

The Unlucky 13: Lessons Learned from Companies Caught in the Act

<http://i-sight.com>

Phone: 800-465-6089

info@i-sight.com



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Introduction

No company is too big or too small to pay the ever-increasing price for workplace misconduct. The media is full of examples of companies caught in the spotlight for fraud, theft, harassment and discrimination. Recent scandals have affected some of the biggest names in business, as well as some smaller, relatively unknown, companies. Many have received hefty fines and penalties.

Protecting your company's reputation and bottom line is an ongoing process and one of the most efficient ways to do this is by learning from the mistakes of others. Don't learn the 13 lessons below the hard way.



Xerox

Loss Value: From \$50-100 million

In 2002, the SEC filed fraud charges against Xerox at around the same time the Enron and WorldCom scandals broke. It was reported that management at Xerox had accelerated revenue and violated the generally accepted accounting principles (GAAP) to make the company's financial position look better.

Unlike many of the other companies found guilty of similar violations, Xerox failed to cooperate with the SEC during the investigation. This was reflected in the penalty the company received. The \$10-million fine was the largest one handed down at that time.

Lessons Learned

- Communication is key

After the scandal, Anne Mulcahy stepped in as CEO. Mulcahy sends other executives the message to get out of the office and talk to those who matter – employees, customers, other business leaders and managers – at the company's operations in other countries.

- Cooperate during an investigation

Companies that cooperate with the SEC during investigations receive much lower fines and sanctions.

Unlike many of the other companies found guilty of similar violations, Xerox failed to cooperate with the SEC during the investigation.

Ford

Loss Value: From \$50-100 million

In November 2010, a former Ford employee pleaded guilty to stealing trade secrets from the company. The former employee downloaded the design documents, which weren't related to his job at the company, onto an external hard drive and took it with him after his last shift.

Lessons Learned

- Implement access controls

Employees should have access only to the information and documents they need in order to do their jobs. Product- or client-related information should have tight controls.

- Establish a network security policy

Eliminate the ability for employees to connect any sort of media storage devices to the network. Ensure there are no unsecured wi-fi access points.

Siemens

Fine/Settlement: \$1.6 billion in 2008

From 2002 to 2006, Siemens had a “bribery budget” in place. The funds were used to pay officials around the world to secure business contracts and other needs at Siemens. The purpose of the fund was well known throughout certain departments in the company’s German operations.

Siemens was extremely cooperative with investigators, which reduced the fine and granted amnesty to employees who were willing to bring information forward. Siemens was also allowed to plead to “accounting inaccuracies” as opposed to bribery because of its cooperation.

Lessons Learned

- Tone from the top

It was clear that Siemens needed to bring in someone from outside of the company to take over. Peter Löscher was the man for the job.

- Code of ethics

When selecting leaders, choose people who embody the corporate mission and vision. Make sure leaders walk the walk to back up their talk.

Satyam

Amount Overstated: \$1.04 billion

The Satyam accounting fraud scandal shook the company and the rest of India. The false \$1.04 billion in cash on the company’s balance sheets equated to 94 per cent of the cash listed on the company’s books. Satyam’s Chairman, Ramalinga Raju stated that no one else on the board was aware of his actions.

When news broke about Satyam, the value of the rupee dropped, as did Indian equity markets.

Lesson Learned

- Corporate crime hurts everyone

Corporate crime can impact the reputation of an entire country. After the scandal, it was predicted that Indian rivals would also face greater scrutiny by regulators, investors, and customers.

The banking and finance sector in the US is another example. A loss of trust, increased regulation and tighter enforcement have resulted from the actions of a few key players.



Tyco

Fine/Settlement: Former CEO and former CFO \$35 million to Tyco plus fines of \$70 million \$35 million, as well as prison sentences.

Former CEO Dennis Kozlowski and former CFO Mark Swartz were accused of the theft of more than \$150 million from Tyco. During their trial in March 2004, they claimed the board of directors had authorized it as compensation.

There were signs of extravagant personal spending by both men, but nothing was done about it. In 2002, questions about the accuracy of the books at Tyco triggered a slew of events that led to a major fraud investigation. Kozlowski and Swartz are paying the price for the crimes: 22 counts of grand larceny, false business records, and conspiracy and securities fraud.

Lesson Learned

- Accountability

These two men played significant roles at Tyco and weren't held accountable for their actions. When Tyco introduced Ed Breen as the new CEO, it became apparent that the company wanted to make the right move and hire someone who would hold everyone, including himself, responsible for their actions.

The leader sets the tone for the company and establishes the corporate culture. Peter Löscher was the man for the job.

Hewlett-Packard

Issue: Lawsuits and Investigations

Multiple lawsuits and investigations in a short period of time made 2010 a rocky year at HP. A sexual harassment investigation, a kickback probe and an SEC investigation into whether or not former CEO Mark Hurd leaked inside information wraps up the year for HP.

Lesson Learned

- Ethics training

Employees need to know what is expected of them. An evaluation of risks they face should be used to ensure training topics are up-to-date with current ethics and compliance threats. Ensure training is ongoing so that change is lasting.

Johnson & Johnson

Issue: Recall Response

After several years of continuous recalls, Johnson & Johnson has been roundly criticized for its lack of communication and ability to take control of the situation.

An *Associated Press* (AP) story reported that J&J had roughly two dozen recalls of “prescription and nonprescription medicines, replacement hips, contact lenses and diabetes test strips, including tens of millions of bottles of children’s and adult Tylenol and Motrin” since September 2009. The continuous safety failures put three J&J manufacturing facilities under federal scrutiny.

Lessons Learned

- Transparency

During the tainted Tylenol scandal in the 1980s, the company’s chairman communicated regularly with the media and, in a press conference, gave a tremendously transparent overview of every detail related to the recall.

- Timely crisis communication

J&J’s quick and bold reaction to the 80s Tylenol recall has gone down as one of the best in history, setting the bar for crisis management. Its more recent behavior has fallen short.

Mattel

Issue: Supply Chain Quality Control

In 2007, Mattel launched four separate product recalls. The recalls were the result of large quantities of lead found in the paint used in a number of its products. Mattel, like many other companies, uses contractors in China to manufacture products.

This case raises supply chain concerns, bringing to light the importance of quality control and keeping an eye on the actions of your overseas operations and partners.

Lesson Learned

- Keep an eye on your supply chain

Chinese contractors had subcontracted the painting of the toys to another company that used inferior and unauthorized products. Third parties need to be held to the same standards to which you hold your own company. If your third party contracts out to another company, make sure to do your due diligence on them as well.



BAE

Fine/Settlement: \$450 million

BAE faced fines in both the US and the UK for different crimes. Both settlements were finalized on the same day.

In the US, BAE pleaded guilty to one count of conspiring to make false statements to the US government. It was reported that BAE gained approximately \$200 million from business received from the false statements.

In the UK, BAE pleaded guilty to one charge of breach of duty in relation to records of payments made in Tanzania. It was alleged that BAE paid a Saudi official to influence purchase/contract decisions.

Lesson Learned

- Tighten anti-corruption/anti-bribery procedures

With both the US and the UK cracking down on bribery and corruption and increasingly hefty penalties, it's more important than ever for companies to conduct due diligence and research common business practices in other countries before embarking on business relationships there.

The Google Street View cars around the world were collecting (inadvertently) private information from wi-fi networks that had been left unprotected.

Google

Issue: Loss of reputation over privacy violations on two fronts

The Google Street View cars around the world were collecting (inadvertently) private information from wi-fi networks that had been left unprotected. It was reported that the information had been gathered over the past few years.

Google Buzz automatically opted users into the feature that showed others their contact lists.

Lesson Learned

- Privacy controls

Private information should be collected only when necessary and permitted. Before launching a service, test it to make sure that other information isn't exposed in the process. Users should have to opt-in to features before any of their information (contact lists included) is displayed.

International Monetary Fund

Fine/Settlement: TBD + Reputational Damage

The arrest of the IMF's managing director, Dominique Strauss-Kahn, for allegedly sexually assaulting a hotel housekeeper, resulted in a wave of attention directed at the corporate culture at the IMF. Strauss-Kahn resigned from his position at the IMF shortly after the arrest.

Since then, the floodgates have opened with new allegations against Strauss-Kahn and a portrait of an organization rife with harassment.

Lessons Learned

- Anti-harassment training and policies

Ensure the policy includes information about the types of harassment and discrimination and where employees can report anonymously any misconduct.

- Tone from the top

Get top-level buy-in for harassment and discrimination policies and show that the rules apply to everyone, regardless of their level of seniority in the company.

Verizon Communications

Fine/Settlement: \$20 million

Telecommunications giant Verizon Communications agreed to a \$20-million settlement and significant equitable relief to resolve a nationwide class disability discrimination lawsuit filed by the US Equal Employment Opportunity Commission (EEOC). The settlement sent a clear message that disability discrimination is a serious offense.

The class lawsuit said the company disciplined or fired hundreds of employees who weren't able to comply with the company's strict attendance policy. The employees in question were denied "reasonable accommodations" for their disabilities, according to the ruling.

Lesson Learned

- Anti-discrimination policies and enforcement

Companies must provide reasonable accommodations for disabled employees according to the law. The settlement demonstrated the need for employers to have attendance policies that take into account the need for paid or unpaid leave as a reasonable accommodation for employees with disabilities.



Happy Days Children's Wear Inc.

Fine/Settlement: \$22,500

Happy Days Children's Wear Inc. is a small children's shop in New York. Its manager dismissed a female employee of seven years because she was pregnant. Although the manager gave other reasons for the dismissal, the EEOC felt that the reasons weren't consistent or plausible.

While the dollar value of the settlement with the EEOC might seem small, it was significant for the size of the business.

Lesson Learned

- Anti-discrimination training

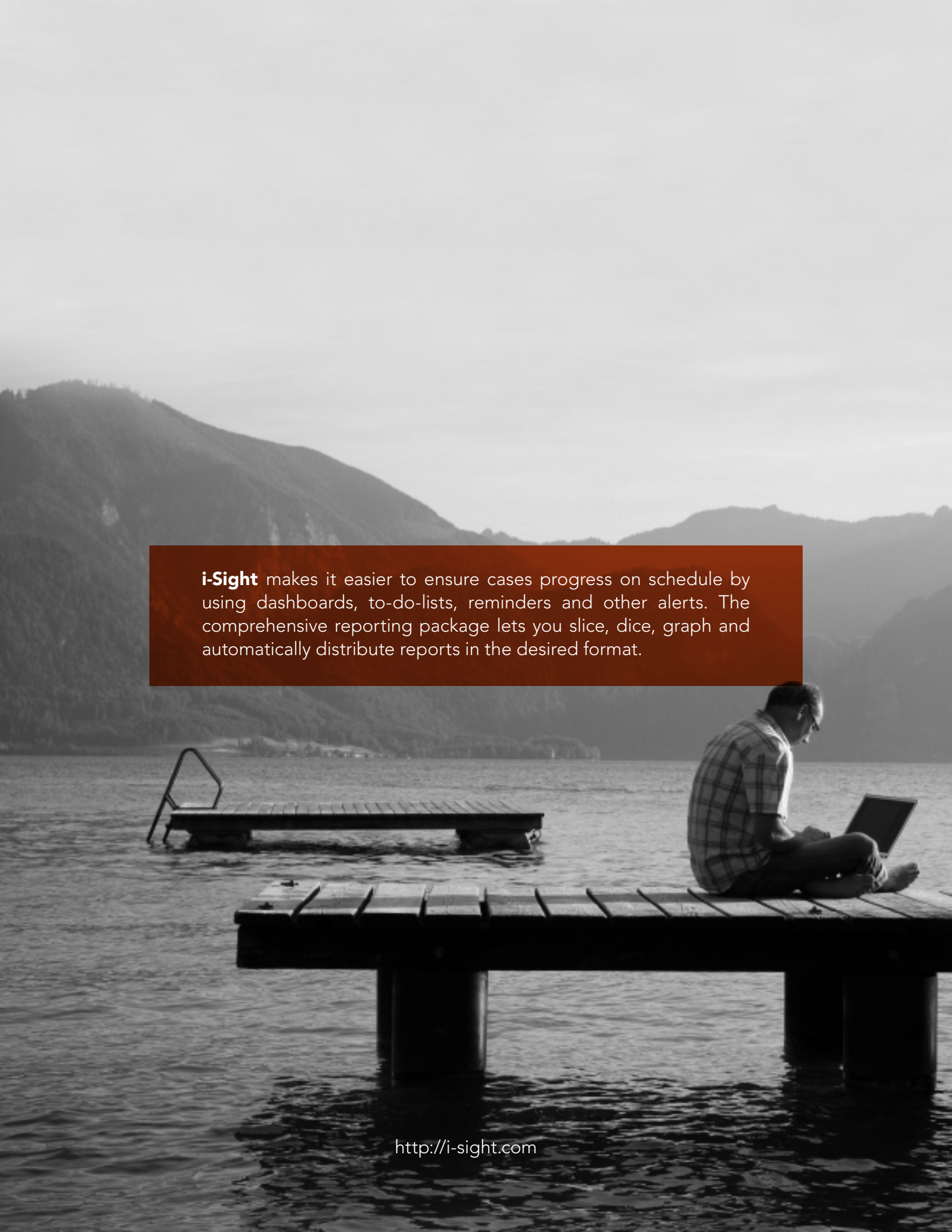
Pregnant women are a protected class, making it illegal to discriminate against an expecting employee.

- HR policies and training

When terminating an employee, provide him or her with concrete examples of the actions that led to the decision. To do this, employers and supervisors must keep an updated written record of employee incidents or misconduct. This serves as evidence, if a lawsuit is filed, that the employee was terminated for just cause.

It is also important to perform and document regular employee evaluations so that any feedback that employees have been given are recorded. This could provide a defence in the case of a wrongful dismissal lawsuit.

Pregnant women are a protected class, making it illegal to discriminate against an expecting employee.



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