Hirschfeld Kraemer

Conducting an Effective Internal Investigation

October 15, 2019

Smartly
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Course Objectives

- To establish why effective investigation skills are important
- To build skills necessary for conducting an effective internal investigation
- To provide guidelines on how to handle an internal appeal

Course Objectives

- To provide information on handling a charge from an outside agency
- To identify the role of HR in the issue resolution/appeal process
- To provide reference tools to assist in conducting an investigation
Standards of Proof

- Beyond a reasonable doubt - CRIMINAL
- Clear and convincing evidence - CIVIL
- Preponderance of the evidence - CIVIL
- Good faith investigation/reasonable conclusion

Beyond reasonable doubt - 99%
Not applicable
Clear & convincing - 75%
Preponderance - 50%

Initial Meeting - Purpose/Objective

- Goal
  - Identifying evidence in the system and you
  - Gathering all material facts
  - Identifying all issues
  - Determining initial or informed investigation involved

Investigator - Free of Bias
Give accused chance to respond

Must always feel welcomed
My job is...
Important to pause... I explain psychiatry
But today I am a neutral fact finding investigation
Your job is to be honest.

Investigator - Shouldn't take more than 10% of time
Always ask if they have any documentation?
Curious as to what remedy you are seeking?

If they use legal terms, put them in "quotes" to show it is not your finding or words.
"Sexual harassment?"
Issue Confirmation Memo – Key Points

- Identify issue (confirmation)
- Confirm these are all issues
- Identify facts provided by employee to support issue

Footnote in the investigation:
If they remain & expand the scope
I chase, I find, I conclude

Is a Formal Investigation Necessary?

- Employee initiates issue
  - You determine:
    - Employee misunderstood the organization's policy
    - There is a lack of communication between employee and another (supervision)
    - No other facts are needed to resolve the issue
    - No other outside resources are necessary to resolve the issue
    - Issue is susceptible to informal resolution
  - Therefore, no internal investigation is necessary
Is a Formal Investigation Necessary?

- Employee initiates issue
  - You determine:
    - You need additional facts
    - Employee cannot supply you with facts
    - You need to speak to others
    - You need the assistance or input from those with special expertise
  - Therefore, you initiate an internal investigation

Investigating Different Kinds of Issues

- What are the issues the employee is raising?
- What are the organization's obligations (legal and organizational) with respect to these issues?
- Are there others within the organization with whom you should consult to resolve these issues?

Planning the Investigation Important Considerations

- What facts/documents can you unilaterally gather?
- Who should conduct the investigation?
- Who should be interviewed?
- How should the interviews be conducted?
Interim Actions

Key Points of Consideration

- Will administrative leave take place before or after you confront the accused?
- Will removing the accused make things better or worse?
- Who should you consult beforehand? HR? Legal? Is a risk or threat assessment necessary? **PUBLIC SAFETY**

Key Points of Consideration

- How will you respond to the accused when asked why removing him or her is necessary?
- What, if anything, should co-workers and members of the public be told about the employee’s departure?
- What are the terms of the leave? With pay? Who should he or she contact? What should he or she do during that time?
**Preparing for and Conducting an Effective Investigation**

- Contracting for expectations
- Showing sensitivity toward interviewee
- Putting interviewee at ease

**Preparing for and Conducting an Effective Investigation**

- Stressing that no conclusions have been reached
- Minimizing risk of retaliation
- Protecting the investigation's integrity

**Meeting with the Accused Outlining Your Approach**

- Carefully analyze all issues involved
- List the facts
- Leave Room
- Research/Collect

  - Understand each fact to work in the individual's answers
  - Do the best you can to get down key facts during the interview and complete your notes immediately after the interview is completed while the interviewee is still fresh.

**Building rapport is Critical!**

**Give lots of time!**

**Be thoughtful of when & where**
**Asking Effective Questions**

- Broad to narrow questions
- Leading questions
- Tough questions
- Follow-up questions
- Avoid compound questions
- Committing interviewee to a story/chronology

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**What if the Accused denies wrongdoing?**

- Explore possible ill-motives
- Ask: “Do you have any idea why he/she would make this up?”
- Ask: “Have you had any conflicts or problems with him/her?”

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**Concluding the Interview**

- Offer general time frame for investigation
- Encourage the supplying of facts
- Stress need for confidentiality
- Stress no retaliation

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**DON'T combine 2 questions into one.**

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**LEAVE DOOR OPEN TO COME BACK TO THEM. "I MAY NEED TO FOLLOW UP... BEST WAY TO FOLLOW UP."**

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Interviewing Witnesses

- Non-cooperative witness
- Witness who loves the limelight
- Witness with an axe to grind

Assessing Credibility

- Demeanor
- Logic/consistency of story
- Corroborating evidence
  - Evidence that supports other evidence
- Circumstantial evidence
  - Collection of facts that, when considered together, can be used to infer a conclusion about something unknown

Reaching a Conclusion

DON'T BE AFRAID TO BE WRONG!
Reaching a Conclusion

Making a Recommendation

Preparing Your Investigation Report

- Preparation of the report
- Contents of the report
- Access to the report
Implementing Recommendations

- Discuss with your manager
- Recommend to line management
- Determine who will implement
- Implement
- Skelly rights

Charges from Outside Agencies

Appeals Process