

VORYS

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Workplace Investigations

Libby Callan
Bob Harris



Background and Review: Steps in an Effective Investigation

- Intake of complaint
- Plan of attack: What do I want to know and why?
- Gather documents and records
- Interview witnesses
- Follow up on leads
- Make decision on the facts
- Document the investigation

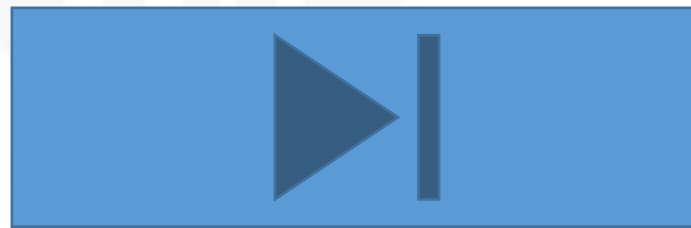
Conduct of the Investigation

- Healthy skepticism
- Fair, impartial and thorough
- Test veracity by asking about witnesses, proof, documents, etc.
- Document – in some cases your investigation will itself be your best defense

Most Important Interview Skill: Listening

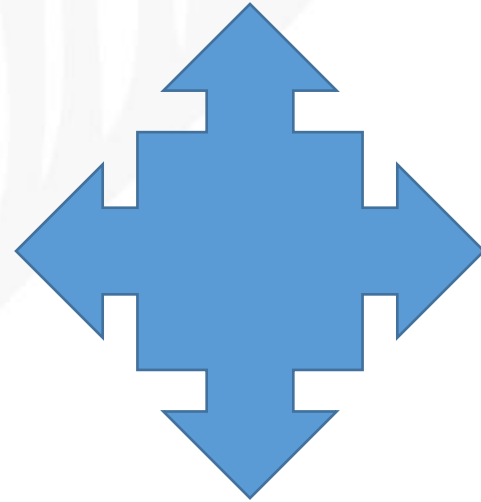
- Listening best practices:
 - Listen to understand
 - Be here now
 - Reserve judgment/start with clean slate
 - Do not interrupt
 - Pay attention to non-verbals

Fast



Slow

Zoom out



Zoom in

Schedule Interviews Promptly

- Memories fade
- Need time for follow-up interviews
- There are *always* delays and scheduling issues
- Scheduling interviews in rapid succession limits witnesses talking to each other
- That said, be mindful of circumstances that might require a more deliberate pace

How to Document Facts and Observations



Your Notes – What Are They Good For?

- Recording the content and timing of your investigation.
- Future reference for this matter and possibly other related issues.
- In some cases, may also be evidence in a lawsuit.
- Can be Exhibit A demonstrating what a great job you did!

Appearance Matters!

What should your notes look like?

- Notes should be organized and orderly
- Number multiple pages
- Should be readily accessible to others in the office
- Must be legible
- One subject / one person per page
- Resist doodling
- Date your notes
- Follow your internal guidelines for storage

How to Document Facts and Observations

- Record actual observations, not conclusions or opinions

☑ “blushed,” “raised voice,” or “no eye contact”

vs.

☒ “appears to be lying”

☑ Two people reported that his breath smelled of alcohol and he slurred his speech. One person said he seemed to stumble.

vs.

☒ He was drunk

☑ She was out sick Thursday, Friday and again today.

vs.

☒ She likes to skip class whenever she feels like it.

Completing the Investigation

- Review the file for completeness
- Organize factual descriptions by chronology
- Make it clear where there is first-hand knowledge, but don't ignore hearsay
- Include the facts bearing on credibility
- Proofread
- Do NOT save drafts
- Where appropriate, provide feedback to relevant parties
- All feedback and communications should undergo privilege analysis



HYPOTHETICAL INVESTIGATION

Questions? Comments?





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Thank You