

# Employment Law Corner

## Monthly Report



FOLEY & FOLEY<sup>PC</sup>  
ATTORNEYS AT LAW

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### July Updates

[Hot Workplace? OSHA Would Like to Fix That...](#)

[Today is the Day! It is PWFA Time](#)

[Women's Health & the Workplace: Are You in Compliance?](#)

## Master the Art of *Investigations*

Receiving an internal complaint can feel overwhelming to an employer-- but actively investigating complaints is a must. In fact, solid investigations are the key to maintaining a positive workplace and ensuring compliance. By conducting a thorough investigation into complaints, employers can effectively protect their best interests and the best interests of their employees. Proper handling of an internal complaint ensures you are mitigating risk of recurring issues and preserving an affirmative defense to a filed complaint.

### The Essentials

1. **Be Proactive:** Every employer should have policies and practices on how to address internal complaints. All supervisors and managers should be familiar with your organization's internal complaint procedure.
2. **Review the Complaint:** If in writing, review the complaint to determine what the allegations are, what evidence the reporting employee has, and what next steps to take.
3. **Stop the Conduct:** After receiving a complaint, the company should immediately take action to prevent the alleged activity from recurring.
4. **Determine a Plan:** Those in charge of handling complaints should evaluate the extent of and circumstances surrounding the allegations to develop a plan for the investigation. The investigator chosen, whether in-house or externally, should be an unbiased third-party properly trained in conducting investigations.
5. **Documentation is Key:** Thorough documentation will assist the investigator in determining what happened and reporting that determination.
6. **Investigatory Interviews:** The investigator should conduct interviews with the complainant, the accused, and any identified witnesses.
7. **Evaluation and Determination:** The investigator should review all relevant evidence and interviews conducted to determine whether it's more likely than not that the conduct occurred. The investigator should prepare a report on the investigation and their determinations.
8. **Prohibit Retaliation:** The company should strictly prohibit any retaliation and take proactive steps to minimize the risk of retaliatory conduct.

### *Be Proactive*

At a minimum, employers should develop policies and provide trainings on what type of conduct is prohibited in the workplace. Policies and trainings should provide employees with proper procedures for reporting misconduct and outline the employer's process for handling internal complaints. Additional training should be provided to individuals who will be actively involved in the handling of internal complaints and investigations. Consistent application of policies and procedures matters!

### *Determine a Plan*

A thorough and effective investigation is the result of a well-crafted plan. After receiving a complaint, the investigator should determine a plan based on the type of allegations made and the steps outlined in the employee handbook, policy, or collective bargaining agreement for unionized employees. Investigations may include interviewing witnesses and reviewing documents, videos, emails, text messages, social media, etc. Each investigation is unique and the extent of the investigation will depend on the complaint and information that the reporting employee provides.

Determining whether to engage outside counsel as an independent investigator is an important issue at the outset. Due to the nature of some allegations, engaging an outside investigator is essential to establishing an objective and unbiased determination and indicating to employees that the employer takes all complaints seriously.

### *Investigatory Interviews*

When the investigation begins, the investigator should be generally aware of who they will speak with and in what order. At a minimum, the investigation should include interviews with the complainant and the accused. Generally, interviews should begin with the complainant and conclude with the accused. The investigator should evaluate who should be included in the investigatory interviews throughout the investigation. If the complainant or accused identifies witnesses, then those individuals should be interviewed as well.

Aim for an empathetic approach to provide space for the interviewed to share their experiences, perceptions, and thoughts. When interviewing the complainant, questions should be focused on identifying the who, what, when, and how of the allegations. The interview is an opportunity to receive specific information and examples, including potential witnesses, documents, or recordings. When interviewing the accused, the investigator should give the accused the opportunity to respond to allegations, provide their version of events, and identify any witnesses or supporting documents as well. When interviewing identified witnesses, questions should remain open-ended and information obtained should help corroborate or refute the allegations made. Investigators should emphasize to all employees interviewed that retaliation is strictly prohibited.

### *Evaluation and Determination*

The investigation should conclude only when all evidence has been reviewed, all interviews have been conducted, and the investigator can make a proper determining of whether it's more likely than not that the conduct occurred. The

investigator should prepare an investigation report, including information on what was shared, what was reviewed, and what the final determination is. The report may also include a recommendation on next steps or resulting disciplinary action.

### **We can help!**

Our team regularly works with clients to properly address internal complaints and take proactive measures. We routinely draft handbooks and policies, review complaints, field questions, conduct investigations and provide training on this issue. We can support you at any level you need!

### **Who We Are:**

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com).**

### **Meet Julia Pomella-Griggs**

Julia has experience on a wide range of employment matters in the public, private, and nonprofit sectors. Julia's experience includes counseling clients, drafting and analyzing policies, managing workplace misconduct, and conducting trainings.

For more info, check out her full bio [here!](#)



### **Contact Us**



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