

THE INVESTIGATOR'S ROADMAP: CONDUCTING FAIR AND EFFECTIVE WORKPLACE INVESTIGATIONS

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I. PURPOSE AND IMPORTANCE OF WORKPLACE INVESTIGATIONS

A. Key purposes:

1. Avoid or minimize legal liability
2. Improve factual basis for decisions
3. Improve morale
4. Demonstrate the Company's commitment to enforcing policies and creating a healthy working environment

B. When should you investigate?

1. An employee files a formal complaint
2. An employee makes an informal complaint
3. An employee reports a questionable situation, even if they say they do not want to make any trouble
4. All allegations of violations of harassment and discrimination policies

C. Selecting the investigator

II. THE INVESTIGATION PROCESS

A. Step 1: Plan the Investigation

1. Who will investigate?
 - a. HR staff, in-house counsel, outside counsel
2. What are the specific allegations?
3. What evidence needs to be collected?
4. Who needs to be interviewed and what information is needed from them?
5. Does the accused need to be removed from the workplace pending investigation results?

B. Step 2: Interview the Complainant

1. Your goal in this interview is to uncover the who, what, where, when, why, and how of the incident.
2. Use open-ended questions and never promise confidentiality.
3. Sample questions:
 - a. What happened? Be as specific as possible.
 - b. How many times did this happen?
 - c. Where did it happen?
 - d. Did anyone else see it happen? Who? What did they say and/or do in response?
 - e. Do you have any physical evidence (e.g., notes, emails, text messages) you can share?
 - f. Do you know anyone else who can shed light on this incident?

C. Step 3: Interview Witnesses

1. Witnesses can help to corroborate or refute the complainant's account of what happened
2. Sample questions:
 - a. What did you witness?
 - b. Where did it happen?
 - c. Did you do or say anything?
 - d. Was anyone else around who may have also witnessed it?
3. Witness Statements

D. Step 4: Interview the Accused

1. Be objective. Don't be adversarial.
2. Sample questions:
 - a. Do you recall having a conversation with Sally on [insert date]? What happened?
 - b. What were the circumstances leading up to the incident?
 - c. Do you have any witnesses whom you think I should talk to?

d. Do you have any physical evidence (e.g., notes, emails, text messages) you can share?

E. Step 5: Collect Evidence/Documentation

1. Examples: signed witness statements, emails, text messages, attendance records, phone logs
2. Review your interview notes to confirm you aren't missing any evidence referenced by a witness

F. Step 6: Create an Investigation Report

1. The investigation report should include:
 - a. The scope of the investigation
 - b. A description of the allegation(s)
 - c. The facts surrounding the allegation(s) with specific dates or timeframes
 - d. Applicable policies or guidelines
 - e. The witnesses interviewed
 - f. Summaries of witness statements
 - g. Documents reviewed
 - h. Key factual findings and credibility determinations
 - i. When assessing credibility, consider:
 - (A) Plausibility
 - (B) Demeanor
 - (C) Motive
 - (D) Corroboration
 - (E) Past record
 - i. Specific conclusions
 - j. Recommendation of next steps, if requested

G. Step 7: Determine Appropriate Remedial Action

1. Disciplinary actions for substantiated misconduct

2. Targeted training or educational interventions
 3. Policy revisions or organizational practice improvements
- H. Step 8: Inform the Parties of Findings
1. Tell the parties whether the allegations were substantiated or unsubstantiated
 2. Do not tell the complainant about the specific corrective action taken against the accused
- I. Step 9: File Records in Investigation File
1. Maintain a separate investigation file, separate from the personnel file
- J. Step 10: Investigation Follow-Up
1. Set a timeframe to follow up with the complainant to ensure the conduct is no longer occurring.
 2. Review investigation and look for patterns in complaints that might suggest more training is needed to avoid similar problems in the future

III. COMMON PITFALLS TO AVOID

- A. Failing to plan
- B. Ignoring complaints
- C. Delaying investigations
- D. Using overly aggressive interview tactics
- E. Promising confidentiality
- F. Failing to listen during interviews and not asking important follow-up questions

IV. BEST PRACTICES

- A. Act promptly
- B. Be thorough
- C. Maintain objectivity and treat all parties fairly
- D. Use open-ended questions
- E. Document everything
- F. Communicate the no retaliation rule