

Internal Investigations

Internal investigations are a serious matter when an employee/employer is alleged to be violating company rules. Inside threats can cause as much damage as outside threats. The goal of internal investigations is to uncover the truth about alleged misconduct within the organization. However, it must be done without compromising the relationship with innocent employees or damaging anyone's reputation. If done poorly the company could face fines, penalties, the risk of suspension, or negative publicity.

Arises from:

- a. Media reports
- b. Risky events
- c. Whistleblower allegations
- d. Shareholder demands
- e. External/internal audits

Some situations where investigations may be required:

1. Allegations of racial discrimination
2. Gender and racial discrimination
3. Same sex sexual harassment between senior level administrators
4. Racial, gender, religious, or sexual orientation harassment

What should be done?

Independent investigations should be conducted into internal employee complaints and fact finding investigations in order to make objective written findings and recommendations to employers. The company needs to carefully define the scope of the inquiry because if it's too broad it will cause undue expense and business disruption. On the other hand if the scope is too narrow then it will fail to uncover serious misconduct. Attorneys are **REQUIRED** to provide the witness with a warning that the attorney represent the company and not the employee.

Compositions of the investigation team and scope should be memorialized in writing between counsel and the client and should include: (1) the reason for the convening investigation; (2) the authority empowered to authorize the investigation; (3) goal to preserve relevant data; (4) maintain confidentiality through attorney client privilege; (5) authority to conduct employee interviews; and (5) final report should be delivered in writing.

A complete investigation entails:

1. Counsel are in position to make reliable findings
2. Counsel can defend their conclusions to internal and external recipients
3. Counsel has sufficient basis to provide informed legal counsel to their client

Witnesses are a critical party because they have the facts (who, what, where, when, why)

A good witness interview has:

1. Discovery of a many relevant facts from the witness as possible
2. Accurate assessment of the witnesses' credibility

All complaints (even trivial) should be thoroughly investigated. **Common mistakes** are often: protecting a high level executive or favored employee who has been accused of harassment while taking severe disciplinary action against other employees accused of similar misconduct.

Why hire outside counsel?

Hiring outside counsel to conduct the investigation is crucial for a successful outcome because it provides employers with a measure of independence and credibility in the outcome of the investigations. Additionally, it allows clients to get on with its business without the distraction of having to conduct the investigation itself. These investigations can do more harm than good by raising questions about the validity of the results. Although no workplace investigation is perfect the goal is to conduct the investigation in the fairest way possible.

Tips:

1. Promptly report the complaint to HR (supervisors and other employees should not be doing the investigation)
2. Identify the best person to conduct the investigation (can the person remain impartial, objective, and fair)
3. Promptly initiate and conclude the investigation
4. Take immediate and necessary remedial measures
5. Interview all potential witnesses
6. Document the investigation
7. Avoid retaliation
8. Take prompt remedial measure
9. Keep concerned parties informed