

CHECKLIST: EMPLOYEE MISCONDUCT INVESTIGATION

The following list is designed to provide a guideline for conducting a fair and thorough investigation.

- Conduct a thorough interview of the accuser or initial witness asking who, what, when, where, how, and why. Reiterate the need for employee cooperation in maintaining discretion and ensuring that no one experiences retaliation. However, be aware that overly broad confidentiality rules can be deemed to unlawfully restrict employees' rights to discuss terms and conditions of employment. After reviewing notes, always ask if there is anything else the complainant wants to add.
- Either ask the accuser and witnesses to put their claim(s) in writing, or interview the individuals, write up a draft of their statement based on your notes, and ask them to review, verify contents, change contents, if necessary, sign, and date the document. Work with legal counsel to decide whether sworn or signed statements are needed.
- Put out the fire first. The more severe the claim or emotions, the more care may be needed to keep employees separate and/or safe from any further threats, retaliation or harassment while you investigate. Stabilize the workplace and hold off on discipline until an investigation is complete.
- Decide if it is necessary to place the accused on administrative leave or allow voluntary leave for the accuser during the investigation. Reinforce the company's no retaliation policy.
- Assess what additional help you need for the investigation. Consult with legal counsel in all allegations of discrimination, harassment and/or violence.
- Identify who you need to speak with and what questions you will ask.
- Interview the accused or potentially involved person(s) with a view toward finding out what happened.
- Do not pick sides. Conduct an impartial investigation and interview of all parties.
- Re-interview those involved based on new information and evidence.
- Keep good notes of interviews, responses, dates/times, efforts, results, actions and refusals. Assume all documents will be seen by a judge or jury. Avoid gratuitous conclusions and speculations. Only write what you were told and what you saw.
- Assess credibility and resolve factual disputes. Keep secondary performance issues separate from this investigation.
- Create a summary report of the investigation and confirm with senior management and legal counsel the final course of action.
- Make decisions on the action(s) to take with due consideration of past practice. Close the investigation with those who need to know.
- Follow up as needed on the effectiveness of the corrective action. Be alert to retaliation claims and follow up on them.
- If you find there is no probable cause due to one employee's word versus another, advise the accused that if a similar issue is raised again, the first incident will be taken into consideration during the new investigation.