

Workplace detective: 10 investigation mistakes to avoid

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Conducting workplace investigations is one of the most challenging and most important duties that HR professionals must take on. How you respond to complaints about harassment or other misconduct can have huge legal and practical implications for your organization.

Here are the 10 most common workplace investigation mistakes:

1. Ignoring complaints

Failing to take action on a complaint is one of the biggest mistakes employers can make. Choosing not to conduct an investigation after learning of allegedly inappropriate conduct may result in the company being legally responsible for harm caused to any employee, client or others due to the inappropriate conduct. Investigate regardless of how frivolous or unfounded the complaint appears, or who complained.

Note: Just because a complaint is anonymous does not excuse failure to investigate.

2. Not having a plan

Create a preliminary plan for the investigation so you understand the purpose of the investigation. Think about these five W's:

- Why are you investigating?
- Who will conduct the investigation?
- Who are the witnesses that need to be interviewed?
- What evidence needs to be collected?
- What is your investigation timeline?

3. Taking too long

Delaying the start of an investigation may lead to employer liability. Particularly in harassment and discrimination cases, deciding to wait to begin an investigation may be viewed as subjecting the employee to additional unlawful behavior.

Your timing goal: to strike a balance between adequately preparing for the investigation and avoiding unreasonably long delays.

4. Not training investigators

Poorly trained investigators can't promptly respond to complaints, making the inquiry ineffective. Train several employees to conduct an impartial, professional and credible investigation.

Another option is to hire a trusted HR colleague or use in-house counsel or an outside attorney to conduct the investigation. No matter who you choose, making sure that the investigator is trained and able to begin the investigation promptly is key.

5. Accepting half-measures

Conducting a sloppy investigation by failing to interview necessary witnesses, failing to review relevant documents and ignoring potential issues that come up during the investigation can create just as much legal exposure as not doing an investigation at all.

6. Conducting unlawful searches

Searching an employee's personal belongings or monitoring certain communications without consent can violate several federal and state laws. Avoid liability by informing employees of surveillance policies. Obtain their consent to monitor and access information on any devices employees use at work.

7. Interviewing too aggressively

Aggressive tactics may result in legal claims such as false imprisonment and coerced confessions. More practically, you risk dissuading employees from cooperating in the investigation, thus failing to understand what happened.

Advice: Conduct interviews in appropriate locations, outline questions in advance and use open-ended questions when possible, to get the entire story.

8. Promising confidentiality

Never promise an employee that his or her complaint will remain confidential. There will always be certain information that must be disclosed in order for a thorough investigation to be completed. You run the risk of a possible violation of federal labor law if you demand absolute confidentiality by the witnesses.

9. Failing to create a report

Document investigation processes and findings to support the company's action regarding the allegations. Failing to document evidence, results of interviews and other relevant findings is just as bad as failing to conduct an investigation.

Prepare a report for every investigation. Include a summary of the matter; the identity of all parties and witnesses; a description of the documents, findings and credibility determinations; and recommended action.

10. Pulling punches at the end

Failing to reach a conclusion and take the necessary steps to address misconduct will ultimately expose the employer to legal liability. Once the report has been completed, a determination should be made regarding

whether misconduct occurred and what appropriate actions should be taken.

Make sure the complainant does not suffer any adverse employment actions resulting from the determination unless you can prove that the allegations were made in bad faith.

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