

Can worker 'plead the Fifth' in an HR investigation?

Q. Two employees are refusing to participate in an internal workplace investigation. We received a report that our employees at a job site were racially harassing one of our subcontractor's employees. There may have been a noose involved. When we asked what had happened, the workers absolutely refused to cooperate and refused to let us inspect their toolboxes. We think they were responsible for the harassment, although it will be difficult to prove without their cooperation. Can we discipline them for insubordination? — V.Y., Georgia

A. Yes, you can. Conducting workplace investigations are a necessary business function. In some instances, such as in response to complaints of unlawful harassment, investigations may be legally required. Employers have a legitimate right to expect employees to cooperate in efforts to get to the bottom of an issue being investigated. Disciplining an employee who obstructs these efforts—or refuses to cooperate in an investigation—is often justified.

Because you don't want your actions to fuel a retaliation lawsuit, be careful to review the circumstances in each instance before imposing discipline. If, for example, the employee who is reluctant to share information is someone who you suspect has been the victim of harassment (and the employee is reluctant to cooperate because of fear of reprisal), discipline in this context could be unlawful.