

The Verdict Is In: Don't Judge Your Own Case

Why outside counsel is key to a thorough, unbiased investigation

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Workplace investigations can be a troubling experience. Complaints about discrimination, bullying and sexual harassment are uncomfortable and sensitive topics. These investigations are often emotionally charged and complicated by interpersonal relationships. When these issues come up, it is prudent to involve outside counsel.

The benefits of hiring outside counsel stretch beyond the important legal implications.

It is critical to maintain a neutral position during an investigation. By engaging outside counsel, you mitigate concerns of bias that come with internal investigators. An outside attorney has no reason to overlook some concerns and focus on others. An unbiased investigator ensures the investigation can withstand scrutiny. Outside counsel can provide the objective approach you need to honestly evaluate the facts and draw sound, unimpeachable conclusions.

Engaging outside counsel to investigate also comes with an added benefit: experience. Personnel investigations are highly sensitive and have serious consequences. Investigations should be handled with experience and preparation. New information often comes to light during an investigation and being prepared to react to new and unexpected issues is critical. By hiring outside counsel, you are engaging a team of attorneys who have handled these issues before and can adapt to unexpected changes in the investigation, shifting their focus to ensure all pertinent information is captured.

When you engage outside counsel to lead an investigation, their sole purpose is to investigate. Your human resource office does not plan time in the day to conduct investigations. Outside counsel, on the other hand, does not need to juggle hiring, benefits and employee relations, and they are not concerned about maintaining a working relationship with your team in the future. This creates a separation between the business and the investigation, which benefits all parties involved and can encourage honesty.

Furthermore, maintaining confidentiality is crucial. Both during and after an investigation, the investigator's findings should remain as confidential as possible. Engaging outside counsel helps maintain that confidentiality, and at times provides the basis for attorney-client privilege. Attorneys who conduct investigations are also experienced in handling

sensitive allegations and keeping facts to a need-to-know basis to prevent any unnecessary embarrassment and animosity.

Finally, outside counsel is familiar with the law and can provide value beyond the investigation. Employment law changes often, and it can be a struggle to keep employment policies and handbooks up to date while also keeping employees well-

trained. Outside counsel knows the current law and knows when employees might need more training. A thorough investigation can include analysis and recommendations on policy updates and additional trainings to prevent future issues.

Limit your exposure. Consider outside counsel for your next investigation. It may be the prudent choice.

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