish*” takes a critical look at SeaWorld. One news source also states that while attending the film festival in Park City, Utah, the OSHA Compliance Officer shared a rental house with the filmmakers and former SeaWorld employees who appear in the documentary. The *Black Fish* Associate Producer reportedly responded that the Compliance Officer “had nothing to do with the production of the film.” Still, how’s it look to the public? As businesses have painfully learned, appearance matter and sometimes the truth is far less interesting.

Not surprisingly, SeaWorld is vigorously raising questions about whether the Compliance Officer was objective in her OSHA investigation and speculated that the Compliance Officer appears to be an animal activists. Keep in mind that the SeaWorld case has ignited a passionate and contentious debate, so SeaWorld’s concerns are hardly frivolous.

So far, OSHA has only stated that they are investigating the matter. I don’t envy the Agency this task.

I do not know this OSHA Compliance Officer, but her Area Director is a straight shooter, who does not show favoritism. Likewise, OSHA Region IV leadership is among the best in the OSHA system. In 30 years of dealing with Region IV OSHA, I have not encountered a situation similar to the worse case scenario presented here. If the allegations are true, OSHA is a large organization and no one should be surprised if, just as in the private workplace, an employee takes unwise actions. This could happen to any organization. Are you prepared?

Let’s talk about lessons for employers. First, what on earth was the Compliance Officer thinking? I would love to go to the Sundance Film Festival, and I can well understand her desire to do so. However, the SeaWorld OSHA citations are currently being appealed to the U.S. Court of Appeals, and follow-up OSHA investigations have occurred and will no doubt continue to occur. If I was an employer, I would sure as heck doubt her objectivity.

Who knows. Maybe the Compliance Officer was encouraged to get to know the Black Fish participants in order to broaden OSHA’s knowledge base. Unfortunately, allegedly showing up in a

*Black Fish* tee shirt and staying with members of the crew would “appear” to the public to go beyond building a relationship in order to obtain information.

How often have we seen similar unwise behavior involving workplace social media? Twitter, Instagram and blogging have increased the opportunity for a single employee to destroy your carefully crafted brand.

How about those Facebook posts by the angry managers of a restaurant accused of stealing tips, firing more than 100 staff, and picking fights with customers: *“You are all little punks. Nothing. You are also nothing. We are all laughing at you. All of you, just fools. We have got on our side, you just have your sites.”* Wow. I bet that brought in customers.

What’s really scary is that you may not even realize your exposure by your employees who have access to your twitter feed and other social media efforts. Read [“\*HMV Forgets Who Has Access To Its Twitter Feed.\*”](#) According to this article, employees had access to official HMV tweets as they met with them to terminate their employment. They took out their anger by live tweeting the meeting where HR informed them of their discharge. *Ouch!*

Consider the twitter post of a well known U.S. manufacturer’s social media employee who apparently tastelessly posted ON THE COMPANY’S FEED that the President’s grandmother knew the presidency was going to be a problem and therefore died three days before he became President. The company swiftly removed the tweet and issued an apology, but the point is that employees have the power to make a company look bad in a way our pre social media workforce never enjoyed.

Lessons? Regularly train your employees about professional use of new forms of social media and its ability to harm a company’s brand. Do not assume that even managers will display “commonsense.” Revise your electronic communication policies to provide better guidance, especially regarding official company sites and communications. Finally, do not overreact and run afoul of the NLRB’s distaste for employer restrictions on employee speech.

## ***Related People***

---





**Howard A. Mavity**

Partner

404.240.4204

Email