

THE HR HANDBOOK FOR EMPLOYEE INVESTIGATIONS



*HR tips for minimizing risk
and ensuring fair and solid
investigations within your
company*



As the business world continues to adapt to the ever-changing COVID-19 pandemic, the need for companies to handle workplace investigations in a consistent and efficient manner has never been greater. Staying on top of compliance regulations in the current environment is critical when it comes to mitigating liability and avoiding big financial and reputation -damaging consequences.

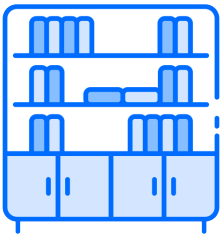


The Importance of Proper Investigations

There is no shortage of high-profile precedents that should serve as warnings for companies that are not conducting proper investigations. And, as is the case with most legal matters, ignorance of employment law and compliance standards is not a defensible position. Failure to conduct a fair and thorough investigation, or neglecting to conduct an investigation at all, can jeopardize any business' future.

DO'S:

With the risks and consequences laid out, it brings us to the question – what can be done to minimize risk and to ensure that your company is conducting fair and solid investigations? Here are a few “how to” tips to get you started...



1. HIT THE BOOKS

The person assigned to the investigation – whether it’s an HR manager or representative, or an outside contractor – should acknowledge and follow procedures exactly as they’re laid out in your company handbook or manual. Making sure that the process is adhered to is the most basic step in conducting an investigation. It’s also critical to make sure that the investigator has the most up-to-date version of the written policy or procedure, since verbiage may have changed during the pandemic to accommodate for a remote or hybrid work environment.



2. DOCUMENT!!!

Did we mention you should document everything? Keeping formal, written records is absolutely critical to any investigation. This starts with the complainant’s statement and continues through all interviews, research, meetings, and all components of the overall inquiry. Make sure there is a clear and comprehensive timeline of events with exact dates. The importance of keeping thoroughly detailed records of all investigations cannot be understated. Industry standards suggest keeping all records on file for a minimum of three years.



3. USE DISCRETION

Confidentiality is required through the National Labor Relations Act (NLRA). This is pretty straightforward. Meetings and testimony should be restricted to private rooms or offices, and every effort should be made to protect all employees involved. No one involved with the investigation should speak with anyone else about it. HR managers and representatives have the challenge of finding a balance between respecting employee confidentiality and making sure that an investigation is complete and thorough, thus ensuring fairness to all parties involved.

DO'S:



4. MAINTAIN OBJECTIVITY



An investigator's impartiality is essential to the process. Although not all cases end up in court, an investigator should compile any notes or records as objectively as possible, since all documentation can end up being evidence. The adage "stick to the facts" is a good guideline. Any statements offering opinion or analysis should be attributed to the person who said it. If a judge has any perception that investigative notes are biased or possibly have been tampered with in any way, it could have a disastrous result for a business.

2. DIG DEEPER



Thoroughness is critically important, and all investigations must include perspectives from each side of any complaint. The initial interview should be conducted with the complainant. Follow-up interviews should be conducted with the accused, and then any witnesses. Finally, after all individuals have provided testimony, there should be a final interview conducted with the complainant, so that any discrepancies or matters of confusion can be cleared up, and so that they can answer any additional questions that may have arisen during the process. An investigator should explain to all parties why they're being interviewed, and must adhere to the established protocols for their organization. Finally, the investigator must gather all evidence that applies to the case including emails, texts, and all written records.

3. CLOSE THE CASE



When the investigation is complete, the employer must draw a reasonable conclusion based on the facts that emerged. The conclusion must include the rationalization behind any decision, as well as the particular details of any remedial action that will be taken. Conducting an investigation without providing a resolution to all parties is, in the eyes of the law, the same as failing to take any action at all. Findings should be documented and provided to all parties involved



The tips above will get things rolling for you, but it's also just as important to know what **NOT** to do while handling any employee issue or investigation...

1. BURDEN THE ACCUSER

The complainant should never be put in a position where expressing their concerns puts the burden of proof on them. As soon as a complaint is relayed, an investigation should begin, and the investigator should always be transparent and deliberate in their objectives.

2. AVOID DELAYS

Although conducting investigations may be more challenging in a remote or hybrid environment, an investigator should be as efficient and organized in order to keep the process from dragging out. If there is a delay in starting an investigation, it typically reflects poorly on the organization and can be perceived as an attempt to try to allow the situation to “blow over.”

3. COLD, HARD FACTS ONLY

An investigator should never rely on circumstantial evidence. Never take a complaint at face value and always look for the facts.

4. CONFIDENTIALITY IS KEY

Breaking confidentiality will create feelings of mistrust or apprehension, and can even jeopardize the entire investigation. Additionally, maintaining confidentiality is simply the ethical thing to do.

5. RETALIATION

Terminating a complainant, or holding an accusation against an employee in any way that punishes them or impedes their career and opportunity to make a living, is a violation of the law. Termination, decrease in pay, decrease in job responsibilities, or a decrease in hours are all examples of what would fall into the retaliation category.

Once a determination is made in an investigation, one final meeting should be held with all parties to inform them of the results. If results are inconclusive, that must be explained to everyone involved. Once the follow-up meeting is held, any disciplinary action should then follow. Senior management should also be kept in the loop in case the company's policies need to be revisited or revised.



Overall, it's essential that all workplace claims are handled quickly, professionally, and in a fair and unbiased manner.

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