

# ***CONDUCTING INTERNAL INVESTIGATIONS***

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## **CONDUCTING INTERNAL INVESTIGATIONS**

### **I. YOUR INITIAL MEETING WITH THE EMPLOYEE RAISING THE ISSUE**

- A. Be sure the person raising the issue is comfortable with your handling any investigation.**
- B. When conducting your initial interview, get the facts – Who, What, When, Where, How and Why.**

### **II. DETERMINING IF AN INTERNAL INVESTIGATION IS NEEDED**

- A. Will a single answer resolve the issue?**
- B. Are other employees involved?**
- C. Do you need more facts than the employee is able to provide?**
- D. Do you need the help of any other resource in order to reach a conclusion?**

### **III. DETERMINING THE NATURE OF AN ISSUE BEFORE INITIATING AN INFORMAL INVESTIGATION**

- A. Identify what the employee is complaining about.**
- B. Determine what the company's obligation is with respect to resolving the issue.**
- C. Decide who else is necessary to assist you in resolving the issue.**

### **IV. PLANNING THE INVESTIGATION**

- A. Determine what policies, guidelines or practices apply to this situation.**
- B. Obtain all relevant documents that will assist you in conducting your investigation.**
- C. Determine who is suited to conduct this investigation.**
- D. Decide who you should interview.**
- E. Decide the order of your interviewees.**

- F. Determine if any interim actions are necessary before you initiate the investigation.**
- G. Outline the questions you will ask.**

## **V. CONDUCTING THE ACTUAL INVESTIGATION**

- A. Anticipate the questions that each of your interviewees will ask.**
- B. Before you begin the interview, be prepared to explain what you are investigating, why the interviewee is being interviewed and how the information obtained will be used.**
- C. Remember to stress that no conclusion has yet been reached.**
- D. Be sure to emphasize your company's policy regarding confidentiality and reprisal.**

## **VI. CONDUCTING AN EFFECTIVE INTERVIEW**

- A. Give the person who is the focus of the investigation a detailed account of the claim.**
- B. Obtain the interviewee's detailed account of the events surrounding the claim.**
- C. Get as much information as possible from the interviewee.**
  - 1. Understand what policy or guideline forms the basis of the issue.**
  - 2. Understand what facts are necessary to reach a conclusion.**
- D. Effective techniques for asking questions.**
  - 1. Draft a preliminary list of questions you want to ask.**
  - 2. Save unfriendly or embarrassing questions until the end of the interview.**
  - 3. Don't begin with hostile or tough questions.**
  - 4. Start with "broad" questions.**
  - 5. Do not put words into the interviewee's mouth.**
  - 6. Ask the tough questions.**
  - 7. Go beyond your pre-planned questions.**
  - 8. Ask questions designed to elicit relevant facts.**
  - 9. Ask *who, what, when, where, why, and how* type questions.**

## **VII. BEFORE CLOSING THE INTERVIEW**

- A. Relate the seriousness of the investigation.**
- B. Remind the interviewee of the confidentiality of the investigation.**
- C. Ask if there is anyone else you should talk to.**
- D. Review the interviewee's answers with the interviewee.**
- E. Encourage the interviewee to come back with any additional information and/or documents.**

## **VIII. ASSESSING CREDIBILITY**

- A. Make notes that will help assess credibility as soon as the interviewee leaves.**
- B. Review the interviewee's chronology of events.**
- C. Note the interviewee's demeanor.**
- D. What, if any, admissions were made during the interview.**
- E. Did the interviewee deny anything.**
- F. Were there conflicting statements made.**
- G. Was the interviewee's explanation plausible.**

## **XI. MAKING A RECOMMENDATION AFTER COMPLETING YOUR ANALYSIS**

- A. Were any of the company's policies, guidelines or practices violated.**
- B. Is the violation serious or minor.**
- C. Do any local, state, or federal laws require you to take certain actions.**
- D. What is the employee's history at your Company regarding length of employment, prior complaints and/or problems, performance, etc.**
- E. What, if any, factors would mitigate against instituting discipline in this case.**
- F. Follow-up as appropriate.**

**VIII. COMPLYING WITH THE COMPANY'S POLICIES REGARDING DOCUMENTATION**

- A. Be sure you have documented the investigation properly.**
- B. Distribute your findings and conclusions to appropriate people.**
- C. Be sure the “personnel files” of the employee raising the issue and the employee who was the focus of the issue are appropriately documented.**

## **CONDUCTING INTERNAL INVESTIGATIONS**

### **INTRODUCTION:**

- Burden of proving misconduct
  - You must make a good faith determination that sufficient cause existed based on reasonable grounds.
  - Reasonable grounds is an objective standard.
- Legal Claims
  - Negligent investigation ... Requires more than evidence that the employer came to an incorrect conclusion.
  - Defamation Claim ... Employee claims that they were defamed by the employers false accusation of misconduct.

### **I. YOUR INITIAL MEETING WITH THE EMPLOYEE RAISING THE ISSUE**

- Identify all issues
- Gather all material facts
- A. Be sure the person raising the issue is comfortable with your handling any investigation.**
  - Instill confidence in the system and you.
  - Make sure the employee feels comfortable that you can be objective addressing the issue.
  - Confirm that the employee feels comfortable that you can reach an impartial resolution. (Help to avoid a bias claim at a later date)
- B. When conducting your initial interview, get the facts – Who, What, When, Where, How and Why.**
  - Tell me what happened.
  - Who was there? What did they see? What have they told you? What would you have told them?
  - Has it happened before?
  - Who have you told this to?
  - Written documents?
  - Has the employee kept any written records or diaries?
  - Similar concerns?
  - Make tick marks to reflect questions the employee did not answer.
    - Assess employees demeanor.
  - Inform the person raising the issue that the company does not permit any retaliation or reprisal due to a legitimate issue having been raised.

- Tell the employee that you will limit the disclosure of information to those people having a legitimate need to know.
  - Person conducting the investigation
  - Necessary decision makers
- Instruct the employee to do the same and that they have a strict duty to keep the investigation information confidential.
- Ask the employee for suggestions on how the matter could best be resolved.
- Let the employee know the company will make any final determination regarding the best way to resolve the issue.
- Pin the employee down on their complaint and the facts
  - Encourage the employee raising the issue to write down their side of the story.
  - Consider sending the employee a **“confirmation memo”** memorializing the issues and facts.
  - Goal ... Make sure all of the issues are clearly understood before starting the investigation.
    - Identify the issue
    - Identify the facts
    - Name the person investigating
    - Roadmap for the investigation
    - Outline the company’s expectations.
- Obtain all documents relevant to the investigation, including any documents that will provide background information.
  - Post-it notes
  - Notes on napkins
  - Diaries
  - Timecards
  - Performance evaluations
  - Disciplinary memos.

## **II. DETERMINING IF AN INTERNAL INVESTIGATION IS NEEDED**

### **A. Will a single answer resolve the issue?**

- Is there a fairly simple answer or is it a more complex problem
- Single incident or is there a pattern of conduct alleged

### **B. Are other employees involved?**

### **C. Do you need more facts than the employee is able to provide?**

### **D. Do you need the help of any other resource in order to reach a conclusion?**

- Chart ... Determining if a formal investigation is necessary.

### **III. DETERMINING THE NATURE OF AN ISSUE BEFORE INITIATING AN INFORMAL INVESTIGATION**

- A. Identify what the employee is complaining about.**
- B. Determine what the company's obligation is with respect to resolving the issue.**
  - To take immediate and appropriate action to correct the inappropriate conduct.
- C. Decide who else is necessary to assist you in resolving the issue.**

### **IV. PLANNING THE INVESTIGATION**

- A. Determine what policies, guidelines or practices apply to this situation.**
- B. Obtain all relevant documents that will assist you in conducting your investigation.**
  - Master personnel file
  - Performance Appraisals
  - Documents from internal interviews
  - Information from prior investigations
- C. Determine who is suited to conduct this investigation.**
  - Are you the right one to handle the investigation.
  - Do you have the experience and expertise.
  - Can you be objective with regard to the parties and issues.
  - Do you have any bias which will prejudice the integrity of the investigation if you are the one who handles it.
- D. Decide who you should interview.**
- E. Decide the order of your interviewees.**
- F. Determine if any interim actions are necessary before you initiate the investigation.**
  - Removing the accused from the workplace.
  - Placing the accused on administrative leave pending the outcome of the investigation.
  - Tell the accused what is expected of them.
    - Cooperate fully throughout the investigation.
    - Be completely honest in answering questions and providing info.



- Explain that they will remain on the payroll and will receive full pay and benefits while the investigation is being conducted.
- Inform them that they must remain available during normal working hours to meet and/or provide information.
- Tell them the investigation is confidential and that they must not discuss it with any person who does not have a legitimate need to know the information.

**G. Outline the questions you will ask.**

**V. CONDUCTING THE ACTUAL INVESTIGATION**

**A. Anticipate the questions that each of your interviewees will ask.**

- Show sensitivity toward the interviewee.
- Put the interviewee at ease.
- Minimize the risk of retaliation.
- Confidentiality ... Inform the employee that the information will be shared on an as need to know basis.
- Don't grant immunity ... If the employee discloses information that could get them in to trouble.

**B. Before you begin the interview, be prepared to explain what you are investigating, why the interviewee is being interviewed and how the information obtained will be used.**

- Prepare an opening statement
- Get the employee's commitment that they will keep the interview confidential.
- Inform the interviewee that retaliation or reprisal for participating in the interview will not be tolerated.
- Important to get accurate and truthful information.
  - Anyone who intentionally misdirects an investigation, whether by falsehoods or omissions will be disciplined.
  - Failing to cooperate can be the basis for discipline.
  - Do not speculate or give opinions. Only first-hand information.
  - Discussing the investigation with others can be the basis for disciplinary action.

**C. Remember to stress that no conclusion has yet been reached.**

**D. Be sure to emphasize your company's policy regarding confidentiality and reprisal.**

## VI. CONDUCTING AN EFFECTIVE INTERVIEW

- A. Give the person who is the focus of the investigation a detailed account of the claim.
- B. Obtain the interviewee's detailed account of the events surrounding the claim.
- C. Get as much information as possible from the interviewee.
  1. Understand what policy or guideline forms the basis of the issue.
  2. Understand what facts are necessary to reach a conclusion.
- D. Effective techniques for asking questions.
  1. Draft a preliminary list of questions you want to ask.
  2. Save unfriendly or embarrassing questions until the end of the interview.
  3. Don't begin with hostile or tough questions.
  4. Start with "broad" questions.
    - "What are they like to work with."
    - "Does it surprise you that she's complained about you."
    - "What did happen."
    - Use open-ended questions. Then move to the pointed questions.
  5. Do not put words into the interviewee's mouth.
    - Avoid leading questions. "Is it true that you asked her out for a date."
  6. Ask the tough questions.
    - Develop rapport first.
  7. Go beyond your pre-planned questions.
  8. Ask questions designed to elicit relevant facts.
  9. Ask *who, what, when, where, why, and how* type questions.
    - Chronology of events.
    - Use a timeline.
    - Ask yourself ... Does the story or chronology make sense.
    - If the person who is the focus of the investigation claims that the person raising the issue is "lying," ask why they think someone would do this. Is there something that happened that might explain why someone would file a meritless complaint. Has there been any conflicts.

## **VII. BEFORE CLOSING THE INTERVIEW**

- A. Relate the seriousness of the investigation.**
- B. Remind the interviewee of the confidentiality of the investigation.**
- C. Ask if there is anyone else you should talk to.**
- D. Review the interviewee's answers with the interviewee.**
- E. Encourage the interviewee to come back with any additional information and/or documents.**
  - Give the employee a general time frame within which you expect to complete your investigation.
  - Close with a general statement that "you will speaking to other people, or that you appreciate their cooperation with the investigation."

## **VIII. ASSESSING CREDIBILITY**

- A. Make notes that will help assess credibility as soon as the interviewee leaves.**
- B. Review the interviewee's chronology of events.**
  - \* Does it differ from other witnesses chronology.
- C. Note the interviewee's demeanor.**
  - Body language.
  - How did they react to the allegations (argumentative, defensive, hostile)
- D. What, if any, admissions were made during the interview.**
- E. Did the interviewee deny anything.**
  - Are there witnesses who will support the interviewee's denial.
- F. Were there conflicting statements made.**
  - Version of the facts different from anyone else's version.
  - Are there diaries or other writings that will help substantiate their version.
- G. Was the interviewee's explanation plausible.**
  - Do they make an overall credible impression.

- Was the person forthcoming or did you have to pull information from them.
- Are there things that the accused has said or done in other situations which make it more likely than not that the facts in dispute actually happened.

H. Classify where the interviewee was coming from.

- The “reluctant” witness.”
- The witness who loves the limelight.
- The witness with an ax to grind.

## **XI. MAKING A RECOMMENDATION AFTER COMPLETING YOUR ANALYSIS**

**A. Were any of the company’s policies, guidelines or practices violated.**

- Did the person raising the issue, raise in a timely manner.
- Why was the issue raised now.
- What motivation would the accuser have to fabricate facts.
- What motivation would the accused have for denying the incidents
- Did either the accuser or accused say anything at any point which you found to be untrue.

**B. Is the violation serious or minor.**

**C. Do any local, state, or federal laws require you to take certain actions.**

- Past practice.

**D. What is the employee’s history at your Company regarding length of employment, prior complaints and/or problems, performance, etc.**

**E. What, if any, factors would mitigate against instituting discipline in this case.**

**F. Options**

- No action
- Education
- Verbal discussion/counseling.
- Written warning
- Suspension
- Corrective action plan
- Demotion
- Transfer
- Reduction in salary

- Termination

**G. Follow-up as appropriate.**

- Implement the results in timely manner.
- Follow up with the employee to ensure that they are properly informed of the investigation results.
- With the Accused.
  - Describe the course of the investigation.
  - Results of the investigation.
  - Be prepared to explain why you reached the result that you did.
  - Whether the result will be placed in their file.
  - Who will be made aware.
  - Effect on future with the company.
  - Can they transfer.
  - If a written report is to be placed in the file, set forth the issues, steps taken, conclusions drawn, actions being taken and who to contact with questions or additional information.
- With the Accuser.
  - Set forth your conclusion.
  - Actions being taken.
  - What the accuser should do if she/he experiences any retaliation.
  - Confidentialities.
- Other Employees.
  - Information regarding the investigation is confidential.
  - Their assistance was appreciated.
  - Not the company's practice to discuss confidential information regarding one employee with another.

**IX. COMPLYING WITH THE COMPANY'S POLICIES REGARDING DOCUMENTATION ... INVESTIGATION REPORT**

- **Investigation Report**
  - Name, division, department of the employee raising the issue.
  - Name, division, department of the employee investigated.
  - Date received.
  - Summarize issue raised and info received.
  - Date investigation started and completed.
  - Investigator.
  - Date complainant and accused agreed to the investigator.
  - Names and dates of people interviewed.
  - Final decision and date.
  - Application of policies or guidelines relevant to the situation.
  - Facts relied on to make your final decision regarding the investigation.  
Do not draw conclusions in this section. Stick with relevant facts.

- Analysis
  - Conflicting or inconsistent information.
  - Credibility of the witnesses.
  - Why the witnesses were/not believed.
- Conclusion of the investigation
  - Factual conclusions. Don't make assumptions.
    - Stick to the objective facts.
  - Application of policies to the situation.
  - Unresolved issues from the investigation.
  - Actions to be taken.
  - Report should not reflect conversations or written communications with legal counsel. These conversations are "privileged."

**A. Be sure you have documented the investigation properly.**

- Final Investigation File
  - Labeled as "Need-to-know Confidential."
  - File should not be released to anyone outside the company except when required by law. (Court order)
  - File should include
    - Key steps taken to investigate.
    - Written communications from the accuser.
    - Suspension notice.
    - Investigation summary.
    - Results and notification.
    - Notes and support documentation as necessary.
    - Written or electronic communications regarding the steps taken during the investigation.
    - Final copies of documents and not drafts.

**B. Distribute your findings and conclusions to appropriate people.**

**C. Be sure the "personnel files" of the employee raising the issue and the employee who was the focus of the issue are appropriately documented.**