

HR Insights

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Remote Workplace Investigation Considerations

Even as businesses reopen across the country, remote work will likely remain popular for the foreseeable future. While remote work arrangements help keep employees healthy and safe in the midst of the coronavirus (COVID-19) pandemic, they create unique challenges for teams and managers, particularly when it comes to conducting workplace investigations.

Workplace investigations are crucial when it comes to establishing a safe and welcoming work environment. However, these investigations are often complex and can involve navigating sensitive topics and disputes. Adding in the complexity of the remote work environment can further complicate these investigations.

Accordingly, it's important for managers, HR professionals and business leaders to understand best practices for conducting remote workplace investigations.

When is an investigation needed?

There are many reasons HR professionals may have to conduct a workplace investigation, including, but not limited to, the following:

- Employee behavior
- Suspected substance use
- Concerns of discrimination, harassment or threats
- Violations of workplace rules
- Workplace theft

Employers are expected to take investigations and employee concerns seriously in order to foster a supportive workplace culture. In fact, organizations that fail to conduct proper investigations may face legal action if they mishandle a workplace investigation.

Establish Investigation Goals

In-person and remote workplace investigations share some similarities, including establishing investigation goals. One of the best ways to ensure effective investigations is to establish a consistent framework that can be repeated for various incidents and account for the following:

- **Objectives of the investigation**—In general, the goal of an investigation is to resolve workplace issues in a fair and efficient manner. Clear objectives can guide investigators and promote the timely resolution of workplace incidents.
- **Scope of the investigation**—Formalizing the scope of an investigation can help investigators gather the appropriate information and carry out corrective action for various types of incidents.
- **Timing of the investigation**—Generally speaking, timeliness is key when it comes to workplace investigations. Regardless of the perceived merit of the complaint, it's in a company's best interest to trigger investigations upon request. Failing to act quickly could be considered prejudicial to the employee and result in potential claims.



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- **Process of the investigation**—Unlike when you're in the office, you can't hold casual meetings or interviews while you're investigating an incident. Moreover, you'll need to consider how your organization will conduct remote investigation interviews. Often, video calls will be the preferable method of communication, as this media allows you to analyze nonverbal cues during an interview. However, if a video call is not possible, an audio call is also preferable to an instant message or email.

Carry Out Investigations in an Objective Manner

Employers must demonstrate procedural fairness when conducting workplace investigations. These investigations should be thorough and well documented before an employer takes any action. Additionally, effective workplace investigations embrace the following three principles:

- **Neutrality**—HR and other personnel involved in an investigation must be detached from an incident. Those involved should remain objective and have no personal stake in the outcome of an investigation. Employers have a duty to conduct workplace investigations in a fair and impartial manner. To remain neutral, it's important to give all employees involved in an investigation the opportunity to provide their version of the incident.
- **Thoroughness**—To ensure that the proper decision is made following an investigation, you must be thorough in uncovering all the necessary information. Ask detailed questions throughout the process.
- **Timeliness**—Once an investigation is triggered, investigators must act promptly to avoid further acts of wrongdoing. Any disciplinary action should be administered in a timely manner to avoid potential legal issues.

It's important for organizations to decide whether they will utilize internal or external investigators. While internal investigations tend to be quicker and comply with organizational policies, external firms ensure neutrality throughout all investigations.

Respect the Privacy of Those Involved in an Incident

In some instances, employees may be reluctant to participate in an investigation due to privacy concerns. Because of this, employers walk a fine line and must balance the privacy interests of their employees with their own legitimate business and safety interests.

All parties involved in an investigation have a right to privacy and confidentiality. These rights are especially important if an incident involves sensitive subject matter. Employers must be tactful and avoid oversharing details regarding the incident. Only those who need to know should be given the facts of the case.

It's better to be overly cautious when handling workplace investigations, limiting information as follows:

- Respondents (e.g., the alleged harasser, subject of an incident or a bully) are entitled to know that a claim has been brought against them. They should also be informed of the details of the claim and what to expect during a formal interview.
- Witnesses can provide your investigators with valuable information regarding workplace incidents. However, employers should still keep the details of the incident to a minimum when speaking with witnesses.

Preserving and Protecting Confidentiality

Preserving and protecting all involved parties' confidentiality should be an utmost priority for any workplace investigation. However, remote workplace investigations pose potential risks to preserving such confidentiality.

The following best practices may help minimize risks to an investigation's confidentiality:

- **Ensure all data and evidence is secure**—When sharing data or evidence on online tools or through email, it's crucial to check that platforms and systems are secure. Consider adding built-in protections to prevent unauthorized distribution or access of relevant materials.
- **Restrict access to information**—Those involved in the investigation should only have access to

information that specifically pertains to them. Before sending an email or other electronic correspondence, double-check that the appropriate party receives the appropriate information.

- **Comply with applicable data protection legislation**—Consult legal counsel to ensure compliance with applicable federal, state and local data protection requirements.

In addition to these best practices, be sure to evaluate any risks to investigation confidentiality unique to your business.

Ensuring Interview Privacy and Confidentiality

Unlike in-person investigations that can take place in a private room, holding virtual investigation interviews presents a risk to privacy and confidentiality.

The following best practices may help minimize privacy and confidentiality risks when conducting virtual interview investigations:

- Make sure that only relevant parties are invited to a virtual meeting.
- Use a password for virtual meetings to ensure only invited individuals are able to join.
- Request interviewees to join the meeting from a private and quiet room. If this is not possible, given the current COVID-19 situation, request that they attend the meeting alone and use a headset to promote privacy.
- Check that the platform or online portal through which the interview is being held is secure and compliant with any applicable data protection legislation.

In addition to these best practices, be sure to evaluate any risks to investigation confidentiality unique to your business.

Virtual Interview Best Practices

Conducting and attending a virtual meeting may be a new territory for involved parties. As such, keep in mind the following best practices for holding a successful virtual interview:

- Request that the virtual interview is held via video call to allow for nonverbal expressions to be seen, which can enhance comprehension and humanize the interaction.
- Ask parties to speak clearly and to ask questions if clarification is needed.
- Request the use of headsets or microphones to improve the audio quality.
- Utilize screen sharing capabilities or other tools during the meeting to improve engagement.
- Dress professionally to preserve a sense of formality during the interview.

By keeping these tips in mind, employers and employees alike can preserve a sense of normalcy and formality while conducting a virtual meeting.

Taking Action

If, after an investigation occurs, you find that the employee's complaint is substantiated, the employer should take action to:

- Prevent the harassment, fraud or misconduct from recurring. To accomplish this, issue training and educational resources as needed.
- Make accommodations to ensure employees feel safe at work.
- Discipline the subject of the complaint in a manner proportional to the severity of the misconduct, up to and including dismissal. Do not take action against an employee if you have no clear evidence of misconduct.

If the complaint is not substantiated, the employer should notify the parties accordingly and explain how this conclusion was reached. After an investigation concludes, you should compile your findings in a final report. It's also a good idea to assess the effectiveness of your investigation process and make any improvements.

More Information

Navigating the new normal of remote work can be difficult. Contact Toole Insurance for additional resources.