

Conducting Workplace Investigations

By

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Failure to properly investigate an allegation of misconduct or harassment can expose an employer to further trouble.

There are preliminary decisions to make before beginning the investigation. For instance, who will conduct it? Some considerations include the nature of the complaint, the title of the accuser and the accused (i.e. if the accused is at a high level, there could be a perception that an internal investigator cannot be impartial), and whether it should be done by a lawyer. Also, should the accused be placed on administrative leave pending investigation? If so, will it be with or without pay?

Once the employer is ready to begin the investigation, it should do so in a way that is prompt, thorough, and fair. For the interviews, the employer must consider factors such as the location, the identity of attendees, the way in which the interview is conducted (i.e. tape recorded or not), the approach to the interviews (i.e. open ended questions or not), whether to take notes and who will do so, and what to do with the notes afterward. Interviewees should be told of the employer's non-retaliation policy for participation and informed of confidentiality issues. In addition to interviews, the employer will need to decide whether other types of investigation is needed, such as use of email, the internet, the telephone, or cameras. Finally, the employer has to consider how the investigation should be concluded, whether a final report will be written and what format it should take, whether disciplinary action is appropriate and how it will be issued, and how the final action will be communicated to those involved.

Conducting an investigation is an art form that requires significant analysis and even creativity, especially when doing so properly can go a long way toward avoiding a workplace claim or at least better positioning the employer to defend one.