7 Elements of a Sound Investigation

Compliance and Ethics

It’s a typical day in the office as you go through your normal routine. But then things change abruptly when you receive a report on your company’s ethics hotline that an employee is defrauding the company. If you are called upon to lead an investigation into such a matter, where do you start? What steps should you take and in what order to ensure you perform this work professionally and efficiently? How can you best ensure fairness in the process?

Providing complete answers to these important questions is beyond the scope of this short column. If you are not experienced in performing investigations, I recommend you seek the guidance of a trained investigator to assist you when the need arises. But, by way of introduction, the following seven steps are critical when investigating allegations of workplace misconduct:

Step 1. Carefully review the allegations and preserve evidence

Before you commence investigative activities, it is essential that you take time to make sure you understand what is being alleged. Often, individuals who report misconduct via company ethics hotlines make statements that contain several allegations of misconduct against multiple individuals. Moreover, such reports can be an emotional jumble of disjointed sentences that take several careful readings to untangle. Taking the time to carefully parse each and every allegation will help you identify the specific issues that merit investigation.

During this initial review, you should also take stock of what is not being provided. Ideally, reports of misconduct should contain detailed descriptions of who did what when as well as a list of possible witnesses and a collection of associated documents corroborating the allegations. Unfortunately, this is the exception rather than the rule. Often, ethics hotline reports are missing much of this key information. If this is the case, you may have to ask the reporter for more information before you can make any headway investigating the allegations.

Finally, take immediate action, as may be required in the circumstances, to prevent the spoliation of evidence. This may involve seizing electronic equipment, changing locks on office doors, preserving videos, and imaging email servers or accounting records. Regardless, don't wait until you have a perfect investigation plan to save perishable information that you'll likely need to determine what happened.

Step 2. Draft an investigation plan

When you receive an allegation of workplace misconduct, it is important to resist the natural impulse you may have to rush out and start questioning witnesses. Instead, the smart thing to do is to close your office door and start writing down an investigation plan. This plan should include:

- A list of the resources you will require to perform the investigation — including the individuals you may need to work with you. In some cases, this may include law enforcement authorities and/or legal counsel.
- Identification and review of relevant company policies and procedures.
- A list of possible sources of evidence such as witnesses, physical evidence, photographs, videos, emails, and electronic and paper files.
- A table or spreadsheet outlining the steps that will be taken to perform the investigation, the individuals responsible for each activity, and target completion dates that are regularly updated as the investigation progresses.

Investigation plans will vary in complexity depending on the nature of the case. But regardless of whether your plan is 10 or 50 steps long, you will never regret taking the time to think through and document what you and your colleagues are going to do and how you are going to get it done.

Step 3. Execute the investigation plan

When putting your plan into action, be sure to:

- Follow up as needed to gather more facts from the reporter.
- Seek objective evidence such as written communications, videos, or other documentation.
- Consider hiring an outside investigator when there are allegations of misconduct against senior company personnel to ensure objectivity.
- Treat witnesses with professional courtesy and take steps to put them at ease.
- When conducting interviews, always have at least one other investigator present to take notes and bear witness to what is said.
- Avoid promising witnesses anonymity. Instead, tell them that you will maintain their confidentiality and only disclose their identity to those with a need to know.
- Request witnesses to not discuss their testimony with anyone else.

- Be mindful of and compliant with applicable legal restrictions on what you can and cannot do in conducting searches.
- Take good notes and keep the evidence you gather well organized and stored in a secure location.
- Keep an open mind and don't jump to conclusions. Remember, as an investigator, your job is not to prove the allegations are true or false, but, instead, to determine what happened in an objective and professional manner.

Step 4. Analyze evidence and reach a conclusion

Once all the evidence is gathered, sort through it and draw conclusions about what you know and what you don't know. In so doing, it is entirely appropriate to consider the relative credibility of witnesses who have differing accounts of events and to assign weight to other pieces of evidence based upon their nature and reliability.

Step 5. Record your analysis and conclusion in a written investigation report

Regardless of whether you conclude that the allegations of misconduct were substantiated, you should take the time to write a formal investigation report that contains the following key elements:

- A summary of the allegations;
- A summary of steps taken to investigate the allegations;
- Analysis of the evidence gathered;
- Conclusions reached;
- Root causes of confirmed allegations of misconduct; and
- Recommended responsive actions.

Step 6. Update your case management system

If your company's ethics hotline includes a case management system, be sure to upload your investigation notes, the final investigation report, and a record of the case status. Maintaining an accurate and up-to-date case management system will allow you to respond to questions that might arise about the investigation and the conclusions reached and also allow management to run meaningful reports to evaluate possible trends associated with workplace misconduct in your company.

Step 7. Follow up with the reporter

Regardless of your investigation's outcome, you should get back to the reporter to at least let her or him know that the investigation has been completed and that appropriate steps were taken in response to the findings. It may not be appropriate in some circumstances to share with the reporter details regarding your firm's response to the investigation findings. However, by letting the reporter know that the report was taken seriously and that an investigation was conducted, you will build confidence in your firm's ethics hotline and encourage its use.

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