

Follow these steps to conduct more effective workplace investigations

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What would be the result if incidents occurred in the workplace and employers did not conduct subsequent investigations? Employers would make decisions based on assumptions, rumors, gossip and other non-factual criteria. Various legal requirements would not be met and employees' trust in their employers to make fair and objective decisions would rapidly decrease.

By conducting investigations, employers can replace these inadequate bases for decisions with facts as the determiner in the outcome of each case. Fact finding should then become the primary purpose of any investigation and the critical component in making employment decisions related to potential policy violations and other types of misconduct. Investigations can involve a wide variety of situations, including discrimination, harassment, accidents, organizational ethics, e-mail and Internet use, workplace violence and theft.

Although all investigations should be conducted in a methodical manner, the length of the fact-finding process is dependent on the nature of the case. In some situations, facts can be readily identified and the investigation completed in a brief timeframe. In other instances, facts may be more difficult to assess, making the investigation a lengthy and more extensive process. The time involved can also be influenced by legal and policy requirements as well as the nature of potential disciplinary actions.

Whereas well-conducted investigations can result in making appropriate decisions, those that are poorly conducted can increase the likelihood of un-supportable decisions, liabilities and other costly risks for employers.

The following are general tips that employers can apply to increase the effectiveness of employment investigations:

1. Prior to a specific incident, give consideration to the overall investigatory process and to identifying and/or training individuals who will be qualified to conduct an investigation. The ability to be objective should be a key determiner in the selection process as well as the investigator's ability to obtain relevant information from those interviewed.

2. In addition to making a decision regarding an investigator, prepare for the investigation by making a list of potential witnesses; identifying and/or obtaining relevant policies, documents and other materials; and developing preliminary questions to be asked.
3. Give consideration to involving legal counsel in developing an overall strategy and/or providing assistance throughout the decision-making process.
4. Conduct the investigation in a prompt manner to preserve evidence related to the case and to enable witnesses to more accurately recall the facts.
5. Recognize that the interview will have a substantial impact on the outcome of a case and frequently will provide information that cannot be determined by other means.
6. Interview anyone who has potential information that may be relevant to the case.
7. Consider the following questions in preparation for the investigation and throughout the process, including the interviews: who was involved, what happened, when did the incident occur, where did it occur, why did it happen, and how did it take place.
8. Document the entire process, including interviews, evidence and any action taken. Throughout, those involved in determining the outcome should ask themselves “How will the evidence and overall investigatory process be viewed if a charge or lawsuit results?”
9. Avoid promises of confidentiality throughout the process. Instead, management should explain that information will be shared only on a need-to-know basis.
10. Advise each witness not to discuss the interview or related matters with others.
11. Communicate to those interviewed that there will be no retaliation for registering a complaint or for participating in an investigation.
12. Include a second person in the interview to witness the discussions, as feasible. The individual selected should be an objective witness.
13. Begin the interview with broad, open-ended questions that require more than “yes” or “no” responses and give witnesses an opportunity to describe events. Follow-up should include asking more specific questions both to clarify what was said and to “peel back the onion” and obtain additional facts. Questions asked should allow the investigator to determine relevant facts and assess the credibility of information provided.
14. Encourage those who are included in the investigation to provide relevant information at any time prior to the point that a decision is reached.
15. If disciplinary or other corrective action is taken, administer it in a timely manner after all related factors are taken into consideration.

16. Review a number of factors in deciding whether discipline is appropriate, including the severity of the conduct, the employee's disciplinary and employment record, prior notice that the employee had of organizational policies and practices, and action taken in similar situations.

17. If discipline is administered or other action taken, management should have the employee sign a statement or letter of discipline as acknowledgment of receipt.

18. If the investigation is inconclusive, consider whether there are non-disciplinary steps that should be taken, such as re-communicating the organization's policy.

19. At the conclusion of the investigation, prepare a written report that documents steps followed, information obtained, decisions reached, any actions taken, and other pertinent information.

20. Treat all parties with dignity and respect throughout the investigatory process.

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