

How to conduct a workplace investigation

Properly investigating any complaints that arise is an essential part of maintaining a positive and safe work environment. For employees, these investigations provide an opportunity for their concerns to be heard and properly looked into. For employers, they can uncover serious issues such as theft and harassment.

Conducting a workplace investigation is an important duty. However, it can be intimidating for small business owners or newer HR Managers. There are a lot of steps that must be taken, and handling the process poorly can result in legal action. Don't let that scare you away though. Once you have procedures in place, you'll be ready to handle any investigations or concerns that arise.

Here is what you need to know about conducting a thorough workplace investigation.

Workplace investigation preparation

Before you start interviewing employees, there is a fair amount of preparation that must be done. Here are the initial steps of a workplace investigation.

Collect your initial report

Many workplace investigations start with a formal complaint. Your company should have a process in place to collect these. Many businesses allow employees to submit anonymous complaints through a hotline or web portal. This encourages employees to come forward, though it does make conducting an investigation a bit trickier.

Sometimes you won't have a complaint. There may be a rumor going around the office that prompts an investigation. Complaints may also come from external sources such as customers or the general public. In recent years it has become more common for people to report offensive, harassing, or discriminatory behavior that occurs or is posted online to the perpetrators' employer. Piece together as much as you can from these sources.

Then review the complaint or initial report and consider whether a policy violation is being reported and who is involved. In some cases, you may find that the accusation does not necessitate a workplace investigation and can instead be routed to the employees' supervisor to address.

Review relevant records and policies

Before you set out on a fact-finding mission by interviewing employees or witnesses, it's a good idea to take a look at the information that you already have.

Look at the initial complaint filed and pull any company policies that may be relevant to this particular case and to the investigation process. For example, if there has been an accusation of harassment, you should review any company policies regarding harassment as well as any written company policies regarding the processing and investigation of harassment complaints. You will also want to reference any applicable employment laws and visit the EEOC website to conduct further research.

There may be other internal records or data available as well. If there are security cameras inside or outside the building, review footage if applicable. In the case of fraud or theft investigations, you may want to review transactions or timesheets (for time theft). Pull all applicable data so that you know what evidence you have available as this will help you ask the right questions during the investigation interview process later on.

Create an investigation plan

It's best to create an investigation plan before diving into your investigation. Some things to include in your plan are:

Decide who will lead the internal investigation. Often the designated workplace investigator is someone from the human resources department. However, there are times when it is better to involve an outside investigator or legal counsel. One challenge of conducting workplace investigations for small businesses is that it can be hard to identify an internal investigator that can maintain full impartiality. If it is a small business that has maintained the same staff for many years, the owner and HR professionals may have stronger relationships with the employees than would be preferable when determining who the impartial decision-maker should be. Everyone should be open about any conflicts of interest including personal relationships with the employee or their family.

Determine the scope of the investigation. It is important to nail down the specific act or policy violation that you are investigating. As you begin to conduct interviews and evidence, you're going to end up with a lot of excess information. If you're investigating a sexual harassment complaint against a supervisor, employee witnesses will want to tell you everything that they don't like about that supervisor. It's important to understand how to sort through all of this information to drill down into the specific action that you need to make a determination on.

Make a list of which employees need to be interviewed. Make a list of everyone that you will want to interview. Include the complainant and accused perpetrator as well as anyone that may be a witness or have additional knowledge regarding the issue.

Start planning your questions. Once you've identified who you'll be talking to, consider what information you need from each person. It's best to script out your questions beforehand so that you don't forget to ask anything important.

Where or how will interviews be conducted? If the case involves remote employees, some of the meetings may need to be conducted virtually. If you will be conducting in-person interviews, you'll need to identify a private room or location to conduct the interview in. Preferably, a location in which the interviewees will feel comfortable. Be considerate of each person's privacy and right to keep their involvement confidential. Calling people into a conference room throughout the day may raise the suspicion of other employees and spark rumors.

Handle any immediate needs

The workplace investigation process should be fairly timely, but it should never be rushed. If there are several parties to interview, it may take some time to collect and review all of the necessary statements. As such, consider whether any interim actions need to be taken while the investigation is being conducted. In the case of harassment, you may need to separate the two parties until the matter can be investigated fully to prevent further harassment and protect the complainant.

Conducting interviews

Now it is time to interview witnesses, complainants, and the accused person(s). The interview process is often

the most important part of the workplace investigation. Here is how to conduct thorough investigation interviews.

Use open-ended questions

Good investigators use open-ended questions when interviewing employees or witnesses in order to extract more meaningful information. Avoid using yes or no questions as these typically provide very limited context. The goal is to guide the interviewee through a narrative of what happened. Ask open-ended questions that will help spark their memory.

Do not ask leading questions that may introduce bias into the interview. Try to remain impartial with your tone and phrasing. However, it can be helpful to ask questions that are slightly outside the scope of the specific incident. An interviewee may remember something that they did not initially think is relevant. A co-worker may not have witnessed harassment directly, but they may be able to speak to a change in the victim's demeanor after the incident. This type of information can also be helpful in painting a full picture of the incident and its impact on the victim and the work environment.

Take detailed notes

It is imperative that detailed notes be taken throughout the interviews. Investigators should not rely on their memory, particularly when the outcome can be serious such as in cases that may result in termination. Before beginning your interview, let the interviewee know that you will be taking notes throughout the meetings. You will want your notes to be thorough and while you don't need to dictate everything exactly, it can be helpful to document especially important statements word-for-word.

Don't be afraid to let the conversation go silent for a minute to catch up on your notes. The silence may actually provide a helpful pause for interviewees to think over the incident they are recounting and remember extra details. Some interviewees also share more as it is many people's natural instinct to speak in order to fill the silence.

Employees may want to review your interview notes, and this can actually be a good thing. Allow the interviewee to make edits to the notes to ensure they correctly represent what the employee said. You may also want to ask them to initial each page and sign the last page. This step is time-consuming, but it ensures that the notes will not be challenged if the case ends up in court. Some HR investigators also like to collect written statements or witness statements from their interviewees.

Recording the meeting may or may not be preferable. When meeting over Zoom or a virtual meeting software, you may choose to record the session. A tape recorder or other recording device (but preferably not a personal cell phone for confidentiality reasons) may be used. Many workplace investigators and HR personnel prefer not to record as recording can make interviewees nervous and may lead them to be less open in their responses. However, it does give you a more complete record of the interview that would be harder to challenge.

Circle back

Don't be afraid to circle back to witnesses that you've already interviewed. As you get further along in the investigation process, new questions may arise. You should also invite interviewees to circle back with you if they remember something later. If an interview subject had trouble remembering something or mentioned that they may have messages or emails pertaining to the incident, check in with them towards the end of the investigation to circle back on whether they remembered or found anything.

Making a determination

The last step in the workplace investigation is to review the evidence and make a determination. Once you have your determination, take these steps to conclude the investigation.

Take corrective action if needed

If you've determined that a violation of company policy has occurred, you may need to take corrective or disciplinary action. Disciplinary actions may include warnings, write-ups, suspensions, or even termination.

Be sure that your use of disciplinary measures are fair and consistent. If you give someone a warning or write up for an offense other employees have typically received suspensions or been terminated for, it may look like favoritism. Similarly, taking harder measures than the company historically has without extenuating circumstances such as past write-ups or a more severe violation of the policy, it could look like you are discriminating against this specific employee.

Speak with the complainant

Let them know the outcome of the investigation. It can be a difficult conversation if the investigation was inconclusive and there was not enough evidence found to take action. However, it's still important to speak with the complainant to encourage them to reach out to human resources if any additional incidents occur. You should also offer them any other available resources or solutions such as directing them to an employee assistance plan (EAP) or discussing transfer options if they do not feel comfortable in their current role.

Regardless of the outcome of the investigation, it is also imperative to let the complainant(s) and participating witnesses know that any retaliation that they experience should be reported and will not be tolerated by the company.

Document your determination and close out the case

Once you've made your determination and taken all appropriate action, document your decision and all actions taken in the investigation report and then close the case out. It's always a good idea to review your investigation case file and make sure that all relevant information including witness and victim statements is in the folder (electronic or physical) in case you need to reference the investigation again due to future incidents or legal reviews.