

How to Conduct a Workplace Investigation

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Employee complaints of discrimination and harassment must always be taken extremely seriously.

Investigations of complaints are necessary to provide a factual basis for the employer's decision-making and to mitigate potential risks. A proper investigation allows a company to determine what happened, deal with employee problems early on, appropriately enforce company policies and rules, and mitigate liability.

Multiple steps are needed to conduct a proper investigation. Employers should:

1. Respond promptly.
2. Ensure discrimination or harassment stops immediately.
3. Choose an investigator.
4. Gather and review background information.
5. Conduct interviews.
6. Document the investigation.
7. Make a decision.
8. Prepare the investigation report.
9. Use corrective action, as appropriate.
10. Close the investigation.

Best practices for conducting a proper investigation

An employer must make the investigation a top priority and promptly identify an investigator and a decision-maker who are free of real or perceived conflicts of interest or bias. A good investigator should possess the following abilities:

- Good listening skills.
- Capable of handling uncomfortable subjects and maintaining confidentiality.
- Detail oriented.
- Make findings in the face of conflicting evidence.
- Write a concise and coherent report.
- Presents well as a witness in any future litigation.

Human resources professionals often make great investigators. However, on a case-by-case basis, employers should consider utilizing in-house or outside counsel to conduct investigations in order to best navigate serious or complex complaints and to enhance the likelihood that certain related communications are and remain privileged.

During an investigation, the most common order of interviews is:

1. The complainant/victim.
2. Key witnesses.
3. The accused.
4. Other witnesses identified during the investigation.
5. Any follow-up interviews for witnesses to respond to or address statements of others.

This order best allows the investigator to gain sufficient knowledge in order to effectively interview the accused.

When interviewing the accused, the



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investigator should not offer a personal opinion. Instead, the interview should be designed to give the accused an opportunity to provide his or her version of the events as well as any additional information to be considered. If the accused refuses to participate, the investigator should advise him or her that the company will be forced to base its decision on the other information gathered during the investigation, the inferences drawn from the evidence, and the accused's unwillingness to cooperate with the interview.

In most non-union settings, the accused does not have the right to legal representation during the interview. However, in some circumstances, it may make sense to allow attendance of legal counsel, provided that they do not interfere with the investigation.

After completing interviews, the investigator prepares a written summary of findings and determinations. This summary should identify the persons interviewed, dates of interviews, and documents and other information reviewed. The investigator will likely have to weigh evidence and assess credibility to make their final determination(s). When making credibility determinations, the investigator should consider how each witness presented, whether the witness's version of events was corroborated or undisputed, and the potential motives of each witness.

Following the investigation, any remedial measures should be designed to ensure that

no further discrimination or harassment occurs and correct the effects on the complainant, to the extent applicable. In addition, employers must take preventative measures to ensure that the complainant is not retaliated against for making a good-faith complaint.

There are many pitfalls when conducting an employment investigation. Employers are well advised to consult with their employment attorneys before and while conducting an investigation in order to mitigate risks.

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