


Conducting Workplace Investigations


Presented by:
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Purpose of an Investigation




- Gather facts
- Sort out relevant details
- Reach conclusion that leads to employment decision, response to an agency or prepare for defense
- Demonstrate commitment to workforce and culture regarding fair and equitable treatment of employees





Benefits of Conducting an Investigation



- **Self-monitoring** – ensures compliance with state laws and company policies
- **Avoids embarrassment** – minimize risk of discipline or termination for false accusations
- **Reduces risk of legal action** – appropriate action may mitigate risk, ensures fair and just treatment




Who Should You Conduct Investigation?



Someone who:

- Has appropriate experience
- Has expertise in the field
- Skilled at putting people at ease
- Ability to gather relevant facts
- Unbiased
- Unprejudiced


When Should You Conduct an Investigation?




When any of the following occur:

- Complaint
- Accusation
- Alleged employee misconduct
- Rumor
- Violation of company policy

Take all complaints seriously!




10 Common Investigation Mistakes



1. Not conducting an investigation at all, dismissing complaints
2. Potential bias during investigation
3. Not referring to EEOC guidelines
4. Inadequate or poor documentation
5. Not interviewing all potential witnesses
6. Not taking appropriate remedial measures during investigation
7. Not taking steps to avoid retaliation
8. The "confidential complaint"
9. Delay
10. Inconsistency

Matthew A. Goodin, California Employment Law Letter

Formal or Informal Investigation



The way you handle may prevent issue from proceeding further.

Formal Investigation is Needed When...

- Additional facts are needed
- Employee unable to provide all the information needed to find resolution
- Others needed to be interviewed
- Additional documents need to be reviewed
- Special expertise is required to obtain in-depth research, data, analysis

Investigation Suggestions

- Plan the Investigation thoroughly
- Identify questions
- Notify EPLI
- Respond and take action quickly
- Any and all allegations regarding Harassment should be investigated thoroughly
- Employers have a legal obligation to protect employees and provide a safe working environment
- Employer liability may depend on how complaints or allegations are handled
- Consider using 3rd party investigators

Planning the Investigation



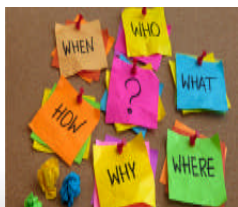
- What policies/guidelines apply to the situation?
- What is the Company's obligation? Risk?
- How have similar situations been handled in the past?
- Who will be interviewed and in what order?
- What questions will be asked?
- What special expertise does the interviewer need?
- What interim action is necessary? (suspension)
- Is there potential for violence?
- Plan private location for meetings



Investigation Questions



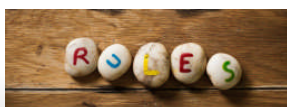
- Who was involved, witnesses, etc.?
- What happened?
- When did it occur?
- Where did it occur?
- Why? Motive?
- How did the incident happen?
- What else?



Interview Ground Rules For All Parties



- Assure that no conclusion has been reached
- Assure that no reprisal will be taken for providing truthful information
- Required to keep all discussions confidential
- Asked to identify others with possible relevant information
- Do not promise confidentiality



Interview Ground Rules For All Parties



- Allow silence
- Observe body language, tone, changes in demeanor
- Do not influence answers or ask leading questions
- Do not form conclusions
- Treat with dignity and respect
- Provide general overview of next steps



Interview With Complainant



- Establish comfort level with investigator's impartiality
- Identify all issues
- Gather all facts – documents, notes, emails, texts, photos, recordings, witnesses, etc.
- Solicit Employee's suggestions for resolving issue
- Assure employee that Company does not permit retaliation
- Assure employee that disclosure of information is limited to need-to-know basis; Same expectations for Employee
- Ask for chronological events
- Ask employee to put all information in writing and sign/date
- Thank them for the opportunity to address

Interview With the Accused



- Provide as many details about the issue as possible
- Identify policy or guideline surrounding the issue
- Begin with open ended questions
- Ask tough, direct, embarrassing questions towards the end when the employee is not as defensive
- Ask for chronological description of events
- Avoid reaching conclusions
- Continue asking questions until you feel relatively certain you have obtained the truth

Documentation



- Documentation can minimize employer liability
- Document facts and details - avoid conclusions, indicate when employees are sharing personal feelings instead of facts
- Capture direct quotes
- Document credible evidence
- Timelines are important (incident and investigation timelines)
- Notes may be discoverable



Documentation is critical!

Investigative Report



- The incident being investigated, with dates
- The individuals involved
- Key factual findings and credibility determinations
- Applicable employer policies and guidelines
- Summaries of witness statements
- Specific conclusions, recommendations
- The name of the person making recommendations
- Issues that couldn't be resolved
- Employer actions taken
- Signed statements from all parties involved



Assess Credibility – EEOC Guidelines



- Make notes immediately after each interview to help you assess credibility later, nervousness, tone of voice,
- Assess demeanor – nervousness, tone of voice



EEOC Guidelines to Assess Credibility:

- Plausibility – are facts believable and make sense?
- Demeanor – do they seem to be telling the truth?
- Motive – does person have a reason to lie?
- Corroboration – documents or other witnesses that support their version?
- Past record – does the alleged wrongdoer have past record of inappropriate conduct?

Conclusions and Recommendations



- Organize information obtained and write report
- Investigator may or may not be the person to write a summary and make recommendations on resolution
- Conclusions and recommendations based on nature of violation, based only on facts and take into consideration applicable laws, company policy, and company practice
- If conclusion leads to employee discipline, employer should have an appeal's process to prevent external actions



Potential Corrective Actions



- No action (except documentation)
- Education
- Discussion or counseling document
- Written warnings/corrective action
- Suspension – with or without pay
- Demotion
- Salary reduction
- Transfer
- Termination
- Criminal authorities notified




Follow Up





- Submit findings to decision-maker (typically not investigator) who will determine disciplinary action to take
- Notify Complainant that action was taken – even if details cannot be shared
- Reintegrate involved employees into workplace
- Remind managers of zero retaliation policy
- Review and identify learning and/or training needs




Best Practices 

- Employer statement prohibiting retaliation or reprisal against employee for raising legitimate issues
- Appeal procedure for employee who feels unjustly treated
- Choice of reporting options – supervisor, member of management, senior management, HR, Board, anonymous avenue, hotline



questions? 

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Thank you for your participation!
