Conducting an Internal Investigation

CSSEA Training & Development 2014

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Workshop Objectives

• To provide participants with techniques and strategies to prepare for and conduct an Internal Investigation.

• Tools for structuring your interview.

• Determining when you have all the necessary evidence.

• To share previous interview experiences and best practice.
Workshop Outcome

• Provide you with investigation preparation tips.
• Provide you with interviewing and documenting tips.

A prepared investigator will have the confidence to do an effective investigation...

...preparation....preparation...preparation.
The Inevitable

- A complaint
- An Accusation
- Alleged Employee Misconduct
- Possible Misappropriation of Funds
- Sexual Harassment
- Probationary Employee
- Abuse, theft, Violation of work rules, safety, etc..
Who should do the investigation

• When an employer is faced with an internal investigation preferably is should be done by an experienced individual.

• Remembered that investigation details and notes may be introduced in court and a sloppy or biased inquiry can actually work against the employer in an arbitration.
What Type of Investigation

- Not all workplace investigations require a formal and comprehensive approach.
- Preparing for your meetings all the facts and issues should be identified including who, what, when, where, why and how the incident happened.
- This information should assist in determining whether a formal investigation is necessary.
Same Approach to All

• As the investigator you need to be unbiased and unprejudiced and be perceived as such.

• An event that is subject to an informal investigation should be handled just as seriously and expeditiously as a more serious matter. It is here that the employer can prevent an issue from becoming explosive.
Objectives of an Investigation

- Gather relevant evidence.
- Develop the fact pattern that evidence establishes.
- Summarize what theories explain the events in a manner consistent with this evidence?
Be Confident

• Always remember that while conducting an investigation you should always remain professional and not discuss any elements of the investigation with staff that are not on a need to know basis.

• Instruct everyone you meet that your discussion is in the “strictest of confidence”.

• Do not respond to rumor.
Planning the Investigation

• As in all major business undertakings, it is important to take the time to lay out as many details as possible prior to interviewing your first witness or employee.

• Make a check list to help to prepare you for the investigation.
Investigation Checklist

• What policies/guidelines apply to this situation?
• What is the company’s obligation?
• How have similar incidents been handled in the past?
• Who will be interviewed and in what order?
• What questions will be asked?
• What special expertise do I need?
• What interim action (such as a suspension) is necessary?
• Does the potential for violence exist?
The Investigator Must

• Be familiar with the policies and procedures of the Agency (e.g., harassment, health and safety, employment, abuse/neglect, equity, code of ethics, etc).

• Have a clear understanding of the applicable laws and the investigation process.

• Maintain confidentiality – “at all times”.

Investigator Musts

• Remain objective and neutral during the course of the investigation.

• They should not present any real or perceived bias to others.

• Ensure that they are conducting the investigation in a fair and just manner.

• Conduct the investigation in a timely manner.
Investigator Musts

• Substantiate the facts.
• Gather all pertinent information, go back and re-interview if you must.
• **Document everything!**
• Refrain from drawing conclusions until all the information has been collected and verified.
  • What facts does the evidence establish?
  • what theories explain the events in a manner consistent with the evidence?
Process

- Prior to commencing the investigation, the investigator should:
  - Consult the Collective Agreement;
  - Provide notification to relevant authorities/individuals.
    - Employees have a right to Union representation, Article 11.6
  - Review past practice, policy, procedure and organizational directives;
Process

• Should the employee stay at work?

• Article 11.9 Employee Investigations

(a) The parties agree that in certain situations it may be in the best interest of both clients and employees that employees be reassigned or removed from all job sites during an investigation of conduct.

(note: this is a paid leave)

Article 11.9 (b) ....the employer will provide the Union with a summary of the investigation report.....
Interview Exercise

Objective

• Listening
  • Try to keep as much eye contact as possible;
  • Cannot take notes while listening;
  • Do not interrupt or speak other than to ask questions;

• Remembering
  • Summarize what you heard, can do this on paper;
  • Be ready to give a 1 minute overview to the room.

• You will ask three simple questions
Three Questions

• Your Name & Your Position;

• Three most important things in your life today;

• Last three places you have lived.
Preparation

- Identify all issues.
- Gather all facts.
  - Are there relevant written documents?
  - Was employee’s work affected?
  - Were there witnesses?
  - Was incident isolated or part of pattern?
  - Has employee discussed this with anyone else?
Determining Your Questions

• Knowing *who* contributed or were associated with an event creates more opportunity to gather information but should not be used to assign blame to any one of them;

• Understanding *what* happened is the core of any investigation. All details that are relevant must be gathered and summarized in the investigation report;

• The time *when* something happened can reveal important elements in the evolution of the event being investigated.
Ground Rules

During interviews some ground rules should be covered. Interviewees should be told:

• The reason for the investigation;
• Your role in the investigation;
• You will be taking notes;
• All information provided will be kept confidential;
• There will be no tolerance for reprisal from anyone.
Interview Tip (1)

• Keep a separate note pad to make quick notes on questions you will want to ask so you can maintain concentration on the interviewee.

• Take your time analysing what your hearing, you can always go back, in the interview, to clarify a fact or detail already provided.
Set the Stage

• Provide the participant with an overview of the process including a statement that emphasizes the importance of being completely truthful.

• Explain their purpose, explain their role during the investigation, and how and when the information will be used.

• Inform the participant that you might need to do a follow-up interview.
Interview Tip (2)

- Establish a rapport with the participant. Make it clear that your role as the investigator is to establish the facts and not to place judgment.

- Always be aware of the participants body language, this may give you clues to the questions that should be asked or pursued.
  - Maintain reasonable eye contact
  - Take adequate breaks to avoid fatigue
  - Be aware of facial expressions
  - Nod when appropriate
Commencing the Interview

• Get them to verify what normal is.
• Start by asking the participant to relay the entire story from beginning to end, uninterrupted.
• Keep your questions open-ended.
• Get a picture of normal before you get into the detail of the actual complaint.
Interview Tip

• During an interview do not acknowledge information that you have received from a previous interview.

• Don’t set the stage by making a statement such as “we know everyone is unhappy, so let's talk about it”.

• Your demeanor and questions should be a non-accusatory and non-judgmental conversation.
Staging the questions

• Keep asking questions until you feel relatively certain that you have obtained the truth.

• Do they know what policies /procedures apply to their job or the issue.

• Ask the tough, unfriendly and embarrassing questions towards the end of the interview when the employee will be less on the defensive.

• Listen ...listen...listen
Interview tips

• Tell the participant that the conversation with you is confidential and between you and the parties in the room.

• It is your objective to maintain anonymity but because you are investigating an event you may make reference to comments or statements without exposing the source.

• Always end an interview with “do you have anything else you want to add?”
Two Way Communication

- At the end of the interview where relevant solicit employee’s suggestions for resolving the issue.
- Assure the employee that disclosure of any information will be limited to people on a need-to-know basis. Remind employee that he is expected to do the same.
Accessing Credibility

- Complete your notes immediately after interviewee leaves room to help you assess credibility later.

- Judge demeanor (e.g., nervousness, tone of voice, etc.), logic and consistency of story (e.g., does it make sense, does it agree with others, etc.)

- Did statements conflict with other people’s version or written information collected?

- Did the person make any admissions or deny anything?

- Has the accused said or done anything previously which make it more likely that the facts of the current circumstances actually occurred?
Interviewee Credibility

Factors to consider when determining credibility:

- Honesty and forthrightness;
- The degree to which the interviewee’s version of the facts agrees with the evidence;
- Common sense;
- And character and motivations of the interviewee.
Interview tips

• If the interview provides little or no information, the investigator may have to use a variety of questioning techniques to get information.

• Ask questions to understand rather than to confirm;

• Your questions should fill in the gaps, remembering the “Who, What, When, Where and Why” process;
Frequent Interviewing Mistakes

• Avoid leading the interviewee;

• Do not guess at the responses given by witnesses;
  • Get them to complete the “you know what I mean” statement.

• Avoid questions that require pure guesses on the part of the employee;
Note Taking

• How on earth can I listen and take notes and cover all the detail that I am getting?
Note Taking Tips

• Write down only the facts; avoid interpretations, feelings, assumptions, and frustrations.

• Write direct quotes, if possible.

• Record on separate pieces of paper instead of a notebook. Notes may be subject to discovery in a lawsuit and a notebook may contain information not relevant to the issue.
Documentation

• Whenever a serious allegation is made you should make effort to secure evidence with all steps documented.

• Where ever feasible ask the complaining employee to write down their side of the story.
Documents

- Stage your interview to have the employee provide you with a verbal description of the event.
- At the end of the interview do a verbal summary of what you heard through the employee’s comments touching on all the key points to ensure proper understanding of the details surrounding the complaint.
Documentation (1)

• To determine the facts, you need to corroborate either through interviews or documentation.

• One party’s statements should not be accepted as fact without corroboration. If corroboration is not possible, the credibility of the interviewee must be assessed.
Reference Materials

• Consider what other documentation might be helpful such as policies and procedures, finance manual, security guidelines, benefits books, employee files, performance appraisal, etc.
Report Summary Template

- Employe Name
- Position
- Job duties
- Incident Description
- Investigation Conducted
- Findings
- Conclusions
Serious Issues

• Draw upon the expertise and experience of your CSSEA HRLR Consultant.

• For serious issues company executives should consider hiring an independent investigator to ensure expertise and experience, impartiality, and speed.
Minimizing Risk

- Do not terminate in haste
- Remind affected supervisors that retaliation is not tolerated
- Avoid jumping to premature conclusions
- Keep all information, including the results and consequences to any employee, confidential
Just Cause

• Before an Employer can discipline or dismiss an employee, they must establish *just cause*.

• Just cause is the principle that an employer must prove that the employee has committed a wrongdoing to justify discipline/discharge.
Arbitrators & Just Cause

What must the arbitrator consider when deciding if there is cause?

- Has the employee given just cause?
- Was the penalty excessive?
- How serious was the offence?
- Was the offence premeditated or deliberate?
- Was the employee provoked?
Considerations of Just Cause

• What is the severity of the offence?
• What is the employee’s length of service?
• What is the employee’s work history?
  • Previous discipline on file
• What is the potential economic hardship to the employee?
• Did the employee apologize or show remorse?
Burden of Proof

• The employer has the burden of providing there is just cause for termination or discipline.

• Article 11.3 Burden of Proof

In all cases of discipline, the burden of proof of just cause shall rest with the Employer.
Summary

• Schedule Interviews – (allow adequate time)
• Where you feel employees may collaborate do their interviews back to back.
• Select a comfortable neutral environment.
• Ensure employee has been provided with opportunity for Union representation.
Summary

• Interview witnesses even if they provided a written statement.
  • Compare their verbal description to their written statement and probe any discrepancies.
• BE PREPARED
  • Compare statements, without directly referencing any discrepancies between statements, prepare your questions to clarify/verify facts.
• NEVER refer to other statements you have reviewed!
Summary

• Collect and Review Statements:
  • Complainant statement
  • Respondent statement
  • Witness statement

• Review Personnel Files and Other Relevant Documents.

• Determine your initial list of interviewees

• Plan out the structure of your interview, the goal you want to achieve.
Facts

• Substantiate the facts.
• Clarify all issues and review all the information available to them.
• Facts must be corroborated by witnesses or through other concrete evidence.
• Don’t take anything at face value and probe until you are satisfied of the validity of the information.
Thank You

• Remember your CSSEA HRLR Consultant can be a great resource.
• Use your CSSEA Consultant to validate your conclusion.