

Planning the Investigation Ten Points*

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- I may have snuck a few extra ones in there.

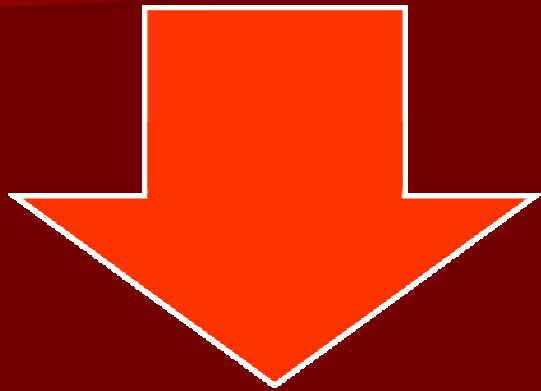
Point #1 – Establishing Scope

Do you need an investigation, and
how flexible is the scope?

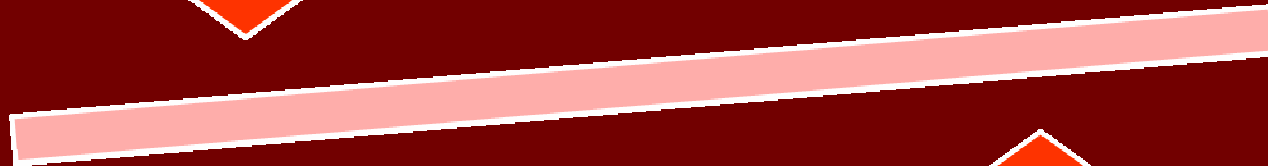
Check your thinking

- “I am investigating whether X happened” investigation limited to extremely narrow scope and can produce a thumbs up or thumbs down verdict BUT
- Usually X is what is alleged and Y is what happened. This means that the scope would rule out findings that “something happened”

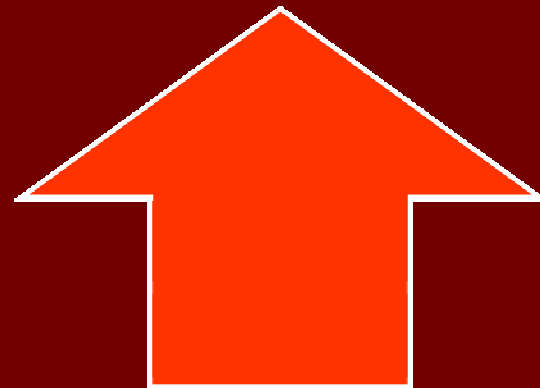
The Case of X and Y



"Dinner?"



"No thanks,
I've got
plans."



Better Way to Conceptualize Your Plan

- What happened?
- Was there a violation of policies or the law?
- Is corrective or remedial action necessary?

An investigation is necessary when:

- The claim alleges that policies and/or the law have been violated
- The employer would likely take remedial or punitive action if the allegations were true
- There is a possibility that the claims are part of a pattern of conduct, or represent a widespread set of behaviors
- There is a dispute or a variety of perspectives about what has transpired

Scope

- The investigator should use **consistent** criterion for deciding whether new issues should be added to the current investigation.
 - Is the new issue sufficiently related to the existing issue ?
 - Do the parties essential to resolving or exploring the new issue substantially overlap the existing pool of witnesses? (continued)

Scope

- If the new issues/allegations are true, would they likely change the organization's course of action?
- If the new allegations are found to be untrue, could this substantially affect the assessment of credibility of any party to the current investigation?
- Is the new issue of sufficient scope that it calls for a separate dedication of resources in order to ensure that the central investigation is completed in a timely way?

Point #2 – Preparing Investigative Questions

Investigative Questions:

- Are separate and distinct from *interview* questions
- Are questions *that will need to be answered in order for the investigation to be completed*
- May include questions about fact, timing, context, history, relationships and organizational climate and culture
- Are dynamic
- Are a TOOL to help investigators maintain focus and efficiency

Practically speaking

- Your investigative question document need not be “pretty” or permanent
- It should be used to track your progress
- Not essential to use a document, but not a bad idea.

Point #3 – Review
Policies, Records and
Other Documents

Review:

- Written complaints, if there are any
- Personnel and supervisory records pertaining to those identified
 - Consider that this information may create unrelated positive or negative impressions
- Language of relevant policies to formulate questions most suited to a determination of policy violation
- Language of policies to determine cooperation and structure requirements

Methodological Decisions

- Specific methodological decisions that are **debatable, but also defensible**:
 - Recording or not recording interviews
 - Interviewing one-on-one vs. two-on-one
 - Reviewing or not reviewing personnel files prior to interviews
 - Being briefed by a prior/preliminary investigator about the facts and events to date
 - Whether drafts are retained or destroyed

Be Prepared for Tough Questions

- What are my privacy rights? Is this confidential?
- Could my cooperation result in discipline?
- Do I have to talk to you?
- What if I don't cooperate?
- Could I lose my job?
- Can I record this interview?

Tough Questions

- Should I have/Can I have an attorney present?
- Shouldn't I have someone from the union here?
- Who else will you be talking to?
- Will you tell anyone else what I tell you?

Recommendation

- Think them through
- Make a choice
- Apply it to each and every interview or, better
 - Apply it to each and every investigation.

Point #4 – Create
Appropriate Logistical and
Communications Support

Logistical and Communications Support

- Determine how to contact and what to say to interviewees
 - Choose a neutral, non-threatening person to arrange logistics
 - Prepare a short script for them. Be extremely detailed about what to say and what not to say.
- Understand “need to know”
 - Avoid the “TMI” trap

#5 and #6 Interim Actions to Protect and Facilitate

- Protect people
- Protect business interests
- Preserve evidence
- Prevent exacerbation of the current situation
- Provide an environment most conducive to completing the investigation

Interim Actions

- Protect People
 - Offer/ require Leave
 - Plan communications
 - Separate Parties
 - Assess immediate risk and take appropriate actions

Interim Actions

- Protect Business Interest
 - Communication plan?
 - How widely known?
 - Possibility of immediate legal claim?
 - Production integrity issues?
 - Immediate need to address possible theft/sabotage/financial wrongdoing?

Interim Actions

- Preserve Evidence
 - Freeze and seize files, electronic evidence
 - Assure supervisory files are preserved
 - Limit access to records
 - Security tapes, card swipes, etc.

Avoid reprisal

- Ensure that parties knowledgeable about the complaint and the investigation are alerted regarding the need to put a hold on pending decisions and changes adversely affecting any party

Routinely determine "easy evidence"

- 30 days of e mail freeze
- Cell phone bills
- Internet cookies
- Security swipes
- Pay history
- Surveillance film freeze
- Copy of corporate photos (maybe)

Point #7 – Scan for and
Consider Ramifications
of Other Events

Ramifications of Other Events

- Make recommendations or adjustments to minimize the appearance that other events are related:
 - Reduction in force
 - Vacations
 - Plant closings
 - Acquisitions
 - Schedule or management changes
 - Unrelated interventions

Point #8 – Prepare Appropriate Notices

Prepare Appropriate Notices

- Preferably in writing, give clear, accurate information about:
 - The nature of the investigation
 - Limits on privacy and confidentiality
 - The process to be followed
 - Expectations about participation and communications
 - Contacts
- Customize to unique circumstances

Pre-Interview Information

- The purpose of this interview
- Who has retained you to conduct this investigation
- Neutral fact finder, no preference or predetermined outcome
- (That I am entitled to union representation)
- Notes will remain in possession unless a court orders otherwise

Pre-Interview Information

- That you will be providing a report to____
- That I am participating voluntarily in this interview
- Information will be shared if necessary
- Should not discuss content of interview with potential witnesses
- May need to re-contact or re-interview me

**Point #9 – Allow
Sufficient Time**

Allow Sufficient Time

- Investigations are time and attention-intensive
- Investigations involve deep listening, intense inquiry, critical thought, rapid analysis and constant reframing of context
- Generate appropriate expectations about your time and others' time
- Allow enough time between interviews for credibility notations, note review and reflection, and reformulation of questions
- Plan for lack of availability, slow provision of data and need to use outside experts if appropriate

Point #10 – Prepare for the Interview with a Template

Template of Questions

- Prepare and use a standard boilerplate of opening questions
- Use your investigative questions to guide you in the questions of fact you will ask each individual
- Constructing questions at the outset ensures neutral, careful wording
- DO NOT limit your interviews based on these questions
- Real-time probing and listening will determine the best course in each interview

Prepare a “tickler” sheet reminding you of key issues

- Topic by topic, allegation by allegation or point by point.
- Sometimes helps to have a list of the “journalist” questions to keep you disciplined

Question Template

- Always start with low hanging fruit
- Remember to allow yourself to baseline the interviewee
- Use the most open ended questions possible, becoming more specific in response to what you hear.

Core fact questions

- What exactly happened?
- Where did it happen?
- Who saw it / heard it?
- Who was told about it?
- What happened in response?
- When did it happen?
- When it was reported?
- Is there any documentation?
- Do you know of other, similar instances?
- Everything else

The investigator's credo:
You are responsible for the
effort. Not the outcome.

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