



Conducting Solid Internal Investigations

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How important are strong investigations?

- Fact-finding tool
- Key to:
 - Good decisions
 - Fair and equal treatment
 - Morale/ethical environment
- Affirmative duty under the law
- Part of defense in lawsuit (prevent/correct/mitigate)
- Crucial to show employer acted reasonably even if conclusion later deemed wrong

When an investigation is needed

Prompt, thorough, impartial investigation

When HR or management learns of employee complaint of misconduct

- Harassment
- Discrimination
- Theft
- Violence
- Substance abuse
- Other misconduct

Choosing an investigator

- Thorough understanding of law and organization's policies, procedures, practices, and rules
- Is discreet and will maintain confidentiality
- Is fair, impartial, and objective
- No relationship to complainant and subject
- Has investigation experience
- Will make a good witness at trial

Interviews

Based on the goals of the investigation . . .

- Who should be interviewed?
 - Personal, relevant knowledge
- Order of interviews
 - Complainant, others, subject
 - Second interviews if necessary
- Outline of questions
- Chronology
- When/how to notify the witnesses of their interviews

Documenting interviews

Standard practice is to use notes only

- Date
- Who is in the room
- What is said
- Documents the witness agrees to provide

Review notes and clean up if necessary

Confirm the witness is not recording the interview

Essential Rules for the Investigator

- NEVER express opinion or judgment
- NEVER write opinion or judgment in your notes
- NEVER ignore new issues that arise
- Be professional and not overly aggressive
- Keep your cool
- Remain objective

Interviewing Techniques

- Establish a rapport with each witness
- Let the person tell his/her story . . .
“what happened next?”
- Ask open-ended questions (how, who, what, when, where, why)
- Keep the interview “on track”
- Start broad, then narrow if necessary
- Leading questions/forced choice also if necessary or to save time
- Periodically summarize and review
- Listen and observe!

Interviewing the Complainant

- Be supportive but neutral
- Ask complainant what (s)he *wants* to occur as a result of complaint
- Encourage the complainant to contact you with any additional information
- “Someone will get back to you at the conclusion of the investigation”

Unlock Conclusory Statements

- Help the witness move past broad statements and conclusions
- Work to break them down into examples, facts, statements, behaviors, “for instance,” and descriptors

Interviewing witnesses

- If possible, be general about complaint
- “I may have follow-up questions”
- “I may not get back to you”
- Review the prohibition on retaliation

Interviewing the Subject

- Present him/her with the allegations
- Ask who else might be helpful to interview
- Why would someone make this kind of accusation?
- “Someone will get back to you at the conclusion of the investigation”
- Stress non-retaliation

Determining Credibility

- Credibility might involve
 - Consistency
 - Demeanor
 - Corroboration
 - Motive
 - Past records
 - Logic
- If the work is done in the information gathering stage, credibility decisions can be made

Reaching a Conclusion

- Consider corroboration
- Consider credibility
- Review documentary evidence
- Focus on the information to eliminate personal bias
- Key is ***reaching a reasonable conclusion after a good faith investigation***

Weighing the Information

- Not a legal proceeding
- Legal burdens of proof (beyond reasonable doubt; clear and convincing) do not apply and are not relevant
- Standard is more likely than not
- *There will be times when a determination may not be possible based on the available information, but these should be fairly rare or limited to some of the issues.*

Prepare a Written Report

- Remember that the Report is **DISCOVERABLE**
- Prepare it as if an EEOC investigator or a jury is going to read it
- Label it “Confidential”
- Document steps taken and information received and reviewed
- Omit adjectives and adverbs
- Omit extraneous information
- Avoid legal conclusions

Create an investigation file

Keep ALL relevant documents, notes, emails, etc. together in one labeled file dedicated to the investigation. File should include:

- Documents reviewed
- Copies of correspondence (including emails)
- Information about third party conversations
 - Complainant's attorney
- Interview notes
- Written report

Follow up

- Close the loop with the complainant and the subject
- Document these steps!
- Implement changes to policies and procedures
- Look for indications that training may be needed

Corrective Action

What is appropriate under these circumstances?

How has the organization handled similar situations in the past?

What makes sense for business needs?

Is it “fair” to all parties?

What would a juror think?

Sound Internal Investigations

- Complaint
- Prompt and thoughtful response
- Investigation
 - Neutral Investigator
 - Interviews of persons with information
 - Review of relevant materials
- Closing
 - Credibility, findings, written report, corrective action
- No Retaliation

Questions?



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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