

Emond Harnden Breakfast Seminar

Conducting Effective Workplace Investigations

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Session Overview

- Types of Investigations
- Pre-Investigation Process
- Interviews
- Investigation Reports
- Avoiding Common Mistakes

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GTAA v. P.S.A.C. (2010)

“...since the GTAA's conduct in both its investigation and also in its ultimate determination was not only unreasonable but also in bad faith, the Grievor is entitled to an appropriate remedy including damages.”

- Awarded more than \$500,000 in damages

Roe v. Schneider National Carriers (2006)

“...the employer should afford an employee a meaningful opportunity to respond to allegations of misconduct and should conduct a reasonable investigation in order to successfully raise such conduct in support of a just cause dismissal.”

Negligent Investigation

- An employee can sue for a negligent investigation
- Liability?
 - Private investigation firm hired by employer – YES
 - Against employers – NOT YET

Types of Investigations

- Just Cause Investigations
- Human Rights Investigations
- Personal Harassment Investigations
- Workplace Injury Investigations
- Violence Investigations (Bill 168)

Pre-Investigation Process

- Receive complaint – incident occurs
- Timing issues
- Interim measures

Pre-Investigation Process

- Suspension with pay
- Transfer
- Change reporting relationships
- Leave of absence

Pre-Investigation Process

- Disclosure of allegations to respondent
- Fact-finding – gather documentary and witness evidence
- Confidentiality

Dealing with Represented Parties

- Lawyer
- Union
- Support person
- Procedural fairness

Selecting Investigators

- Neutral
- Qualified
- Internal vs External

Interviewing Parties and Witnesses

- Order of interviews
- Be prepared
- Private location
- Cover ground rules

Interviewing Parties and Witnesses

- Convey seriousness of interview
- Watch tone
- Be neutral
- Don't interrupt the flow of narrative

Interviewing Parties and Witnesses

- Take time, be patient
- Take notes!
- Written summary from witness
- Ensure accurate, thorough information

Interview Questions

- Break the ice
- Seek specific information – W5
- Invite a narrative – chronological works well
- Lead with open questions
- Clarify with specific questions

Types of Questions

- Credibility questions
- Solicit other relevant information
- Be careful of leading questions

Wrapping up the Interview

- Review notes
- Any questions/additions?
- Follow-up
- Confidentiality reminder

Confidentiality

- X recognizes the Complainant's and the Respondent's interest in confidentiality. To protect the interests of the Complainant, the Respondent and any others who may report or be witnesses to such incidents, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances. Only those with a need to know about the complaint will be made aware that an investigation is ongoing. The results of any investigation will also be kept confidential and will be disclosed to individuals only on a need to know basis.

Obtaining Other Evidence

- Retrieve quickly!
- Secure any relevant documents
- Expert documentation analysis
- Taking a view
- Photos/diagrams

Reviewing the Evidence

- Standard of proof
- Create a chronological summary of ALL evidence
- Assess credibility

The Investigation Report

- Contents
 - Scope of Retainer
 - Description of Complaint
 - Description of Methodology
 - Analysis of Evidence
 - Recommendations
- Circulation
- Action

Contacting Police and/or Regulatory Body

- When?
- Continue with your investigation
- Results of police investigations

Common Mistakes

1. Failing to promptly investigate
2. Failing to provide procedural fairness
3. Failing to take complaint seriously
4. Choosing untrained investigators
5. Choosing internal over external
6. Failing to remain neutral

Common Mistakes

7. Failing to properly document
8. Failing to appreciate psychological dynamics
9. Mishandling reluctant complainants
10. Applying wrong standard of proof
11. Failing to advise of outcome

Common Mistakes

12. Failing to gather all relevant information

13. Failing to follow policy and procedure

Questions?