Breakout Sessions – Series 3

TOP TIPS FOR TRULY EFFECTIVE WORKPLACE INVESTIGATION INTERVIEWS

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I. HOW TO LAY THE GROUNDWORK FOR AN INVESTIGATION

A. Who Should Be The Investigator?

An early decision should be identifying the proper investigator or investigators. Ideally, the pros and cons of various personnel available to participate in investigations should be weighed.

1. Inside Personnel: Human Resources, Legal, Internal Audit, Security Or Compliance Personnel

   a. Advantages

   The first advantage offered by internal investigators is low cost, as they typically are already on the payroll. Speed of deployment is also an advantage, both because they are already familiar with the organization, its procedures, and goals, and because they may already be located in or near the site of the complaint. Necessary fact-finding is another key advantage to choosing such personnel as investigators. Another advantage is that with such investigators there is less interference with the ordinary course of business.

   b. Disadvantages

   Among the disadvantages to selecting internal investigators is the lack of apparent impartiality and independence of such investigators. Another disadvantage is the lack of speed in completion of the inquiry. Unless the organization is large enough to dedicate sufficient numbers of employees to investigate, the regular duties of such persons make efficient conduct and completion of complex investigations difficult. Although the creation of a multi-disciplinary team can minimize the problem, another drawback of using in-house personnel is that employees' knowledge or training may be too narrow to achieve the necessary fact-finding that is required. Additional disadvantages to consider in determining whether to use in-house personnel include:

   • The process itself may trigger whistleblower claims by other employees; and
   • The investigation may lead to corporate divisiveness and unwillingness of employees to talk to investigators.

2. External Personnel: Regular Outside Counsel, Accountants, Or Security Personnel

   a. Advantages

   These individuals offer certain advantages over in-house employees. They tend to be familiar with the organization and already deployed in the geographical areas where the company regularly does business. They do not typically suffer from the problem of being otherwise unavailable when the need for sustained attention to an investigation arises.

   b. Disadvantages

   The first disadvantage is the high cost. The second disadvantage is the potential lack of
apparent impartiality and independence that is inherent when such professionals act as investigators. Said another way, there may be a conflict of interest, and certainly with attorneys as investigators, such attorneys generally are “conflicted out” of representing the company if litigation arises related to the investigation.

B. Competency And Skill Of Interviewer/Investigator

The following must be considered in planning your investigation and in selecting your investigators:

- Must have the ability to understand the purpose and the issues (both practical and legal) of the investigation
- Must formulate appropriate follow-up questions, especially when new facts at issue arise during the interview
- Must have knowledge of company policies, procedures, practices, and corporate culture
- Must possess effective interviewing skills, specifically in view of the personalities and background of the potential interviewees (i.e. ability to develop rapport, to press for admissions, and to understand interviewee)
- Must have credibility (i.e. no conviction record, no history of termination for misconduct or incompetence)
- Must be impartial
- Must not act as an advocate during the investigation
- Must have the ability to take thorough, accurate notes
- Must have the ability to maintain confidentiality
- Must be effective as a witness in a jury trial

II. WHAT DOES AN INVESTIGATION LOOK LIKE?

A. Identifying The Scope Of The Investigation

In most cases, a complaint by an employee (or knowledge by an employer of improper activity) will not require an in-depth investigation. If a single answer will not resolve the problem, other employees are involved, additional facts are needed, or additional assistance is required to reach a conclusion, then a formal investigation should be conducted. Prior to interviewing witnesses, it is important to identify the scope of the investigation. An investigator’s actions, from start to finish, are critical because they may be scrutinized by the EEOC, a judge, or a jury. The interviewing team should ensure that the following questions are answered before proceeding with the investigation:

- Who will investigate the matter?
• Who will be interviewed and what is the likely sequence?
• What is the subject matter of the investigation?
• What issues must be covered?
• Have the employment policy and procedures at issue been reviewed thoroughly?
• Are there any potential obstacles to proceeding with the investigation?
• Is there any documentation or electronic information that should be included in the investigation?
• When should the investigation be completed?

B. Written And Electronic Information

In addition to gathering standard written documentation that may be relevant to the investigation, the employer should also consider whether there are other sources of information that may be useful in the investigative process. In short, the investigator should be a detective and analyze what other non-interview-based sources are helpful. Such sources may include: credit card receipts, cell phone records, time records, emails, computers, Blackberries, and possibly even Internet sites. Utilizing such sources may speed up the investigation, thereby requiring that fewer individuals be contacted and interviewed.

C. Conducting Interviews

1. Practical Considerations for All Employee Interviews
   a. Plan and prepare for the interview in advance.
   b. Consider whether you need to get a written statement from the witness/accused.
   c. An investigator should be impartial throughout the investigation.
   d. Where applicable, preserve the anonymity of the alleged victim(s), if possible.

2. The Interview Itself
   a. Employees being interviewed should be assured that they will not be retaliated against for participating in the investigation.
   b. Explain the purpose of the interview (i.e. “We’re looking into concerns of unfair treatment” or “Due to a complaint, we need to ask you some questions”), and then explain the investigation process.
c. Start broadly with open-ended questions and narrow the questions as you go.

d. Avoid telling interviewees what others have said.

e. Do not disclose any more information than is necessary. Your job is to gather information, not disseminate it.

f. Ask about the events that transpired.

g. Ask whether any other individual has information on the matter. For each source identified, ask: (1) what knowledge does this person have; and (2) from where did he or she get this knowledge.

h. Ask whether the individual has any notes, documents, emails, or other information relevant to the matter.

3. Additional Considerations When Interviewing the “Complainant”

a. Pledge no retaliation, and a fair and prompt investigation, but do not over-promise.

b. Pin down the complainant’s story.

4. Additional Considerations When Interviewing the “Accused”

a. Instruct the accused that this will give him an opportunity to tell his side of the story and advise management of any information it should consider.

b. Convey the seriousness of the matter.

c. Pin down the accused’s side of the story. Ask what the accused is prepared to do about the situation. Does the accused have any suggestions as to how the situation can be resolved? Probe for possible motives by the accused and the complainant.

d. Do not accept a blanket denial.

e. Do not give the appearance of predisposition and do not announce any decision immediately.

5. Concluding the Interview

a. Close the discussion of each event by asking “Have you now told us everything you know about ________?”

b. Make sure that you ask, “Is there anything else you want to tell us?”
c. After you have finished asking questions, recount the significant points with the interviewee and ask him or her to confirm that your understanding is complete and accurate. Reflect that confirmation in your notes.

d. Tell the interviewee to contact you with additional information.

e. Emphasize that you have a policy against retaliation for participation in the investigation.

f. Do not hesitate to re-interview.

III. HOW TO DEAL WITH COMPLICATIONS

A. Uncooperative Complainant

If the complainant will not cooperate, document with a letter that the employer tried to respond, but could not due to lack of cooperation. Inform the complainant that the employer will make a decision based on all of the evidence in its possession.

B. Uncooperative Accused

If the accused is uncooperative, document with a letter that the accused had an opportunity to present his side of the story and vindicate his rights, yet declined. Inform the accused that the employer will make a decision based on all of the evidence in its possession.

C. Employees Represented By Attorneys

Some courts have held that it is not a violation of public policy to discharge an employee for refusing to be interviewed by the company without a lawyer.

IV. HOW TO FINALIZE THE INVESTIGATION

A. Effecting Appropriate Remedies

Typically, it is best to separate the ultimate decision maker from the fact finder. In all cases, however, a competent investigator will evaluate all of the results of the investigation carefully before deciding what to recommend or “find.” In making such an evaluation, the investigator should weigh all of the evidence, including credibility of the witnesses. The investigator should also consider key employees’ situations, possible motives, and work records, while being careful not to carelessly make faulty assumptions. A good investigator will critically examine all alternatives and possible consequences of each of those alternatives. Once the investigation has concluded, the investigator should discuss the facts gathered with the person(s) who will participate in the decision–making process or who will provide advice regarding appropriate remedial action.
1. Remedial Action

Where inappropriate conduct has occurred, action must be taken to remedy the situation. If an investigation conducted in response to a complaint determines that harassment has or likely has occurred, the employer must take prompt remedial action reasonably designed to stop the harassment and address the situation.

For guidance on disciplinary action, the employer should consult company policy or the human resources department. The disciplinary action must fit the infraction. Appropriate action varies, depending on the severity of the offense, the accused’s past record, the accused’s position within the organization, and the type of misconduct that has occurred. Discipline may vary from a verbal warning to a disciplinary suspension or termination. Although not required, the employer also may consider separating the complainant from the accused to reduce the possibility of future problems. However, the employer must be careful not to move the complainant to a less desirable location or position as such action may be deemed retaliatory. The employer should also consider training or retraining and follow-up education on company policies and appropriate workplace conduct.

2. Consistent Handling of Remedial Action

While each complaint and investigation should be handled on an individual basis, it is important to handle cases consistently. The employer should adhere to established disciplinary guidelines where they are in place. Deviation from standard operating procedures may prompt additional claims by either the complainant or the accused. Moreover, such deviations may not be easily explainable to the EEOC, judges, or juries.

B. Memorializing The Investigation

The employer should memorialize the investigation in writing and determine what the written document should look like. The employer should be careful to maintain the written report of the investigation and any corresponding documentation, such as statements, affidavits, or notes. The file should also document any remedial action taken. A thorough and accurate written record will assist the employer in any subsequent actions taken by the accused challenging the remedial action. Similarly, if the complainant is dissatisfied with the results of the investigation, the written record may justify the employer’s actions or any action in a subsequent inquiry.

C. Responding To An Inclusive Investigation

There may be situations in which an investigation is inconclusive. Typically, this happens when an employee’s complaint about workplace misconduct occurs in a one-on-one environment and the accused denies the allegation. Where the investigation proves to be inconclusive, the employer should inform both the complainant and the accused that no conclusion could be reached, but that a confidential record of the allegation and the investigation has been made and will be retained by the human resources or personnel department.

Thereafter, a written memorandum should be prepared and given to the accused outlining the following:
• Advising the accused that management has conducted an investigation and that the investigation was inconclusive;

• Reiterating the company’s strict policy against the relevant misconduct;

• Explaining that while this memorandum does not represent a disciplinary step, the company expects that no other misconduct claims will be filed against the person in the future; if any such claims are lodged, the company will take immediate appropriate action; and

• Have the accused sign the memorandum to indicate his/her understanding of the situation.

A confidential meeting then should be held with the complainant to explain that the investigation is complete, to convey the fact that the results were inconclusive, and to tell him/her about the memorandum. Additionally, the complainant should be reminded of the company’s strong opposition to such misconduct and urged to come forward immediately if there is any recurrence of such activity or any retaliation for making the complaint. This meeting should be documented.

V. INVESTIGATION CHECKLIST

A. Preparing For The Investigation

_____ 1. Review the personnel file of relevant employees. In particular, review the files of the complaining employee and the employee(s) accused.

_____ 2. Collect and review all relevant documents, including applicable policies and/or work rules.

_____ 3. Prepare a preliminary list of persons who may have knowledge of the matter being investigated.

_____ 4. Set a timetable and establish a plan for conducting interviews.

_____ 5. It may also be helpful to consult with legal counsel regarding your initial investigation plan. Counsel can advise you regarding the most effective way to complete the investigation.

_____ 6. Consider whether interim remedial action is warranted.

B. Thoroughly And Immediately Investigate ALL Complaints

_____ 1. Investigate every complaint. Thorough investigations may help to insulate or at least limit liability from legal claims of harassment, discrimination, wrongful termination, etc.

_____ 2. Keep the investigation and the facts that it uncovers on a strict “need to know” basis. Do not, however, make any promises that information will remain confidential. This simply may not be possible and may even jeopardize your ability to conduct a thorough investigation.
3. Interview the complainant, the accused, the immediate supervisors, and witnesses as soon as possible. Take written statements when appropriate.

C. Interview The Complainant

1. Remain objective.

2. Determine the identity of the accused.

3. Determine when and where the alleged incident occurred.

4. Determine if the incident was isolated or part of a pattern of conduct.

5. Get specific details of the incident(s).

6. Ask the complainant his or her reaction to the incident(s).

7. Determine if there were any witnesses to the incident(s).

8. Determine if the complainant has spoken to anyone else about the incident(s).

9. Assure the complainant that the complaint will be taken seriously and investigated thoroughly.

10. Assure the complainant that the complaint will be kept as confidential as possible consistent with your obligation to conduct a thorough investigation.

11. Never agree to forego an investigation of a complaint pursuant to the complainant's request for confidentiality.

12. Ask "Is there anything else you think I should know?"

D. Interview The Accused

1. Remain objective. Be aware of, and avoid, potential unconscious bias.

2. Determine if the accused knows of the incident or incidents to which the complainant is referring. If so:
   a. Determine when and where the incident(s) took place.
   b. Get specific details of the incident(s).
   c. Ask how the complainant reacted.
   d. Determine if there were any witnesses to the incident(s).
e. Determine if the accused spoke to anyone else about the incident(s).

_____ 3. Determine if there was ever a prior consensual relationship between the parties.

_____ 4. Determine the accused's perception of his or her working relationship with the complainant.

_____ 5. Ask whether the complainant and accused socialized together either alone or in a group.

_____ 6. Determine if the accused knows of any reason why the complainant would make the allegation.

_____ 7. Determine whether the accused directed, or had responsibility for, the work of other employees or the complainant, had authority to recommend employment decisions affecting others, or was responsible for the maintenance or administration of the records of others.

_____ 8. Observe the accused's demeanor and reaction.

_____ 9. When the accused is the complainant's supervisor, determine if the complainant was recently granted or denied any job benefits such as raises or promotions.

_____ 10. Assure the accused that the complaint will be kept as confidential as possible consistent with your obligation to conduct a thorough investigation.

_____ 11. Ask “Is there anything else you think I should know?”

E. Interview The Immediate Supervisors

_____ 1. Determine the parties’ discipline problems or behavior patterns.

_____ 2. Determine whether the parties’ supervisors had any knowledge about any relationship between the complainant and the accused.

_____ 3. Determine if the complainant ever reported the conduct to the supervisor.

_____ 4. Ask “Is there anything else you think I should know?”

F. Interview Witnesses Where Necessary

_____ 1. Remain objective.

_____ 2. When the witness is a current or former employee, review his or her personnel file prior to the interview.

_____ 3. Be cognizant of privacy concerns for both the complainant and the
accused.

_____ 4. Start with broad, open-ended questions. Get more specific as necessary.

_____ 5. Do not give details of the complaint unless it is necessary to obtain relevant information.

_____ 6. Phrase questions so as not to give unnecessary information.

_____ 7. Do not automatically limit the investigation to witnesses currently in the work force. Interview former employees, friends, and relatives of both the complainant and the accused if advised to do so by counsel.

_____ 8. Ask “Is there anything else you think I should know?”

G. Consider Site Visits Or Searches As An Investigatory Tool

_____ 1. Determine if a visit to a worksite or other key location may be warranted in order to evaluate information furnished by the complainant, the accused, or other witnesses, or in order to create a photographic or video record of a crucial scene that may change.

_____ 2. Obtain and review video footage, computer records, building entry records, or other routinely maintained data that might be helpful to evaluate the credibility of information furnished by the complainant, the accused, or other witnesses.

_____ 3. If a search is conducted, minimize the intrusiveness of the search and base the search on reasonable suspicion that the premises or property to be searched will yield results.

_____ 4. Avoid searches of an employee’s person except in the most extreme situations.

_____ 5. Do not use or threaten force against an employee when searching person or property.

_____ 6. Require that more than one employer representative be present during any interrogation or search of an employee related to theft.

_____ 7. Do not prevent an employee from leaving the room or the workplace during a search or interview, since doing so may create potential liability for false imprisonment.

_____ 8. Ask law enforcement officials to conduct a search, if you suspect the search situation might get “out of control.”

_____ 9. Do not move illegal substances discovered during a search, but rather contact the police.

_____ 10. Release information or discuss the search results only with persons having a legitimate “need to know.”
11. Keep search and investigation information in a secure area with limited access.

12. Do not confiscate personal property.

13. Adhere to any applicable written policies in conducting searches.

H. Take Corrective Action (If Necessary)

1. Before taking any corrective action, determine if the information gathered corroborates or contradicts the complaint that prompted the investigation.

2. Before taking any corrective action, prepare a report or summary setting forth factual findings. Avoid including any legal conclusions in the summary.

3. Review applicable policies carefully, and review information relevant to determining whether any similar issues have occurred in the past, and if so, the actions that were taken.

4. Promptly take necessary corrective action, up to and including discharge where warranted. Corrective action must be effective and must guard against further harassing acts.
   a. Consider the severity of the conduct; the frequency; the pervasiveness of the conduct; any past actions; and, whether there are reasonable grounds to believe the accused will engage in any further violations of applicable policies.
   b. When imposing discipline on the accused, any form of discipline short of discharge should be issued along with a warning that similar misconduct (or other violations of company policies) in the future may result in immediate termination.

5. Document all corrective action taken. Include a summary of the investigation explaining the appropriateness of the action.

I. Follow Through

1. Inform the complainant what action was taken after you have thoroughly investigated the complaint.

2. Instruct the complainant to immediately report recurring or continuing harassment.

3. Show an interest in the complainant by periodically checking back with him or her to ensure that the harassment has been eliminated and is not continuing.

4. Obtain a signed statement reflecting items 1 and 2, and document item 3.
5. Complete an investigation report and maintain with the file related to the investigation.

6. Assess whether circumstances that prompted the investigation, or information obtained during the course of conducting interviews may justify additional investigations, or any type of workplace training.

VI. TIPS FOR EFFECTIVE INTERVIEWING

Ask Direct, Fact-Based Questions — don’t shy away from asking the ultimate question.

Instead of ...                                  Ask ...

- Do you think that he/she would have said something like that? - What did you hear?
- What did anyone else tell you they heard?
- Did you hear he/she say that?
- Did anyone tell you he/she said that?

- Did you hear any comments that offended you?
- Did you hear any “off-color” comments?
- Were there any inappropriate comments?
- What did you hear?
- Did he/she make any comments that were sexual in nature?
- Did he/she make any comments that were derogatory to someone’s gender (race, religion, ethnicity, etc.?)
- Did you hear anyone make any comments that are prohibited by our harassment prevention policy?

- Do you like he/she person?
- Is he/she person a team player?
- What is your work relationship with him/her?
- Have you had any work-related issues with he/she?
- Has anyone ever complained to you about their work relationship with him/her?

- Do you think that he/she would have told you that if it happened?
- Is that the type of thing you and he/she would normally discuss?

1. **Only share what you need** with each person. Think about what each witness may have information about and ask those questions. You may not need to inform everyone about the entire set of factual issues.

2. **Ask rather than tell.** Example: “Are you aware of anyone in the group having performance issues? (If yes, “what do you know about that?”) NOT: “Did you know that he/she was having performance issues?”

3. **When interviewing the accused,** ask the ultimate question (e.g. “did you say he/she”).
4. Avoid the word “complaint” — it can have a chilling effect. People often don’t like to be associated with someone they feel is a “complainer.” Instead, say “it was reported” or “it was brought to my attention.”

5. Respect privacy of every witness where possible. For example, don’t share witness’ personal or performance information with other witnesses unless it is necessary to the investigation.
## VII. CREDIBILITY FACTORS TO CONSIDER

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<tr>
<th>MAY INDICATE TRUTHFULNESS</th>
<th>MAY INDICATE UNTRUTHFULNESS</th>
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<tbody>
<tr>
<td><strong>Consideration based on the individual's conduct</strong></td>
<td><strong>Consideration based on the individual's conduct</strong></td>
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<td>• behaves consistently in response to</td>
<td>• behaves inconsistently when asked</td>
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<td>threatening questions as he/she does to</td>
<td>threatening questions v. non-threatening questions</td>
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<td>non-threatening questions and questions to</td>
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<td>which the investigator knows the individual</td>
<td>• does not really answer critical question</td>
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<td>told the truth</td>
<td>(fails to deny or admit)</td>
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<tr>
<td>- posture</td>
<td>- states “I don't recall” on critical</td>
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<td>- gestures</td>
<td>questions and “yes” or “no”</td>
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<tr>
<td>- eye contact</td>
<td>- unequivocally on non-critical questions</td>
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<td>- voice (rate, pitch, tone)</td>
<td>- continues to not recall anything about</td>
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<td>• open posture generally (arms open,</td>
<td>situations likely to recall at least parts of</td>
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<td>maintains eye contact, does not sit back)</td>
<td>- deceptive verbal responses or answering</td>
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<tr>
<td>• no motive to lie</td>
<td>without really answering</td>
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<td><strong>Consideration based on external factors:</strong></td>
<td>• “not really”</td>
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<tr>
<td>• corroborated by other witnesses or documents</td>
<td>• “I think”</td>
</tr>
<tr>
<td>• not contradicted by other witnesses or documents</td>
<td>• “I guess”</td>
</tr>
<tr>
<td>• makes admissions against interest on this</td>
<td>• “as far as I know”</td>
</tr>
<tr>
<td>or other issues</td>
<td>• “not usually”</td>
</tr>
<tr>
<td>• probable/likely to have happened that way</td>
<td>• “most likely”</td>
</tr>
<tr>
<td></td>
<td>• “why would I”</td>
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</table>

- Indirect admission (e.g., does not admit nor deny but says “But what about what he did?”)
- Body language in response to critical question:
  - changes posture
  - shifts in seat
  - looks away
- “Closed” posture (e.g., arms crossed leaning away, fails to maintain eye contact)

**Consideration based on external factors:**

- contradicted by other witnesses or documents
- not corroborated by other witnesses or documents
- inherently improbable
- motive to lie
- selective admission - only admits things that help the witness
Top Tips for Truly Effective Workplace Investigation Interviews

Presenters
Elizabeth M. Ebanks (Richmond) and Katherine G. Rigby (Boston)

Moderator
Neil V. McKittrick (Boston)

Agenda
- Tips for how to uncover the truth in investigations
- How to prepare for interviews
- Best practices for how to start and stop the interviews
- Tips and methods of asking questions to capture the most information and to fill in the gaps
Preparation

- Assess the complaint and determine scope
- Determine if immediate or interim measures are required
- Determine who will investigate
Preparation

- Prepare an investigation plan
  - Identify witnesses
  - Determine likely order of witnesses
  - Identify documents/policies to collect/review
- Create a timeline and estimated deadline for investigation
- Determine location of interviews
- Develop opening script/questions

Conducting the Interviews
Interviewing Basics

- Establish rapport
- Investigate, don’t prosecute
- Get person to start talking
- Follow a script, but not verbatim
- Use chronological order – both ways
- Avoid compound questions
- Easy questions first, hard questions last

Opening the Interview

- Introduce yourself
- General description of why you are there
- Retaliation of any kind strictly prohibited (against or by witness)
- Witness’ obligation to tell the truth
Opening the Interview

- Complaints are taken seriously
- A prompt and thorough investigation is conducted upon receipt of a complaint
- Every effort will be made to maintain confidentiality
- Information regarding the complaint will only be shared on a need to know basis
- Request, but do not require, to keep interview discussion confidential

Interview Techniques for All Witnesses

- Develop the facts through the FUNNEL TECHNIQUE

![Funnel Diagram]
Interview Techniques for All Witnesses

- Ask whether the witness knows why he/she is being interviewed
- Ask neutral and fact based questions (no judgments)
- Use reflective listening/recap
- Follow up on anything that is unclear or contradictory
- Avoid telling witnesses what others have said, to the extent possible

Interview Techniques for All Witnesses

- Get a detailed description of the incident
- Do not accept conclusory statements at face value
- Ask whether there is any document that substantiates any event
- Ask whether he/she has discussed the incident with anyone else (who, when, where, what)
Interview Techniques for All Witnesses

- Be patient and listen
- Ask the hard/ultimate questions
- Be sensitive, but not sympathetic/empathetic (neutral)
- Take thorough notes
- Conduct in private
- Get signed statement?

Interview Techniques for all Witnesses

- **DO NOT**
  - Ask leading questions ("but he wasn’t abusive in the meeting, was he")
  - Exhibit bias or make promises ("we’ve received a complaint that is clearly unfounded . . . I’d like to ask you some questions")
  - Engage in discipline/counseling during the interview
Interviewing the Complainant

- Pin down the story (W’s)
- Determine any reason for delay in reporting
- Did he/she ever indicate displeasure to the conduct
- Who else has knowledge (or was told) of conduct
- Tell complainant how she/he will be informed of results

Interviewing the Complainant

- Establish any previous complaints
- Probe for motive
- Has the conduct had an impact (on her/him or the job)
- What remedy is he/she seeking? What result would he/she like?
- Pledge no retaliation and instruct him/her to report if it occurs
Interviewing the Complainant

- Remember the special questions and the essential closing questions:
  - What is it that you think should be done?
  - Is there anything you need for us to do right now?
  - Is there anything else I should know?

Interviewing the Accused

- Opportunity to provide his/her side of the story
- Convey seriousness of matter
- Pin down the story
  - Names, dates, witnesses, locations, times, details, details, details...
  - Don’t accept blanket denial
    - Is there a reason he/she would make this up?
  - Careful not to give appearance of predisposition
  - Probe for motive
  - Typically should be interviewed last
Interviewing the Accused

- Determine the relationship the accused had with complainant prior to the allegations
- Did the accused initiate or participate in the conduct?
- Determine if you want accused to submit a written statement
- Again, don’t be afraid to ask the ultimate question(s) about specific conduct

Concluding Interviews

- Have you told us everything you know about _______?
- Is there anything that I didn’t ask you about that you think is important?
- Is there anything else you want to tell me?
- Review your notes, confirm and clarify details
- Provide your contact information and request to be contacted if the witness remembers any additional information
- Prepare the interview summary ASAP
Investigation Wrap Up Tips

- Did you get both sides?
- Were all necessary witnesses interviewed?
  - BUT don’t go overboard
- Are your documents complete/accurate?
- Consult Legal/HR/Compliance
- Re-interview if necessary

Other Investigation Issues
Other Investigation Issues

- What do you do when the witness wants to tape record or video record the interview?
- What do you do when an employee says he (i) wants his lawyer to be present during the interview or (ii) wants to talk to his lawyer first?
- What do you do when the complaining employee alleges she is so distressed that she is unable to come to work and participate in an interview?

Other Investigation Issues

- How do you deal with co-employees who say they do not want to participate when approached about giving an interview?
- How do you deal with an employee who (i) wants someone else to conduct the interview or (ii) wants his/her own witness present during the interview?
Other Investigation Issues

- The complainant says, “I need to tell you about something that X did, but I don’t want him to get in trouble, so don’t say anything.”

- The complainant says, “I will get fired for saying something, so just deal with this and don’t tell anyone I told you about it.”

Questions?
Top Tips for Truly Effective Workplace Investigation Interviews

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