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Workplace Investigation Procedure

HUMAN RESOURCES MANAGEMENT

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Introduction ...

Every organization will experience conflict in the workplace; however, fostering a healthy workplace culture will help mitigate the chances it will escalate into a major issue. Additionally, every organization will have an employee that abandons their professional ethics, even for a moment, and someone will experience discrimination or harassment.

When an issue or allegation is reported to a supervisor, most organizational policies direct the supervisor to promptly report the issue to the HRM professional for prompt direction.

While many HR departments cannot investigate every employee complaint, employers are legally mandated to investigate harassment, discrimination, retaliation, safety, and certain other types of complaints. The HRM professional must follow policy and procedure.

Someone in HR must sift through the staff's petty grievances and complaints to diligently be on the lookout for real problems that generate business risk and the four most common issues are harassment, discrimination, theft, and violence, and if they are handled improperly, the results can be terrible, dangerous, costly and illegal.

If a problem or complaint has come up at your organization, a proper investigation may be warranted to figure out what happened, and what to do about it. A formal investigation may also help your organization avoid liability for employee wrongdoing; but, only if you act fast and take effective action to remedy the problem. Issues that go unresolved or ignored only get worse and escalate.

Conducting workplace investigations is one of the most challenging duties that HRM professionals must take on. Workforce demographics are shifting. New laws are constantly popping up. Managers make mistakes because they are not properly trained, or they are under pressure to resolve complaints quickly. Employees are more aware of their rights. Employees demand a healthy, safe, supportive workplace free from negativity.

Every complaint is unique, and surrounding circumstances are never the same; however, having a well-defined, consistent process in place can ward off future lawsuits.

While HR professionals have many demands on their time, it is critical to investigate an allegation quickly, stretching an investigation out over a lengthy period tells employees the alleged misconduct is not important. Treating employees with respect during the process has additional rewards such as building employee trust and creating a better work environment. Training and development for every employee will go a long way.

Best practices in human resources management and organizational development suggest that every organization have a policy and procedure for the HRM professional to follow. A 'tip line' can be set up for members to raise issues anonymously. Additionally, HR professionals should be actively soliciting feedback, performing random observations, and reiterating an open door policy.

A word of caution is in order for the HRM team to be conscientious of confidentiality and evidence preservation. Never share information with a colleague if he or she is not directly involved. However, don't promise an employee that his or her complaint will remain confidential, because it might be necessary to share the information down the road.

Encourage all those involved in the investigation to keep the proceedings confidential to protect the integrity of the process. If word leaks out, other employees will lose trust and might refuse to share what they know. As time goes by, it will become more difficult to collect evidence and get witnesses to talk. Details are forgotten. Documents disappear. Bad behavior continues ... eventually.

An employer is always responsible for harassment by a supervisor that culminated in a tangible employment action. If the harassment did not lead to a tangible employment action, the employer is liable unless it proves that:

1) it exercised reasonable care to prevent and promptly correct any issue

2) the employee failed to complain to management or to otherwise avoid harm

Train Human Resources managers and all employees on EEO laws. Implement a strong EEO policy that is embraced at the top levels of the organization. Train managers, supervisors and employees on its contents, enforce it, and hold them accountable.

Promote an inclusive culture in the workplace by teambuilding and fostering an environment of professionalism and respect for personal differences.

Foster open communication and early dispute resolution. This may minimize the chance of misunderstandings escalating into legally actionable EEO problems. An alternative dispute-resolution (ADR) program can help resolve EEO problems without the acrimony associated with an adversarial process.

Establish neutral and objective criteria to avoid subjective employment decisions based on personal stereotypes or hidden biases.

An organization should have a well-documented and communicated corporate policy or procedure, addressing rules of acceptable behavior and practices through a policy and procedure manual or handbook. If an organization lets a manager simply "wing it" without a manual, it's setting itself up for a risky practice that could potentially lead to discrimination issues and legal liability down the road.

Equally as important as having a policy manual is to have an effective means to communicate those policies to employees so they understand what is expected of them and the ramifications for not following policies. If this communication is successfully executed, employees shouldn't be surprised about the outcome if they violate a company policy. As a manager it's your job to know the policies you've been empowered to enforce, and to remind employees that such policies exist.

How to Conduct a Workplace Investigation ...

An essential tool for any manager is the ability to conduct a thorough and proper investigation when needed. Investigation is a significant responsibility and among the most important work you will do. It also separates you—a manager—from your subordinate employees. The following **10 steps** can help you lay the groundwork for a reasonable, timely and successful investigation.

Like any other project, the best way to tackle an investigation is to divide it up into manageable tasks. Fortunately, most workplace investigations follow a similar pattern, although the details can vary considerably. Once you become aware of a problem or complaint, you will have to follow these ten steps:

1. **Investigation warrant.** Although there are some situations that don't warrant an investigation, you should generally err on the side of investigating. Sometimes, you won't know how serious a problem really is until you start asking questions. Decide whether to investigate, including how to scale the size of your investigation to the problem. Defining the problem or allegation you need to investigate is a crucial part of understanding how to tackle the investigation. Begin your due diligence documentation with researching the organizational policy in this matter.
2. **Take immediate action.** You might have to act right away, before you begin to investigate, to protect employees or the company itself, from harm or safety risk. For example, an employee accused of serious sexual harassment or stealing company trade secrets should be suspended, with pay, until the investigation is complete. Take interim measures to mitigate continued misconduct or safety issues that will help you avoid legal claims based on your pre-investigation actions.
3. **Choose an investigator.** If you won't handle the investigation yourself, you'll need to pick someone else to do it with proven competency. The right investigator is experienced, impartial, and of appropriate demeanor and if necessary, testifying professionally about the investigation. In certain situations, it makes sense to bring in an outside, independent investigator.
4. **Plan the investigation.** Start by organizing your thoughts and information and determining a purpose for the investigation. Identify knowledge gaps, who may be involved or offer witness or relevant evidence. Some careful thought up front can help you avoid wasting time or overlooking important facts as you investigate. Develop a plan of action and execute the plan and complete the report template.
5. **Interview.** The heart of any investigation is gathering information. The most basic way to do that is by asking people questions. Typically, you'll have to interview the employee who complained or was the victim, the employee accused of wrongdoing, and any witnesses to the incident(s). You'll learn the most by asking open-ended questions that encourage disclosure without giving too much away. It is likely that you will need to re-interview the accused after your initial meeting to follow up on information uncovered from witnesses or your document review.

6. **Gather evidence.** Documents play a role in many investigations and decide the outcome in more than a few. You might have to review personnel files, emails, personal notes, performance reviews, and other documents to figure out what really happened. You might also have to gather physical evidence, such as a weapon, photographs, video, drug paraphernalia, or pornographic magazines. The evidence is gathered, culpatory and exculpatory and presented in the form of a brief of evidence for authority consideration. You are building a case.
7. **Evaluate the evidence.** The most challenging part of an investigation, especially if witnesses disagree or contradict each other, is figuring out what actually happened. There are some proven methods of figuring out where the truth lies, which we all use in our everyday lives. Evidence evaluation explains how to sift through the evidence and come to a conclusion. Workplace Policy should also cover what to do if, despite your efforts, you cannot get to the bottom of things.
8. **Take action.** If you conclude that an employee committed serious misconduct, you'll have to act quickly to avoid legal liability for that employee's behavior and to protect other employees from harm. Workplace Policy explains how to decide which actions to take after the investigation is complete, including how to communicate with the employees involved. To discipline or not to discipline, that is the question. Corrective action may come in various forms, such as a verbal warning, written warning, discipline, suspension, termination, performance action plans or remedial training. If the complaint was founded, action should be taken to prevent the behavior or situation from recurring in the future. Don't be too lenient or too harsh. Make sure the punishment fits the crime, but more importantly, when appropriate, gear your outcome toward making the behavior stop. For instance, if you recommend and issue corrective action and the behavior stops, then you've done your job. Good work!
9. **Document the investigation.** You should be writing an investigation report that explains what you did and why and what conclusions are made. Once your investigation is complete, this report should be reviewed by management. This will not only give the company some protection from lawsuits relating to the investigation, but it will also provide a written record in case of future misconduct by the same employee. Investigation reports are maintained in the HRM office.
10. **Follow up.** Your last step is to make sure the problem that led to the investigation has been solved. You'll need to follow through with the complaining employee and the accused employee, and you might have to take other steps, such as training employees or developing new workplace policies, specifically to deal with systemic workplace problems. Document and report your follow up after the investigation.

Workplace investigations are simply a fact of corporate life, and quite often necessitate investigation interviews. Carried out poorly, the corporate consequences, liabilities and damage to an organization's credibility can be huge. The desire by company management to ensure fair investigation outcomes for valued employees is an important motivation for HR best practices – just in case additional court investigations or litigation occur later.

Many laws in the area of employee relations effectively require employers to undertake investigations in order to meet their obligations under the laws. The general duty of any employer who either knows or should know about a discrimination, harassment, threat, or safety problem faced by an employee is to take prompt and effective remedial action to put an end to the problem. In order to know what action to take, or to find out whether action is even necessary, the employer has to investigate the situation and ascertain the facts. Employers that fail to investigate such situations usually lose any claims or lawsuits brought by the employee in response to the problem.

Sometimes an internal probe may not be the wisest course: HRM staff members may feel they lack objectivity because they have close ties to higher-ups who might be investigated; they may feel intimidated because the person whose actions need to be investigated hired people in HR or writes HR's performance reviews; they may fear that employees may not respect the results of the investigation because they perceive collusion between HR and upper management; or they may feel out of their depth—that they lack the investigative skills and experience to conduct a thorough probe.

An employer must determine who is going to conduct the investigation. Depending on the allegations and individuals involved, conducting the investigation internally may create bias-related/neutrality concerns. However, retaining outside services (e.g., an attorney or HR-professional) may escalate an already tense situation and/or may not be necessary given the nature of the complaint. While consistency in policy and process when handling employee complaints is important, the decision regarding “who” investigates is often fact-specific and must be analyzed on an individual basis to determine the best course of action for employees and employer. Overall, a neutral investigator is one who acts in good faith and fairly listens to both sides.

At the conclusion, the investigator(s) should carefully review notes and consider inconsistencies, credibility, evidence produced, any repeated behavioral patterns, strength of witness observations/statements, etc. Ultimately, the investigator(s) must determine whether the alleged conduct [occurred/ did not occur /is inconclusive], what policies and laws are implicated, and what the recommended action should be. Actions should be reasonable and responsive to the complaint/findings, and the employer must ensure consistency with internal policy, past practice, and equal opportunity guidelines and laws. For example, if the employer substantiates claims of sexual harassment and offers anti-discrimination training and probation to one harasser, then it must implement the same action the next time. Employees (and courts) generally look for fairness and consistency.

Conclusion ...

In a perfect world, employers would not have to conduct internal workplace investigations. They would hire honest, loyal, drug-free, hardworking employees who would work without incident and would leave their personal problems at home. But in the real world employees are people, who come to work with all the attendant baggage that people carry. Whether from personal stress, character flaws, or watching too much television, employees have problems and cause conflicts, and employers are required to assign blame and mete out discipline.

For a workplace investigation, interviews are crucial to a fair outcome. Done correctly, they can uncover essential information and corroborate a co-worker's account of wrongdoing. Performed poorly or getting the facts wrong can lead to serious consequences for a company including substantial damage or back pay awards and even full reinstatement of an employee. Investigation interviews can also be uncomfortable or intimidating for employees who fear retaliation should they report the misconduct in the first place.

Although most investigations will require you to at least consider each of these ten steps, every situation is a little bit different. Workplace problems rarely land on your desk in a tidy package with an obvious solution. Instead, you'll often be faced with conflicting stories, documents that are open to different interpretations, and no clear answers about what happened and what you should do about it. You'll have to decide which problems merit a closer look, whom to interview, and what documents to review.

All of these decisions are judgment calls, and no book can tell you how to handle every possible scenario you might face. However, if you follow the guidelines, keep an open mind, and use your best judgment. Enforce company policies. If a company doesn't enforce its own policies, employees quickly realize that they don't have to follow the rules. Showing employees that there are consequences for misconduct will help deter future trouble and keep employees on the right track.

Encourage reporting. Investigating and dealing with problems quickly will encourage employees to come forward with their issues and concerns. This means that you'll hear about workplace trouble right away, before it has a chance to grow into a more serious problem. Avoid or counter bad publicity. A company that ignores complaints and problems gives the impression that it doesn't care about its workers or the law. And if your company's failure to deal with a problem becomes public knowledge—through a lawsuit, for example—it could really hurt the company's reputation.

An internal investigation of employee misconduct serves multiple functions. It fosters compliance with corporate policies by ensuring that alleged instances of misconduct are not ignored. It promotes fairness by ensuring that any disciplinary action is based on fact rather than rumor. And it enhances morale by communicating to the workforce that the employer enforces its policies but takes disciplinary action only after giving the accused employee an opportunity to be heard. Proper questioning of the accused employee is essential to achieving all these purposes. Some best practice suggestions for conducting that questioning are provided in our Guide to the Investigation Interview Process.

The Investigative Report Template

The incident being investigated.

The date and manner the issue is reported.

The individuals involved.

Key factual findings and credibility determinations.

Applicable employer policies or guidelines.

Summaries of witness statements.

Specific conclusions.

The authority of the person making a final decision.

Issues that could not be resolved.

Employer actions taken.

Follow up review.