

When Should Employers Engage An External Investigator?



Increasingly, employers are faced with the challenging task of responding to a wide range of complaints in the workplace. When made aware of a workplace complaint, it is crucial that an employer respond appropriately ' but employers often face the difficult decision of how to address the complaint. In some cases, it may be necessary to engage an external investigator.

A workplace investigator specializes in conducting impartial investigations into workplace complaints and is experienced in gathering evidence, assessing credibility of parties to the investigation, and delivering findings or recommendations at the conclusion of the process.

Here is how a workplace investigator can help, and some of the associated benefits of an external investigation:

EXPERTISE

A flawed investigation may expose employers to legal liability, including claims of wrongful dismissal. Workplace investigators are well-versed in the requirements to conduct a proper investigation from the outset. This expertise includes familiarity with the requirements under the applicable legislative framework, the common law, and by interpreting and applying the employer's own policies. Employers should consider engaging a trained, experienced investigator to

conduct a fair investigation which is capable of withstanding scrutiny.

SERIOUS ALLEGATIONS

Investigating a serious complaint is not an easy task; employers and HR professionals may feel ill-equipped to investigate complaints based on the complexity or severity of the allegations. In addition, the more serious an allegation and possible consequences, the more likely that the investigation process will be scrutinized. Workplace investigators are capable of investigating serious complaints including allegations of serious misconduct including harassment and discrimination, gender-based and sexual violence, and racial bias.

IMPARTIALITY

A distinguishing feature of an external investigation is that it is impartial; it is important that the investigation be free of bias (*both actual and perceived*). Engaging an external investigator ensures that they are not connected to any of the parties involved in the complaint and maintains the objectivity and neutrality of the investigative process and provide a credible outcome.

CONFIDENTIALITY

Workplace investigations may be structured as confidential. Confidentiality can apply to both the process and the subject matter of the investigation ' as well as the very fact an investigation has taken place. Where discretion is required by an employer, hiring an external investigator can ensure that the process remains confidential.

TRUST AND MORALE

A properly conducted investigation can increase trust between

employees and management by demonstrating that the employer is committed to resolving workplace issues fairly and objectively. Engaging an independent, third-party to investigate complaints bolsters employees' confidence that their complaints will be taken seriously when reported to the employer. By failing to adequately address allegations of workplace misconduct, an employer risks missing an opportunity to promote a positive and safe environment.

When faced with a workplace complaint, we recommend that employers consider engaging an external investigator. Hiring a workplace investigator can provide several benefits for employers, including meeting their legal obligations, ensuring impartiality, utilizing expertise, and maintaining confidentiality.

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