

Conducting effective employee investigations



BY LAWRENCE LASUSA

Whether you're conducting an employee investigation into sexual harassment, embezzlement or any other kind of improper conduct occurring with

employees during work hours or on work property, there are four key elements to an effective investigation. You must have a prompt, confidential, thorough investigation resulting in some action.

Promptness

Good investigators follow a warm trail. Witnesses' memories fade with each day. The urge to get things "off your chest" passes with time. Delay helps documents get purged, shredded or lost. Acting quickly is the best way to preserve information and evidence. A prompt investigation and response also demonstrates that your company takes such matters seriously and is concerned about employee welfare.

Confidentiality

A well-drafted anti-discrimination or anti-harassment policy will explain that such investigations will be kept confidential to the extent provided by law. There are two important reasons for confidentiality. First, confidentiality encourages witnesses to come forward and tell all without the fear that their disclosures will result in retaliation from superiors or co-workers.

Second, if the claims are unfounded, the company's efforts to maintain confidentiality can preserve a good employer/employee

relationship. Even if some of the claims are founded, some may not be, and public disclosure of private facts, or mis-statements about those facts, can result in an employee's claim against the company for defamation.

Thoroughness

Because there are at least two sides to every story, the investigator should consider using a timeline to plot out each significant factual event and then confirm those facts in independent witness interviews and check for contemporaneous evidence or documentation that corroborates the witness' statement. Independent corroboration of key facts is critical to every investigation.

Here is an example:

Paula says Bill sexually harassed her at work. She claims it happened after work, in his office and that no one else was present during the incident. Her co-worker Mary is the only person who may have seen Paula enter Bill's office after hours. The investigator should take the complaining party's statement first. Start with the Who, What, When, and Where questions. Take careful notes or get permission and then tape record the interview.

An important question that many untrained investigators forget to ask is Why. Establishing motive can help close a case. Q: Why do you think this occurred? A: He said I looked "hot" wearing my green blouse. After you have the complaining party's statement, get independent corroborating evidence. Does Paula have a green blouse? Where is it? Is it ripped? Does she have any marks? When did Paula leave? Is there a time clock, check-in/check-out procedure,

video surveillance of entrances/exits or parking lots showing Paula's and Bill's time of departure? What did Paula do after she left? Did she stop anywhere or buy anything?

Receipts show date, time and place and corroborate a person's whereabouts. Computer-generated documents can show who authored the document and when. Computer data logs themselves can demonstrate who was using them and when.

If the employee you are interviewing is not a target of the investigation, say so. It will put them more at ease and encourage more disclosure. In the example case, the investigator should next interview Mary. Use a straightforward explanation that the company is investigating a claim of (describe the impropriety) without naming names. Explain that the investigation process is considered confidential and that everyone interviewed is expected to follow the confidentiality policy so she can feel free to disclose everything she knows without fear of embarrassment or retaliation.

Tell interviewees they should report back any attempts by others to breach the confidentiality policy. Again, the Who, What, Where and When questions can fill in blanks and confirm events. When did you leave work? Who did you see? Where were they? What were they doing? Keep the investigation limited to those with first-hand knowledge. If the interviewee does not have first-hand knowledge, what they tell you is hearsay, and is generally considered unreliable.

Throughout the investigation, disclose only as much information as is necessary to get information. Ask. Listen. Probe deeper.

Ask the interviewee if there is anyone else who should be interviewed and why. Ask the interviewee if there is anything they want to tell you that you have not asked about.

Lastly, the investigator should interview Bill. Explain the confidentiality and no retaliation policy. Ask the Who, What, When and Where questions. Ask. Listen. Probe deeper. Do not forget the Why question. Q: Why would Paula make such a claim? Remember the investigator's job is to gather information fairly and impartially and draw a conclusion as to what is the truth about the information gathered.

Action

The investigator's job is to draw a conclusion. Use common sense. Whose statements or stories were more credible and consistent? Report your conclusion. The company is then in a position to take appropriate action based on the allegations and conclusion. At minimum, both the accused and the accuser should be informed of the conclusion, even if the conclusion is inconclusive.

Even if no action is warranted against either accused or the accuser, it will be documented that the company fulfilled its obligation to investigate, and will have documentation to support taking further action, if necessary.

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