

MY EMPLOYEE DID WHAT?
 A DISCUSSION ON STRATEGIES IN
 WORKPLACE INVESTIGATIONS




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WHAT AN INVESTIGATION IS

- An investigation is an action precipitated by an event, complaint, or accusation brought forward by a co-worker or member of the public, that gathers related information through interviews and other means of **finding of facts** for consideration as to whether or not a violation of policy or law has taken place.

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"BUT THAT'S HOW ITS ALWAYS BEEN"

- Does acceptance through non-action regarding past behavior excuse current behavior?
- It never depends.
- The answer is no.

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WHAT AN INVESTIGATION ISN'T

- An investigation is not an opportunity to target or take action against an employee
- Discipline
- A recommendation of discipline/remedial measures

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WHO IS GOING TO CONDUCT THE INVESTIGATION?

- It depends.
- Is attorney-client confidentiality a concern?
- What is the level of the reported offense?
- Is there a possibility that state or federal law has been broken?
- Should past performance or discipline be considered?

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HOW DO YOU DECIDE WHETHER TO PUT AN EMPLOYEE ON ADMINISTRATIVE LEAVE DURING AN INVESTIGATION?

- Consider the severity of the complaint and the implications and possible liability of leaving them actively in the position.
- Can you conduct a "clean" investigation?
- Should you consider:
 - Years of employment?
 - Position in the organization?
 - Social status in the community?

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HOW DO YOU COMMUNICATE WITH PUBLIC OFFICIALS ABOUT AN INVESTIGATION GOING ON IN THE WORKPLACE?

- Carefully and in confidence through legal counsel.
- Fairly and unbiased.
- Collectively. Avoid individual conversations. Always remember the elected officials are the decision makers if discipline is warranted.
- Counsel them on how to communicate with the public.

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DOES AN INTERVIEWER RECORD THE INTERVIEWS? MAINTAIN HIS/HER NOTES AFTER REPORT IS CREATED?

- It depends. What's the purpose of recording/maintaining notes?
- Interviewers have preferences on their processes and how they work best. Some prefer typed or written notes rather than a recording. Both are considered records once shared and no longer individual work.
- It depends.
- Is litigation contemplated?
- Legal counsel versus employee.

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DO YOU HAVE A WITNESS SITTING IN ON THE INTERVIEWS? WHY AND WHO?

- Generally, yes.
- Use a person that is familiar to the interviewee, but not threatening, if possible.
- Remember, it is difficult to get people to open-up, especially if it's embarrassing.
- Explain the purpose of the witness is for their protection.

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DO YOU AUTOMATICALLY GIVE GARRITY BEFORE ANY INVESTIGATORY INTERVIEW?

- First, what's *Garrity*?
- Second, it depends.
- There are differing opinions on *Garrity* and whether it should be given right up front in an effort to get an employee to go ahead and talk knowing they cannot be convicted by that admission.
- The downside is once *Garrity* is given, if an employee makes an admission to a criminal violation of law, his admission cannot be used for the purposes of a criminal investigation.

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"HE DID IT FIRST!"

- During an investigation, it's nearly inevitable that the target of the investigation or the supporters of the target of the investigation will make accusations to try to deflect some of the heat of the allegations.
- How do you decide what should be looked into and what is not worthy of pursuing?

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DO YOU PUT THE INVESTIGATION REPORT IN AN EMPLOYEE'S PERSONNEL FILE?

- It depends.
- Is there an agreement with the employee that in return for his admission of guilt and subsequent resignation that the report will be maintained outside of their personnel file?

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ARE YOU REQUIRED TO PRODUCE A COPY OF THE REPORT IN A PUBLIC RECORDS REQUEST TO VIEW OR RECEIVE A COPY OF THE EMPLOYEES PERSONNEL FILE?

- If the report is not maintained in the file, the answer is no.
- Always be careful to review and fulfill a public records request specifically on what is requested. To provide more information could have consequences.
- If the report is maintained outside of the personnel file for any reason, some background or summary should be attached providing insight as to why it is being maintained as it is.
- Remember, you may not always be there with the understanding as to why and the next employee should be given that knowledge.

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MORE QUESTIONS? CONTACT US

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