

Assessing witness credibility in workplace investigations

It's a mistake that's all too common: An employer investigating some workplace infraction fails to act when the inquiry bumps up against a "he said/she said" situation. Then the investigation grinds to a halt.

An impasse like that, of course, makes it difficult to determine the truth about the situation at hand. But that's no excuse to stop the investigation. Remember, contradictory evidence and conflicting stories are not valid defenses to inaction.

These situations often arise in the context of workplace harassment claims—cases in which contradictory versions of events are to be expected.

It is the role of the investigator, however, not only to gather the available evidence, but to make the difficult credibility determinations that will reveal where the truth lies and whether applicable policy has been violated.

Practical investigatory steps

There are a number of practical steps that you, as an HR investigator, can take to improve the reliability and objectivity of your credibility assessments.

First, recognize that conducting a workplace investigation will require you to re-examine your own biases. You need to maintain a calm, objective and neutral frame of mind throughout, particularly when interviewing witnesses and then circling back to review statements and notes.

Many investigators find it useful to jot down additional notes immediately after the witness has left the interview room. Those notes typically focus on the nonverbal cues observed during the interview. Bear in mind, however, that such notes should reflect observations, not conclusions. Those come later.

It often helps to have another experienced investigator present for interviews. He or she can not only assist in note taking, but also can offer another set of observations and impressions against which to compare your own.

As a practical matter, there are four factors critical to assessing witness credibility: demeanor, consistency, chronology, and past history and motivations.

Witness demeanor

How a witness presents himself or herself can be invaluable when judging the truth of conflicting stories and contradictory versions of events.

What overall impression did the witness make on you? How did he react to your questions? Was he friendly, hostile or nervous? Was he forthcoming or did you have to pry the information out? Was the story plausible?

Consistency

Many experienced investigators prepare charts to compare the consistency of a witness's account to the accounts provided by others.

For example, the rows of your chart may identify the different allegations or topics at issue, with each witness listed in a column. In the box corresponding to each witness, you can record the witness's statements regarding that particular allegation or topic. You can also add columns and rows to note witness demeanor, indicate allegiances/relationships and identify information obtained through physical evidence.

You should also document whether witnesses' stories changed.

Chronology of events

The established chronology of events can shed a great deal of light on the accuracy or truthfulness of a witness's account.

How does the timing of certain events recounted by this witness compare to the timing recounted by others? Are the differences significant? Does this witness's account appear to be an outlier?

Compare the differing accounts to the objective physical evidence (such as e-mails, letters, notes, expense reports, etc.) that you have gathered from witnesses, your IT department and any other sources you can identify. Which account does this evidence support?

Past history and motivations

Recognizing and evaluating the possible motivations of witnesses is another important component of your credibility-assessment process.

Primarily, the goal is to determine whether anyone had reason to fabricate their statements. Was there bad blood between the witness and the accused (or the complainant) that might lead the witness to lie? Did the person raising the issue do so in a timely manner? Did similar incidents occur in the past that were not reported?

The entire process can be time-consuming and difficult. But investigators who effectively assess the factors discussed above stand a much better chance of correctly assessing witness credibility and ultimately determining the truth of the matter.

At the very least, you will be in a good position to explain to the complainant what you did or didn't do. You'll most certainly be able to show that you took the investigation seriously.

And if a complaint turns into a lawsuit, that's half the battle.