

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
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Investigation Cheat Sheet

No two investigations will ever be the same. Some investigations are straightforward, some are complicated. Some involve minor misconduct and some are more serious. What remains the same for proper management of internal complaints in *consistency*--both in preparation and approach.

We know that you are busy, so we've pulled together this Investigation Cheat Sheet. This primer is a useful tool to establish consistency with your internal investigations. Investigators need to be familiar with your organization's approach to maintain consistency.

Investigation Preparation

Use the following four questions as your guide in preparing for an investigation:

1. **What are your obligations to investigate the inquiry?** Every complaint and concern should be evaluated on a case-by-case basis to develop a plan for the appropriate investigation. The extent and scope of the investigation will vary depending on the inquiry or complaint. For example, complaints about an employee taking unauthorized breaks may only require a conversation with the supervisor and the employee to make a determination. Whereas allegations of a hostile work environment may require the investigator to speak with everyone within a department and review all relevant emails. Remember that employers have an obligation to investigate every complaint, even if the employer believes the complaint to be unfounded.
2. **Which policies may have been violated?** Asking which policies may have been violated will help you determine the proper investigation strategy. This question should be evaluated prior to initiating the investigation and kept in the forefront throughout the investigation process. As additional evidence is obtained, your investigation plan should be revised accordingly. For example, an employer may start an investigation into allegations that a supervisor violated the employer's code of conduct but discover during the investigation that the supervisor may have also violated the employer's sexual harassment policy. The employer would need to investigate and make a determination on each of those complaints.
3. **Who will conduct the investigation?** Investigations can be performed internally or externally, and it is important to select the appropriate individual to conduct the investigation. You should consider who has the training to conduct investigations, who is familiar with your policies, and who can best create rapport with the complainant (the person making the complaint or allegation), as well as any other parties. Some situations that may call for an external investigation are complaints against members of upper management;

complaints against the HR department; complaints of illegal conduct; or follow-up complaints after the employer has already attempted to investigate and address the initial complaints internally.

4. **Should immediate action be taken?** Some complaints call for immediate action to mitigate the risk of further violations. Immediate action should be considered based on the extent of the allegations, the policies that may have been violated, and the working relationship between the complainant and the accused.

Investigation Approach

Use the following five steps as your investigation guide:

1. **Information Gathering:** The investigator should have a meeting with the complainant to get as much information as they can about the complaint and allegations. It is crucial to ascertain as many details as possible from the complainant to frame the issues to explore. This conversation should focus on obtaining the dates and times of the incident, details of the incident, and any potential witnesses to the incident. At this step the investigator should also seek any additional evidence, including written documentation of the incident, email exchanges, and text messages, and any other type of documentation.
2. **Witness Interviews:** After gathering information from the complainant, the investigator should interview any witnesses the complainant identified. During these interviews, the focus of the conversation should be on determining whether the witness corroborates or contradicts the complainant's information. The investigator should also ask questions about whether the witnesses have supporting written documentation, email exchanges, text messages, and any other type of documentation.
3. **Interview Alleged Wrongdoer:** The investigator should meet with the alleged wrongdoer (or wrongdoers individually) next. This is the time to inquire about any specific instances made by the complainant to give the alleged wrongdoer an opportunity to respond. The investigator should ask questions about whether the alleged wrongdoer has any supporting information (e.g. written documentation, email exchanges, and text messages). The investigator should also interview any additional witnesses the alleged wrongdoer identifies.
4. **Evaluate Evidence:** The investigator should review the weight of the evidence and determine if the incident(s) occurred. The investigator should consider how truthful or untruthful the witnesses are. They should also review and consider any documentation that supports or contradicts the allegations. The investigator should determine the best disciplinary action to take based on the results of the investigation. It is possible that there will not be enough information to make a decision, but the important piece is to go through the full investigation process.
5. **Follow Ups:** Once the investigation is complete and a decision is made, the employer should follow up with the complainant. Without sharing specifics about what disciplinary action was taken against other employees, the employer should inform the complainant that the investigation was performed and the conclusion.

Investigations Can Be Overwhelming: [We Can Help.](#)

We can help guide you in many ways:

Internal Investigations: Do you have questions about your process? Do your managers need training? Our **Employment Counsel On-Call Triage Service** can provide you with the guidance you need to handle internal investigations with confidence.

External Investigations: When the situation calls for an outside investigator, **call us**. Our legal team has conducted hundreds of investigations from start to finish. At the conclusion of our investigation, we provide an investigatory report for your records with recommendations for the next steps.

Policy & Handbook Review: Your organization should have well-written policies that address harassment, sexual harassment, and bullying. Every employer should have policies that include multiple avenues for reporting concerns and that outline your organization's process for handling complaints. We offer policy and handbook reviews to ensure your policies are legally compliant and meet the needs of your organization. An ounce of prevention goes a long way when it comes to sound policies.

Service Of The Month

To further assist our clients in meeting their compliance goals, we have started a "Service Spotlight" where every month we will offer a 10% discount on one of our popular services. July's Service Spotlight is focused on preparing for and initiating investigations with a Code of Conduct policy review and/or a workplace investigation. Please **reach out** if you are interested in learning more!

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 unlike other firms: Anyone can advise on what the law says 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 focus on your business. Learn how we can help: **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**!



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