

Overview/Pre-Investigation

- ◆ Investigation is defined as the process in which an investigator gathers factual information based on allegations and provides a sound, factual basis for decisions by management. The investigation should also produce reliable documentation used to support management actions. Finally, an investigation of employees should reveal whether any policy violations have occurred, identify (or exonerate) specific employees who are alleged to have violated state policy, and put a stop to further wrongful actions.
- ◆ Each investigation is different and should be treated independently according to the specific situation and facts. Workplace investigation types also vary (ex. EEO Informal Inquiry). Best practices for conducting workplace investigations include:
 - Recognize when an investigation is necessary.
 - Understand the allegations.
 - Select the appropriate investigator(s) – (HR/ER/EEO Staff, Manager, outside consultant).
 - Plan the investigation outline, witnesses and documents needed.
 - Outline the relevance of each witness.
 - Conduct the interviews.
 - Create a documented report of the findings with recommendations and/or decide if a report is necessary.
 - Establish security for files and records.
 - Be prepared to modify and update the investigation plan as needed based on new information as the investigation progresses.
 - Follow the guidance/applicable policies on timelines to complete investigations.
- ◆ Determining when an investigation is required is a critical step. Situations that generally call for investigations include:
 - An employee files a formal complaint or grievance.
 - A questionable situation is reported to campus HR; could be anonymous.
 - An employee is suspected of misconduct.
 - Allegations of rule/policy violations.
 - Allegations of discrimination, harassment, and other unprofessional/inappropriate workplace conduct.
 - Performance issues.
- ◆ When selecting an investigator, campuses should consider the following:
 - The investigator's objectivity, impartiality, potential biases or any actual or perceived conflicts of interest.
 - The investigator's experience conducting investigations.
 - The investigator's familiarity with the university, and/or division and its policies, laws, and procedures.
 - The investigator's professionalism.
 - The investigator's availability.
 - The return on investment with hiring an outside investigator.

- The investigator's credibility and ability to effectively communicate, either verbally or in writing, the findings, including as a witness in any legal proceeding.
- The investigator's reputation, credibility, and knowledge about the relevant issues.
- The investigator's interviewing skills.
- The investigator's ability to develop and follow a plan and communicate well with various personalities/stakeholders in varied situations.
- The investigator's ability to maintain confidentiality to the extent the law allows.

Conducting the Interviews

- ◆ When conducting interviews, the following is a list of recommendations in order for the investigator to learn information relevant to the allegations/violations:
 - Utilize the 5-Ws: What, Where, When, Why and Who.
 - At the beginning of the interview read a statement to the interviewee regarding the expectations of confidentiality, being honest and forthcoming, and state how retaliation is prohibited.
 - Hold the interview in a private, quiet location; may also be conducted via telephone or videoconference.
 - Never promise absolute confidentiality (the university may have to release documents and names of witnesses due to public records requirements or other requirements).
 - Keep the interview focused on the allegations, but don't discount additional information received in the course of an interview.
 - Do not interrupt witnesses – be an active listener.
 - Start with general, open-ended questions, then graduate to more closely focused questions to clarify details.
 - Avoid confrontational or accusatory questions; this is a fact-finding meeting.
 - Use silence after a question to encourage reticent witnesses.
 - Be ready with follow-up questions if needed.
 - Stay calm and avoid asking questions in an aggressive, demanding manner. Understand witnesses may be nervous and need assurance that this is a safe place.
 - Avoid threats or psychological manipulation.
 - Interview each party separately, in private, to uphold confidentiality, maintain objectivity and minimize peer pressure.
 - Take detailed notes and look for inconsistencies, opportunities for clarification, additional evidence, and the names of other potential witnesses.
 - Don't jump to conclusions. Always wait until you finish the investigation before making a decision about whether an allegation is substantiated and the corrective action needed. Never offer any opinion or say anything to interviewees that would indicate you have already reached a conclusion (such as, "I believe you," "this is a meritless complaint," etc.).

The Investigation Report – See UNCISO Templates

- ◆ The purpose of the investigation and subsequent report is to produce a reliable set of facts on which to base a decision. Therefore, the investigator will need to be clear and concise in their explanation of the facts. Investigation reports should include:
 - The scope of the investigation.
 - A description of the allegation(s).



- The facts surrounding the allegation(s) with specific dates or timeframes.
- Applicable policies or guidelines.
- The witnesses interviewed (or positions/titles; can also leave names out if preferred).
- Summaries of witness statements.
- Summary of the subject's statements.
- Documents reviewed (if any).
- Key factual findings and credibility determinations.
- Specific conclusions.
- Recommendation of next steps, if requested.
- Issues that couldn't be resolved or remain unclear.
- Relevant observations (if applicable).
- Submit the findings to the decision-maker(s).

Confidentiality

- ◆ Protect the confidentiality of the investigation to the best of your ability. However, avoid promising confidentiality since it may not be possible to keep all information completely confidential. Instead, explain to individuals involved in the investigation that information will be kept confidential to the extent allowed. Report information learned from the investigation only to those who have a legitimate or legal need to know.
- ◆ Don't have a blanket rule concerning confidentiality. To protect the integrity of investigations, it is a common practice for employers to ask employees to avoid discussing the investigation with co-workers. Encourage all those involved in the investigation to keep the proceedings confidential to protect the integrity of the process.

Steps to Prevent Retaliation

- ◆ Make sure employees understand they will not be retaliated against for raising complaints or participating in an investigation. Notify all parties and witnesses of the anti-retaliation provisions of relevant state/university human resources policies. When concluding a witness interview, remind the witness that if they feel they are retaliated against to report it immediately to the appropriate person.

10 Common Investigation Mistakes

- Failing to plan.
- Ignoring complaints.
- Delaying investigations.
- Losing objectivity.
- Being distracted during interviews.
- Using overly aggressive interview tactics.
- Not conducting a thorough investigation.
- Not asking follow-up questions.
- Not doing a thorough review of all information prior to preparing or verbally sharing the report of findings.
- Failing to follow-up with those involved.