

HOW TO CONDUCT AN EMPLOYEE INVESTIGATION JULY 2007
By Olivia Goodkin

Employers need to investigate claims made by employees regarding discrimination, sexual harassment, violence in the workplace, or other prohibited conduct. This article explores the steps necessary to conduct and complete an effective investigation.

Do you have a reporting mechanism?

First, employees must be told that they should report all perceived claims of harassment, discrimination, safety violations or threats of violence. Ideally, your employee handbook will include the mandate that these types of claims should be reported to either the employee's immediate supervisor or another member of management. It is important to have alternative supervisors to whom claims may be reported, since the employee's supervisor may be the alleged harasser.

Ask employees to put claims in writing, providing as much detail as possible, including the date and time of the incident and the names of any witnesses. However, do not fail to investigate a complaint simply because the employee refused to memorialize the incident.

Be sure to tell the employee that the company takes the claim seriously and that the claim will be investigated promptly, thoroughly and with as much confidentiality as possible. Assure the employee that the company will not tolerate any retaliation against him or her for making the complaint.

Respond promptly to the claim

Commence the investigation quickly, while witnesses' memories are fresh. A timely investigation also will assure your employees that you take claims seriously.

The first step is to interview the alleged victim to ask what happened, who saw it and whether there is any documentary evidence that supports or relates to the claim(s), e.g., emails, photographs, etc. Be sure to focus on specific facts, such as the date and time of the events, the actual words used by the persons involved, and the names of witnesses to the incident(s).

Interview all witnesses and gather all documentary evidence

After interviewing the victim, either based on the initial complaint in writing or on the oral complaint made to management, create an outline of events and a listing of potential witnesses to each event. Then, interview each of the witnesses named by

the victim. It is important to get the exact words used by the witnesses, if possible, so take copious notes.

Inform the witnesses that the purpose of the meeting is to investigate a claim made by another employee, that they are not the targets of the investigation, that you will keep their identities confidential, if at all possible, and that there will be no retribution for their sharing of information. However, also tell them that they will need to keep their interviews with you confidential, as the complaint procedure is a private matter. If you are able to describe the complaint without naming names, do so. As an example, you can say, "An employee said that her supervisor squeezed her arm. Have you ever seen an incident such as this in the workplace?"

Consider taking the opportunity of the interviews to query the employees on their opinions of the workplace's atmosphere in general, and whether they have any particular complaints.

Interview the alleged perpetrator

Tell the alleged perpetrator what complaint was made against him or her. You may want to soften the interview by saying that you understand that there are often two sides to a story, and that you want him or her to feel free to share his or her version. Allow the employee to explain the incident and his or her point of view. See if there are any additional witnesses and if the employee has any written documentation, such as emails.

Come to a decision

Decide what and whom you believe, and what probably happened. If the alleged perpetrator needs to be disciplined in any manner, including a warning, suspension, transfer, demotion or termination, then advise the perpetrator, and let the victim know that the investigation is completed and action has been taken against the perpetrator. If you decide that no action is required, or after listening to everyone's statements you believe that the incident did not take place, you need to report this to the alleged victim.

Should I hire an attorney or investigator?

An experienced outside consultant knows how to ask questions and elicit the most information from witnesses. Moreover, he or she will be able to gauge the veracity of the witnesses without any of the emotional baggage or history that a co-worker may bring to the investigation. Although it can be more expensive to bring in an outside consultant, if the charge made by the employee is serious or there has been a pattern of improper conduct, it may be a wise investment.

A lawyer may also add value, but if the employee later brings a claim or lawsuit against the company, the lawyer may become a percipient witness to the case. It is possible that you will then not be able to use that lawyer or his or her law firm to defend your case, if the investigation is an integral part of the company's defense.

Conclusion

An employee claim of harassment, workplace violence or other improper conduct is a disruption to your company's business. With an immediate and focused

investigation, you can mitigate the loss of time and productivity.

ABOUT OLIVIA GOODKIN



Olivia Goodkin has over two decades of experience representing corporations, individuals and closely-held businesses in employment law and business litigation. She advises on the termination of employees, wage and hour laws, employment contracts and other employment issues, and she defends companies in wrongful termination lawsuits. Olivia also creates trade secret programs for companies seeking to protect their valuable intellectual property. *Olivia can be reached at ogoodkin@rutterhobbs.com, or by telephone at 310.286.1700.*

ABOUT RUTTER HOBBS & DAVIDOFF



Century City-based law firm Rutter Hobbs & Davidoff Incorporated represents clients in matters involving bankruptcy and corporate reorganization, business disputes and litigation, corporate and securities, estate planning and litigation, family law, intellectual property, labor and employment, and real estate. For more than one-third of a century, the firm's experienced attorneys have represented middle market companies, early stage entities, large corporations and individuals.

Rutter Hobbs & Davidoff Incorporated

(310) 286-1700

www.rutterhobbs.com