



Workplace Investigations Webinar

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Conducting Workplace Investigations Overview

- Phase 1: Preliminary Considerations & Fact Gathering
- Phase 2: Conducting Interviews
- Phase 3: Making A Determination
- Disclaimer
- Q & A

Poll # 1: Who Is Participating In this Webinar?

Phase 1: Preliminary Considerations & Fact Gathering

- Knowing when a workplace investigation is warranted
- Selecting the investigator
- Preparing for the interviews: collecting relevant information and documents

When Should You Conduct an Investigation?

- Formal employee complaint or grievance
 - Required by law if there is a complaint of harassment or discrimination
- Informal employee complaint or grievance
- Employee is suspected of misconduct or violation of workplace rules
- Significant, downward shift in workplace morale, attitude or performance
- Implied duty to investigate under certain circumstances (e.g., potentially dangerous workplace situation)

Who Should Be Your Investigator?

- Potential investigator
 - Supervisor/manager
 - HR/EEO officer
 - Third party investigator/specialist
 - Attorney
- Factors to consider
 - Investigator's availability and ability to commence investigation promptly
 - Investigator's training, thoroughness, organization skills, and demeanor
 - Investigator's ability to understand and analyze the investigation issues and subject matter (investigation scope)
 - Investigator's ability to evaluate and determine credibility
 - Investigator's ability to prepare a thorough report of findings

Poll # 2: Who Typically Conducts Your Workplace Investigations?

What Preliminary Information and Documents Do You Need?

- Prompt request for initial information/documents
 - Copies of complainant's formal or informal complaints and any related statements and records, including emails and pre-investigation inquiry documents
 - Copies of Notice letters sent to respondent, complainant, and others, which announce the complaint has been received and articulate the rights and duties of the employee
 - Complainant's, respondent's, and key witnesses' personnel file, including disciplinary, "informal" or "supervisory" files
 - Other relevant workplace files, such as workers' compensation file, leave/medical file, benefits file, training file, etc.
 - Applicable workplace policies (e.g., anti-discrimination/harassment, workplace violence, or conflict of interest policies)
 - Respondent's signed/dated acknowledgement of receipt of applicable policies

What Preliminary Information and Documents Do You Need?

- Prompt request for initial information/documents
 - Applicable police report
 - Applicable Memorandum of Understanding or Collective Bargaining Agreement
 - Any records pertaining to prior formal or informal complaints submitted by the complainant
 - Any records pertaining to prior formal or informal complaints against the individual respondent(s)
 - Applicable organization charts
 - Applicable time sheet records
 - Job descriptions/signed job duty statements of complainant and any individual respondent

Phase 2: Conducting Interviews

- Identifying witnesses
- Preparing interview guidelines
- Interview techniques & procedural Checklist

Identifying Non-party Witnesses

- Identifying witnesses
 - Witnesses identified by the Complainant and Respondent
 - Witnesses identified by other witnesses
 - Documents: written statements, organization charts, human resources records
 - Examples: complainant and/or respondent's co-workers and supervisors/managers, human resources personnel, and third parties (former employees, vendors, or clients)

Identifying Non-party Witnesses

- **Witness Order**
 - Complainant
 - Witnesses
 - ✓ Witnesses' relationship to complainant and/or respondent;
 - ✓ First or second hand knowledge of the alleged events
 - ✓ Witnesses' availability
 - Respondent

Preparing Interview Guidelines

- Interview Guidelines
 - Four general categories of interview questions
 - ✓ Preliminary admonitions
 - ✓ Employment history/general background
 - ✓ Substantive questions about specific allegations
 - ✓ Follow-up questions

Interview Guidelines: Preliminary Admonitions

- Preliminary admonitions ensure that the witness understands the purpose and scope of the interview, and ensure that the interviewee is aware of the investigator's expectations.
 - Introduction
 - Employer's duty to conduct investigation
 - Interviewee's role (complainant, witness, or respondent)
 - Obtain consent for recording
 - Confidentiality policy
 - No retaliation policy
 - Cooperation policy
 - Pending investigation
 - Breaks
 - Representative cannot interfere with interview or investigation process
 - Competence of interviewee

Interview Guidelines: Employment History/General Background

- Questions regarding the interviewee's employment history solicit information that will help lay the foundation for the interviewee's knowledge of other specific, relevant information, and also help ease any nerves the interviewee may have by setting a neutral tone for the interview.
 - Work history
 - Workplace/office location
 - Job duties
 - Supervisor
 - Co-workers

Interview Guidelines: Substantive Questions

- Start with broad, open-ended, non-leading questions, and then move to more specific, focused questions about the allegations.
 - “Do you participate in the weekly production meetings?”
 - “Did you attend the March 2, 2015 production meeting?”
 - “Do you recall who was present during the March 2, 2015 production meeting?”
 - “Did you observe any inappropriate conduct by Respondent toward Complainant?”
 - “Did you observe Respondent interrupting and yelling at Complainant?”
- Hearsay is okay.
- Clarify any related documents (written statements, emails, counseling notices, etc.).
- Ask any tough or sensitive questions after rapport has been established.

Interview Guidelines: Follow-up Questions

- Ask the interviewee to identify other potential witnesses or provide other information that has not been asked about, but may be pertinent to the outcome of the investigation.
- Review and confirm each “follow-up” item and designate a time frame by which the witness should provide the additional information and documents.
- Obtain interviewee contact information.

Interview Techniques & Procedural Checklist

- Set aside adequate time for the interview.
- Conduct interviews in a non-threatening, neutral, private and quiet setting, if possible.
- Document the beginning and end of each interview by noting the date, time, and names of all those who are present.
- If you are not recording the interview, document all areas of inquiry and the responses. Having the witness date and sign or initial the notes or written statement will work.
- Use an interview guideline.
- During the interview, take notes and highlight key facts. Explain that you are taking notes to help you remember what they say.

Interview Techniques & Procedural Checklist

- Following each interview, if time permits, review and summarize key points of each interview.
- Try to obtain corroborating information from key witnesses.
- Try to resolve any inconsistent statements.
- Ask if the witness would like to ask you (the interviewer) questions.
- Ask for the interviewee's contact information (business card, phone number and/or email address) in the event there is a need to contact the witness for additional or clarifying information.
- Provide the witness your contact information (or, business card) in the event the witness needs to contact you to provide new or different information.
- Thank the witness for his/her time and cooperation.

Phase 3: Making A Determination

- Assessing witness credibility
- Analyzing the facts (witness statements, documents, and physical “evidence”)
- Preparing a final report

Assessing Witness Credibility

- Assessing credibility to resolve inconsistent statements
 - Inherent plausibility of one version or another
 - Demeanor/attitude of witness (in person interview)
 - Motive to lie
 - Presence of corroborating documentary or eye-witness evidence
 - Ability to perceive, recollect and/or communicate relevant facts
 - Opportunity to observe/perceive relevant facts
 - Character for honesty/dishonesty
 - Prior statements or conduct that is consistent or inconsistent with witness statement

Analyzing the Facts

- Summarize party and witness interviews
- Analyze documentary information
- Resolve credibility issues
- Make factual determinations/findings as to whether the events that are the subject of the investigation occurred

Preparing the Final Report

- Purpose of final investigation report
 - To thoroughly and accurately document the factual conclusions of the investigation and the reason(s) for those conclusions
 - Basis for employment action
 - Evidence in litigation or other future proceeding

Preparing the Final Report

- Confidentiality of investigation report
 - The report should be maintained by the employer as a confidential document, separate and apart from any employee's personnel file.
 - The report should not be disseminated to any person except on the advice of counsel and authorized or required by applicable law.
 - A separate notice may be prepared to notify the parties of the completion and outcome of the investigation.

Preparing the Final Report

- Report Contents
 - Introduction
 - Investigation Methodology/Procedure
 - Brief Summary of Allegations and Findings (state whether the allegation substantiated, partly substantiated, or not substantiated, and a brief description explaining why)
 - Investigation Background (witnesses interviewed, documents reviewed, relevant personnel policies, overview of employer's business operations, and relevant supervisor/subordinate relationships)

Preparing the Final Report

- Report Contents
 - Chronology of Key Events
 - Analysis and Findings (including summary of information from witnesses and documents)
 - Credibility Assessment
 - Conclusion/Summary of Analysis and Findings
 - ✓ Factual vs. Legal findings
 - Recommended Action (if requested by the employer)

Disclaimer

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Questions & Answers



Esther is available to answer questions about this webinar until April 1st 2015.

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Questions About CPS HR Consulting Investigation Services?

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