



Conducting Effective Workplace Investigations

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Objectives

- Understand importance of investigations
- Learn how to prepare for investigation
- Learn how to conduct investigation
- Learn how to document investigation

Types of Investigations

- General complaints from employees/citizens—misconduct, poor service, etc.
- Subtle statements about workplace or supervisor
- Observations/Concerns as a manager—attendance, poor performance/behavior
- Discrimination/Harassment
- Workplace violence
- Workplace injury

Different than Criminal

- Standard for employment investigations is lower than criminal.
- Must show a full and fair investigation took place with a reasonable conclusion.
- Criminal must show beyond a reasonable doubt.



Common Mistakes (SHRM)

- Failing to Plan
- Ignoring Complaints
- Delaying Investigations
- Losing Objectivity
- Being Distracted During Interviews
- Using Overly Aggressive Tactics
- Not Conducting a Thorough Investigation
- Failing to Reach a Conclusion
- Failing to Create a Written Report
- Failing to Follow Up Afterwards

Duty to Investigate

- Required by Law
- "For Cause" Terminations
- Right thing to do for a happy work place





Importance of Investigations

- Limit Risk for claims and inefficiencies
- Failure to act creates risk all on it's own
- Take ALL allegations seriously. Easy to ignore the squeaky wheel, but can get you into deep water.



Be Timely! Every Day Counts!



Tips for Planning

- Who is best suited for conducting?
 - Objective party
 - No real or perceived conflicts of interest
 - Trained in conducting
 - Limit risk for retaliation
- What is being investigated?
- Should subject be removed from workplace pending investigation-Admin Leave?

Tips Continued...

- What notices need to be given?
- What evidence needs collected?
- Who will be interviewed?
 - Reporter
 - Subject(s)
 - Witnesses
 - Supervisors
- What policies need to be reviewed?
- What will you ask?

How to Conduct Investigation

- Review complaint and any policies, documents related to allegation
- Find private location for interviews
- Use good communication and body language to help put interviewees at ease
- Use a conversational style of interview, not an interrogation!
- Take notes!

How to Continued...

- Explain why he/she is being interviewed
 - Witness cannot get too much information
- Ask for confidentiality to ensure integrity of investigation—cannot REQUIRE it
- Ask that any retaliation for participating be reported immediately
- Provide your contact information so they can follow up if needed

Order of Operations

- Reporter
- Subject(s)
- Witnesses—least likely to be involved to most
- Authors of any documents
- Supervisor of subject(s)
- Any follow up with above people

Art and Science



- Communication skills are key for success
- Be appropriately skeptical

How We Really Communicate

7% is based on vocabulary

38% is based on voice inflections

55% is based on non-verbal behavior



Group Exercise Time!



Communication Skills

- Make Eye Contact
- **Repeat** what was said
- **Paraphrase**—summarize and put in your own words—"so what I'm hearing is...."
- **Probe**--Ask Questions—Be Curious
- **Clarify** what you may not understand
- **Remember** important points of message

Questions TO ask!

See handout for suggestions

Questions NOT to Ask?

- Avoid loaded questions
 - *Are you a tough manager?*
- Avoid too many yes/no
- Avoid accusatory questions
 - *Why did you steal the money? We have been told you stole the money. We saw you take it.*
- Avoid compound questions
- Avoid Leading questions
 - *Isn't it true that you were yelling at Liz in the hallway?*

Duty to Cooperate

- Employees must normally cooperate
- Can usually be disciplined for failure to cooperate



Required Notices

Weingarten Notice

Unionized employees have a right to representation during investigatory meetings that may lead to disciplinary action or may affect working conditions.

Garrity Warning

Public employees are protected from being compelled to incriminate themselves during employment investigation.

www.garrityrights.org

Witness Credibility

EEOC recommends using the following when there are conflicting versions of events:

- Plausibility
- Demeanor
- Motive
- Corroboration
- Past Record

Develop the Story/Facts

- What occurred?
- When did it happen?
- Where did it happen?
- Who was there?
- How did it happen?
- Who did or said what? In what order?
- Could it have been avoided?
- Does this story make sense?

Investigative Report

- Incident being investigated, with dates
- Individuals involved
- Key factual findings and credibility determinations
- Applicable policies or guidelines
- Summaries of witness statements
- Conclusions
- Name of person making final decision
- Issues that cannot be resolved
- Employer actions to be taken

Summary and Conclusion

- Investigator MUST weigh evidence and conclude whether city/town policies were violated or misconduct occurred
- Submit findings to decision maker who will determine disciplinary action, if any
- Notify employee who made complaint that action has been taken—cannot always share details
- Remind all parties of avoiding and reporting retaliation
- Look for patterns of complaints to identify training needs

Resources

ISight. (2017). *47 Quick Tips for Better Investigative Interviews*. Retrieved from www.customereexpressions.com/CEX/cesweb.nsf/tips_investigation_interviews.

Meiner, Dori. (May 18, 2017). *How to Conduct a Workplace Investigation*. Retrieved from www.shrm.org/hr-today/news/hr-magazine/pages/1214-workplace-investigations.aspx

Miller, Ashley. (September 7, 2017). *Communicating with Two Ears and One Mouth: How to Master the Important Art of Listening*. Retrieved from <https://www.shrm.org/resourcesandtools/hr-topics/behavioral-competencies/communication/pages/communicating-with-two-ears-and-one-mouth.aspx>

Muller, Debbie. (August 14, 2017). *6 Essential Best Practices for Workplace Investigation Interviews*. Retrieved from <https://hraculty.com>.

QUESTIONS?



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