





# How to Conduct an Effective Internal Investigation


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## Overview

- Legal Requirements
- Examples
- Investigation Techniques
- Investigation Map
  - Tips and Best Practices
  - Common Pitfalls to Avoid



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## Legal Requirements

- Written sexual harassment, discrimination, and child safety policies
- Annual interactive sexual harassment training
- Perform a “prompt and thorough” investigation
- Notify complainant and alleged wrongdoer of the outcome of the investigation
- Inform complainant about external remedies available

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## Investigation Techniques

- Choosing the Investigator
  - Unbiased and credible
  - Has the necessary skills and experience
  - HR Representative?
  - Retaining a third-party investigator
- Legal Privilege



The Investigator may be relied on as a witness in a potential lawsuit.

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## Investigations and Actions

- Prompt
- Comprehensive
- Unbiased
- Well-documented
- Immediate, Interim and Temporary Action
- Do not retaliate

The investigation is an employer's best defense to a potential lawsuit.

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## Examples

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## Investigation Techniques

- Confidentiality – to the extent possible
- “Need to know” basis



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## Investigation Map

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## Step 1: Interviews

- Create a witness list
- Prepare appropriate and targeted questions for each witness
  - EEOC Guidance is available at:  
<https://www.eeoc.gov/employers/small-business/handling-internal-discrimination-complaints-about-disciplinary-action>
- Conduct interviews separately and in-person
- Take contemporaneous notes
- Compile relevant documents
- Keep documents secure and confidential

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## Interviewing the Complainant

- Be sensitive and remain unbiased
- Review the company's anti-retaliation policy
- Ask pointed questions
- Narrow and clarify the issues
- Request any witnesses or documents
- Explain next steps and a realistic timeline
- Follow up in writing

**Best practice: Be prepared for emotions.**

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## Interviewing the Alleged Wrongdoer

- Treat it the same as the interview of the complainant
- All of the same steps apply

Best practice: Reassure alleged wrongdoer that no decision has been made and that is the purpose of the investigation.

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## Interviewing the Supervisors

- Make the supervisor aware of the complaint
- Explain how the investigation will progress
- Ensure you have the supervisor's cooperation
- Inquire about any prior complaints made against the alleged wrongdoer
- Request any witnesses or documents

Best practice: Include dates and time on all notes.

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## Interviewing Potential Witnesses

- Explain the company's expectation of its employees during any investigation
- Review the company's anti-retaliation policy
- Request any witnesses or documents
- Ascertain the witness' credibility
- Encourage confidentiality

Best practice: Divulge as little as possible to get the information needed.

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## Step 2: Document Analysis

- Review the personnel files of the complainant and alleged wrongdoer
- Review any relevant documents that were provided
  - This may include correspondence exchanged outside of work hours (i.e. text messages, WhatsApp messages, social media posts)
- Review company policies, standards, and written expectations

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## Step 3: Draft an Investigation Summary Report

- The incident or issues investigated (with dates)
- Parties involved
- Key factual and credibility findings (with sources)
- Timeline of events
- Relevant company policies or guidelines
- Summary of prior incidents
- Identify any issues that could not be resolved
- Final resolution
- Summary of employer actions taken
- Identify the final decision maker(s)

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## Step 4: Recommendation

- Investigator will evaluate all of the information, including:
  - Credibility of each party interviewed
  - Prior conduct, if any
  - Severity and frequency of the conduct
  - Alleged wrongdoer's knowledge of company's rules
  - Prior disciplinary precedent for similar misconduct
  - Public and employee relations issues
  - Length of employment and prior disciplinary record

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## Disciplinary Actions

- Investigator will issue a formal recommendation, which will identify any appropriate disciplinary actions to be taken
- The company will then make the final determination to take any appropriate disciplinary actions

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## Tips for Making a Recommendation

- The applicable legal standard is a “preponderance of the evidence,” which is a lower standard than “beyond a reasonable doubt”
- Credibility determinations
- Investigator should consider the totality of the interviews and the evidence to determine whether ***it is more likely than not*** that something improper, discriminatory, or harassing occurred

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## Step 5: Closing the Investigation

- The Company should notify both the complainant and the alleged wrongdoer of the outcome of the investigation
- Investigator should follow-up with the complainant
- The Investigator should remind all parties re: confidentiality

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## Moving Forward

- Ascertain whether the victim incurred damages
- Training for the alleged wrongdoer
- Training for all staff
- Review, modify, and/or redistribute the company's policies
- Review, modify, and/or redistribute the company's investigation and complaint procedure

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# Conclusion

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# Questions?

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