



Workplace Investigations: What You Need To Know

The choice of investigator is important and should be based on broader criteria than simply short-term cost

By Naomi Butterfield and Kai McGintee | August 8, 2014

Employee complaints of discrimination, harassment and retaliation in the workplace have been on the rise over the past years. Employers and administrators must be ready to respond to these types of claims.

In the event of a lawsuit or a federal or state audit, employers must also be able to show that they took prompt steps to investigate whether the complaint was founded and then be able to demonstrate that they took appropriate action based on the results of their investigation. An employer's decision to investigate complaints also sends a strong message that it is committed to the fair treatment of its employees.

What do you do when your organization receives a complaint involving employee misconduct or misconduct by a third party on the premises? In almost all cases, you will need to investigate. An investigation is not only legally required for many types of complaints, such as harassment and discrimination, but it can also be the best defense your company has if litigation follows if it is done correctly.

Deciding whether an informal internal investigation will suffice or whether a more formal process is required depends on the nature of the complaint.

Internal company investigators have knowledge of company policies and culture and may be better able to conduct low-cost informal investigations of issues stemming from lack of communication or misunderstandings of company policy. However, it is not always possible to determine if there is more to a complaint at the outset, and as the investigation unfolds it is possible that an internal investigator may be subject to claims of bias or conflict of interest.

Some investigations may also require special skills or analysis that necessitate outside expertise in the area being investigated. For example, a complex embezzlement case may require partnering with an expert in forensic accounting, while an allegation of rape requires an investigator who has training and experience interviewing victims of sexual assault.

Selection guidelines

The Equal Employment Opportunity Commission provides guidance as to an employer's obligation to select an investigator who is well-trained, able to determine the facts and make timely conclusions in an unbiased manner.

From the EEOC's perspective, and as every good investigator will tell you, an investigation must be prompt, thorough and impartial. Both internal and external investigators can conduct prompt, thorough and impartial investigations, but in some situations an outside investigator must be considered.

These guidelines will help to identify the right investigator for the situation.

Consider an internal investigator when:

- There is a fully trained internal investigator on staff who can dedicate the time necessary to conduct the investigation without neglecting other key responsibilities.
- The complaint does not involve a high-level executive or administrator.
- The investigator will not be part of the team making decisions about the complaint based upon the report of findings. (For example, having the director of HR investigate the complaint may create a conflict if he or she will later advise the company as to disciplinary options if the complaint is founded).
- The issues in the complaint are relatively simple and quick to resolve. Keep in mind, however, that what may appear simple at the outset may involve hidden issues that specific expertise could identify early.
- Consider hiring or retaining an external investigator when:
 - There is no fully trained workplace investigator on staff or currently on retainer.
 - The complaint is complex and/or may require a more time and resources than an employee acting as internal investigator can devote.
 - There is concern that an internal investigator cannot be impartial or will be perceived as biased because of the investigator's relationships with those involved in the investigation or their position in the company
- The matter may result in litigation and the investigator will be called as a witness.

The bottom line is that it is vitally important to devote the resources and consideration necessary to make sure the choice of investigator fits the scope and complexity of the workplace complaint and that the investigator can be neutral in their investigation.

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