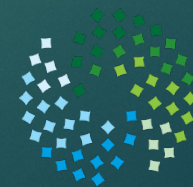


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# Best Practices for Workplace Investigations

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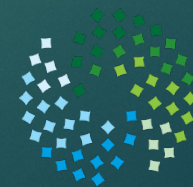


# Your Presenter



MIKE BOURGON  
SYNERGY HR

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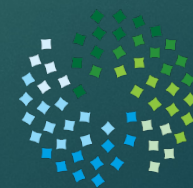


# Introduction

You're an employer, and you receive a complaint about improper behavior. The complaint could come from an employee, or a client, vendor, subcontractor, or it could be anonymously reported.

If this happens, you might need to conduct an internal workplace investigation, also commonly referred to as a HR investigation.

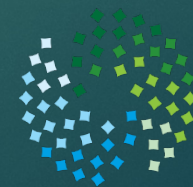
If you decide a workplace investigation is necessary, here are best practices for your workplace investigation.





# Introduction

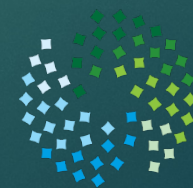
Each workplace complaint stands on its own facts, and at its core, a workplace investigation is an exercise in discovering the relevant facts of what happened. Once you know the “what,” you can then determine appropriate next steps to take, such as disciplining the accused.





# Introduction

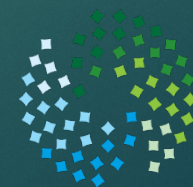
When you are conducting your investigation, here are some best practices you will want to implement, regardless of what you are investigating. By following the below best practices, and having an experienced employment law firm assisting you, you will reduce your legal liability and ensure you are conducting a workplace investigation that protects your best interests.





# 10 Common Investigation Mistakes

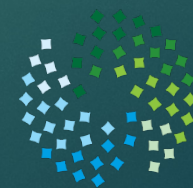
1. Failing to plan.
2. Ignoring complaints.
3. Delaying investigations.
4. Losing objectivity.
5. Being distracted during interviews.
6. Using overly aggressive interview tactics.
7. Not conducting a thorough investigation.
8. Failing to reach a conclusion.
9. Failing to create a written report.
10. Failing to follow up with those involved.





# Follow Your Employment Policies

If you have an employee handbook or other employment policy that mentions workplace investigations, make sure you review it, or run it past your employment lawyer, before conducting the investigation. Some employee handbooks or workplace policies dictate how an investigation should take place, and so you will want to make sure you are following those policies closely.

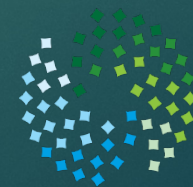




# Follow Your Employment Policies

If you don't have an employee handbook in place yet, after your investigation is completed will be a good time to get one set up. A well-drafted employee handbook will set guidelines for your workplace that will allow your employees and your management to be on the same page, which will ultimately protect your company and keep your employees safe.

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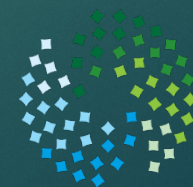


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# Interview Relevant Witnesses

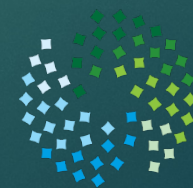
One common mistake our firm sees with workplace investigations is not interviewing the complainant or the accused. When you are conducting your workplace investigation, you will want to be sure to include these critical witnesses in your interviews.





# Interview Relevant Witnesses

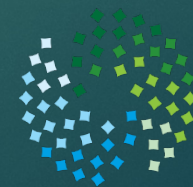
Another common mistake our firm sees with workplace investigations is interviewing too many witnesses, or non-critical witnesses that lack firsthand knowledge of what occurred. If you broaden your investigation too much, it will disrupt workplace operations unnecessarily, and drag people into the investigation that are not on a “need to know” basis.





# Determining Witness Credibility

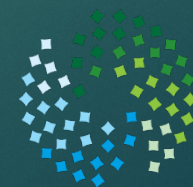
When there are conflicting versions of events in harassment cases, the U.S. Equal Employment Opportunity Commission suggests using the following factors to assess witness credibility:





# Determining Witness Credibility

- **Plausibility.** Is the witness's version of the facts believable? Does it make sense?
- **Demeanor.** Does the witness seem to be telling the truth?
- **Motive.** Does the person have a reason to lie?
- **Corroboration.** Are there documents or other witnesses that support the witness's version of events?
- **Past record.** Does the alleged wrongdoer have a past record of inappropriate conduct?



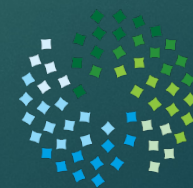


# Ensure Confidentiality

There are two important types of confidentiality you can ensure in a workplace investigation.

First, if you hire an employment lawyer to run the investigation, you can use attorney-client privilege to your advantage by shielding the investigation communications from disclosure.

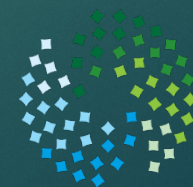
The attorney-client privilege protects communications between the control group of the company and the company's investigation law firm, whenever the content of the communications are meant to convey legal advice.





# Ensure Confidentiality

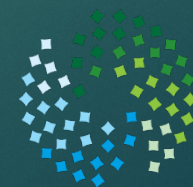
Second, you can require employees to keep the contents of the investigation confidential. This confidentiality is less airtight than the attorney-client privilege. When you are interviewing your witnesses, you will want to give the interviewees an instruction that they are to keep the investigation details confidential.





# Ensure Confidentiality

However, for non-supervisory employees, they are technically covered by the National Labor Relations Act (NLRA), and legally allowed to collectively speak about their working conditions, so a witness instruction of confidentiality is the best way to request this type of discretion. Legally, a non-supervisory employee covered by the NLRA can speak with another non-supervisory employee about their working conditions, so this kind of investigation confidentiality is more nuanced than attorney-client confidentiality.

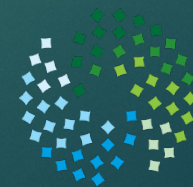




# Conduct a Timely Investigation

The most common question we get asked with workplace investigations is how long they should generally take. It sends a good message to your employees when you conduct a timely investigation and give it the priority it deserves.

But what is a “timely” investigation?

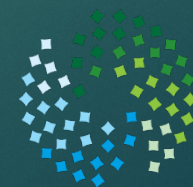




# Conduct a Timely Investigation

Each investigation will come with its own set of facts, witnesses, and circumstances. Some investigations will only take hours, and some can take weeks. The length of each investigation will vary depending on what is being investigated. However, generally we try to ensure that an investigation is completed within a month, from the first phone call with our firm to the final investigation report, if one is prepared. Some can take much less time than this, though.

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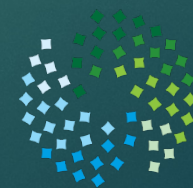


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# Conduct a Timely Investigation

Keep in mind that the longer an investigation takes, and the more complications that arise from it, the more likely that the accused or the accuser will obtain legal counsel. While having experienced employment law counsel involved can aid the situation, it can sometimes increase legal fees for you, because now in addition to running the investigation, you will also have to respond to the employee's legal counsel. So, the quicker the investigation can be completed, generally the better.

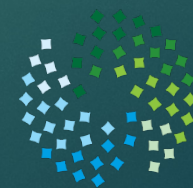




# Collect Relevant Evidence

Collecting relevant evidence is critical to a proper workplace investigation. In addition to interviewing relevant witnesses, you will want to collect relevant documents, communications, footage, and any other pertinent evidence to the situation.

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# Collect Relevant Evidence

When you are interviewing each witness, you (or your lawyer) will want to ask about relevant documentation, communications, and other evidence that might be important for the company to know. The most common types of evidence other than witness testimony are emails and text messages. These communications can be on the company's devices, if they were sent using company property, or on personal devices. Different laws apply to collecting evidence from personal devices, and so legal counsel is critical to ensure that you aren't violating applicable laws in requesting this kind of information.

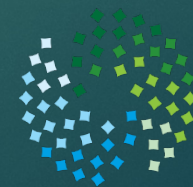




# Be Mindful of Past Practices

Past practices are the way your company has handled a situation before under similar circumstances. If your workforce is unionized, then following past practices becomes even more critical. If you do not have a unionized workforce, following past practices can reduce your legal liability and increase the fairness of your investigation.

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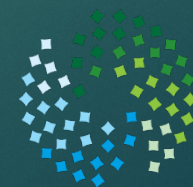
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# Be Mindful of Past Practices

Whenever your company deviates from past practices, or treats an employee differently under the same circumstances from another employee, it can open your company up to a lawsuit for differing treatment. By being mindful of past practices, you can lower your company's risk.

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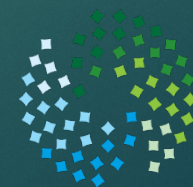
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# Keep the Investigation Team Small

By keeping the investigation team small, you will run a more efficient and prompt investigation. The old adage applies here: “too many cooks in the kitchen ruin a recipe.” Even if you have a complicated investigation, consider having 1-2 maximum main points of contact for the investigation team to ensure that nothing falls between the cracks.

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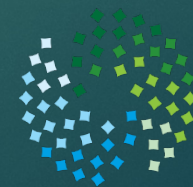
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# Keep the Investigation Team Small

For a small business investigation, you will need no more than one person to lead the investigation, whether that's a lawyer or one of your human resources professionals. By keeping your investigation team lean, you will save resources and get your investigation completed promptly.

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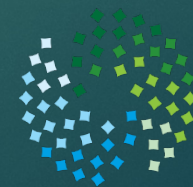


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# No Retaliation

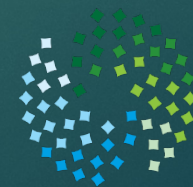
It is critical not to retaliate against the accuser or the accused during or after the investigation. Retaliation takes many forms, but generally retaliation is shown by timing – if a complainant is disciplined, demoted, or terminated shortly after raising a complaint, that can expose the company to a retaliation claim.





# No Retaliation

A company should also have a no retaliation policy in its employee handbook to ensure that all managers and employees adhere to the policy, and so the company can discipline employees for any violations of the no retaliation policy.

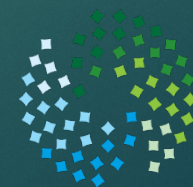




# Keep a Calm, Professional Demeanor

Conducting a workplace investigation requires a calm, professional demeanor. At all times employees and participants in the investigation must be treated with respect. This is not the time to adopt aggressive or “gotcha” tactics.

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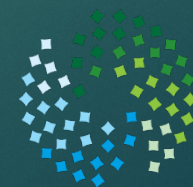


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# Keep a Calm, Professional Demeanor

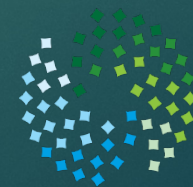
To ensure that all employees conduct the investigation in a respectful and professional manner, it's a best practice to have two people in each interview for management, which can include a HR manager and the company's lawyer, or two HR employees. Each interview should include two representatives of management for witness and note-taking purposes.





# Separate the Complainant from the Accused

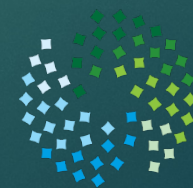
When the complainant makes their complaint, it is usually necessary to keep the complainant separate from the accused, if possible. This is particularly necessary when the accusations involve the complainant's or other employee's physical safety.





# Separate the Complainant from the Accused

In addition, it may be necessary to remove the accused from the workplace while the investigation is being conducted. This is critical when the complaint involves allegations involving harassment, assault, threats, and the like.

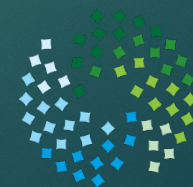




# The Investigation Report

We recommend you create a report. Every report should include:

- The incident being investigated, with dates.
- The individuals involved.
- Key factual findings and credibility determinations.
- Applicable employer policies or guidelines.
- Summaries of witness statements.
- Specific conclusions.
- The name of the person making a final decision.
- Issues that couldn't be resolved.
- Employer actions taken.

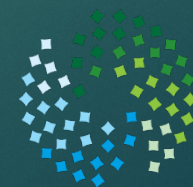




# Next Steps for Workplace Investigations

By keeping in mind these best practices for workplace investigations, you can run a smooth investigation that protects your company and your employees. Making sure your investigation complies with relevant employment laws will keep your company out of court, avoid costly litigation fees for a legal team, and keep your resources focused on your business.

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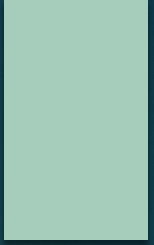


# Questions?

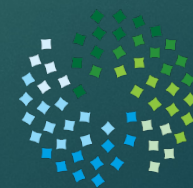
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