

Workplace Investigations: What Every HR Manager and Business Owner Should Know

When an employee comes to you reporting misconduct or harassment, do you run for cover or do you have a plan for how to approach an investigation? Your first step is to select your method and approach for the investigation. Determine if the investigation will be completed in-house or with the use of an outside firm. If you decide to use a third-party investigator, be sure the investigator has the proper experience and skills to handle sensitive issues appropriately. Regardless of how you proceed, it's important to have a solid plan.

Interview the complainant and be sure you understand the complaint.

Some basic questions typically include: What occurred? When did the incident occur? Over how long a period of time did the incident take place? Where did the incident occur? Did you ever ask (or have the opportunity to ask) the person to stop what he or she was doing? If not, why not? Can you identify witnesses and/or other individuals who can shed light on the situation? What do you think should be done to solve this problem?

Offer to interview the complainant in a setting that is most comfortable to him or her. Determine what evidence the complainant possesses to prove the complaint. Obtain the complainant's recollection of the events with a strong focus on facts, not on fault. It is critical to provide a safe working environment for the complainant, particularly during the investigation process. Reassure the complainant and be sure he or she understands the process and the timing of the investigation. Realize you might need to take steps to separate the complainant and the accused in the workplace.

Interview the accused.

Generally, you will use the sequence of events from the complainant to support or distinguish differences in recollection of facts. This questioning will also follow the same pattern of who, what, when, and where questions that were asked of the complainant. Most important, get straight to the point and emphasize the company's commitment to finding the truth and avoid allegations, threats, or promises. Outline all the issues under investigation and the potential consequences of harassment in the workplace. Demonstrate respect for the alleged wrongdoer's rights and concerns and emphasize that the investigation is a neutral fact-finding investigation; remember that the less defensive the person is, the more he or she will be willing to share about the situation.

Interview any witnesses who can provide information.

Take into account the number of witnesses before you determine the scope of questioning as you will need to balance thoroughness and timeliness. Some examples of questions include: Can you tell me more about the incident in question? Do you remember what happened? Did you hear the complainant tell the accused to stop the behavior? Have you seen any other unusual behavior?

Determine whether the witness is likely to be hostile, cautious, or helpful and prepare accordingly. Begin with those witnesses that the complainant and the accused have listed and expand to those individuals you think can provide helpful background information on either party or on the situation that has occurred. Explain the purpose of the meeting to the witness and let him or her know that he or she is part of the investigation and that you wish to collect information. Conduct an independent search for other witnesses who might have relevant information and interview those people; certain types of incidents are repeated and are not limited to just one targeted victim.

Finalize all relevant information and documentation and make a decision when your investigation is complete.

As soon as possible, write up notes from the interviews and compare with other statements, looking for gaps in information or explanations. Follow up on any gaps to ensure complete and accurate information. At some point you will decide that the fact-finding process is as complete and as reasonable as possible. To assess whether you are at this stage in the investigation, ask yourself the following questions: Was an adequate attempt made to collect information with balanced attention to the claims of each party? Can decisions to exclude information be reasonably and comfortably explained? Was specific information about accusations provided to the accused, and did he or she have an opportunity to fully respond? Legal consequences for failing to reasonably explore and fairly consider relevant information can be severe.

Make a report on the investigation.

Finalize your recommendations into a concise and brief report. Generally, one to two pages is sufficient. Recommendations should be broad and prioritized. Do not discuss details or outcomes of the interview with people who do not need to know (this includes many witnesses). Your report should not attempt to draw any legal conclusions, but rather should indicate whether an incident has or has not occurred, if an incident has occurred with inappropriate behavior, or if the complaint was without merit.

Make recommendations for action to resolve the complaint.

Be sure you explain your policy, why it is important, why you have drawn your conclusions, what the current consequences are, and what is expected of the complainant and the accused in the future. Catalog and store all documents and evidence in a safe and secure location. Watch out for retaliation after the investigation is complete and be sure to follow up with both the complainant and the accused. It is best to communicate face-to-face with the accused regarding the intended actions. Explain any disciplinary action with specificity and allow questions where necessary. Finally, follow up with the offender on a frequent basis following closure of the investigation to be sure that behavior is consistent with policies and procedures.