

## **How to Conduct an Investigation into a Whistleblower or Discrimination Complaint**

When a business learns of a complaint/issue/allegation, whether formal or informal, the Human Resources department needs to be notified immediately, and an investigator appointed. The investigator should be fair and objective, and have a strong working knowledge of any laws and policies that will apply to the situation at hand. He or she needs to be organized, and properly and thoroughly document the entire investigation in clear, precise, and factual language. Accuracy will prove vital in how the situation is handled.

Before getting started on the investigation, Human Resources should first consider if any interim steps are appropriate. These steps may require that the complainant and the accused be separated, the suspension with pay of an employee or employees pending the outcome of the investigation, consideration of whether a threat exists to any people or property, or mitigating the risk that evidence might be destroyed.

The first step in the investigation is to interview the complainant. The investigator needs first to get their perspective on the situation and ask necessary questions to obtain clear and concise answers, being careful to maintain the confidence of the complainant and remain impartial during the investigation. Even if the complainant tries to withdraw the complaint, the investigator needs to be clear that the investigation will continue. The Interview will allow the investigator to define the scope of the investigation and make a list of incidents and issues that require further examination. Next, the investigator should meet with or provide written notice to the accused to inform him/her that an investigation is ongoing. It is common for the accused to become defensive. The investigator should provide complete and concise information on the investigation to the accused with the understanding that they are not permitted by policy to offer their own subjective viewpoint on the process. The investigator needs to encourage the accused to identify evidence in their favor and suggest witnesses, in both face-to-face communication and in writing. The investigator must strongly inform the accused that any form of retaliation against the complainant in any manner is strictly forbidden and will result in further disciplinary action.

The investigator will need to approach their investigation systematically. Their plan of attack needs to include a list of witnesses, pointed and clear questions to ask, gathering documents, and examining electronic evidence, video surveillance and anything else relevant to the situation. It also may be a good time to discuss the plan with an attorney.

Before and after interviewing each witness, the investigator should be clear that each witness has not been accused of any wrongdoing to date but is required to cooperate. They should report any retaliation, must maintain confidentiality, and should understand that the investigator is not the decision maker. When interviewing witnesses, it is important to maintain the privacy of all the people involved whenever possible. The investigator should keep questions open-ended at first and then get more specific and detailed as they continue.

The investigator needs to compare the gathered evidence and documents with the witness reports and look for inconsistencies and consistencies. When interviewing the accused, the investigator should be clear about details of the allegation(s) and allow them the opportunity to respond to all the charges. The investigator needs to listen carefully, and still be prepared to ask follow up questions. Confrontational questions should be saved for the end of the interview. The accused should be given an opportunity to produce documentation that supports his/her position. The investigator should make clear the company's directives about any type of retaliation and avoid giving the accused any assurances. The accused should also be asked if there are any witnesses to meet with before the investigation report is completed.

Upon completion of the investigation, the investigator will need to determine if more evidence or information is required, or if he/she is able to make a recommendation to the Human Resources department or other appropriate person based on what they obtained. Once the decision makers decide on a specific course of action, it will be communicated in writing to the accused. The complainant should be notified in writing when the investigation has concluded, with indications of whether the allegations were substantiated and whether remedial action will be taken. It also must be stressed that the complainant needs to report any effort at retaliation. The complainant will not be privy to any specific information about the discipline of the accused or any other employee, and will only receive what information the employer considers is relevant. Documentation of a fair and unbiased investigation is your best defense against any problems, issues, or legal actions.

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