



KENTUCKY
PERSONNEL
CABINET

CONNECTING PEOPLE TO PURPOSE

Governor's EEO, Diversity & Leadership Conference

The Effective Investigation

- Personnel Cabinet
- Kentucky State Police
- Kentucky Department of Corrections

Governor's EEO, Diversity & Leadership Conference

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Goal

Provide practical guidelines for investigations and an understanding of the risks and obligations

Objectives

- Define Investigation.
- Examine how to conduct a formal investigation.
- Examine how to conclude a formal investigation.
- Explore reporting and analysis of investigative findings.

The Scenario

- IT ALL BEGAN WITH THIS....

What is an investigation?

- Probe: an inquiry into unfamiliar or questionable activities.
- The work of inquiring into something thoroughly and systematically

Triggering Events

- Something that happens to start a conflict. It can be something minor, such as an accidental word or careless mistake, or it can be something major and deliberate.

Triggering Events (cont.)

- Should not be limited to events when an employee personally raised a complaint to the EEO Coordinator.
- Supervisors should be regarded as the eyes and ears of management.
- We should assume that the employer will be held responsible for any harassment or discrimination which is known to a supervisor.

Triggering Events (cont.)

What are some examples of a triggering event?

Triggering Events (cont.)

Prompt investigation and appropriate corrective action may be necessary when:

- An employee complains to any supervisor about alleged harassment or discrimination personally experienced by the employee.
- Any person (employee or non-employee) brings allegations to the attention of a supervisor.
- Receipt of an EEOC or KCHR charge.
- When a supervisor personally observes behavior.

Is a formal investigation necessary?

Some problems can be resolved quickly and informally without an investigation. It is usually in the best interest of both employer and employee to attempt resolution as quickly and effectively as possible.

Is a formal investigation necessary? (cont.)

Factors to consider:

- Is the issue simple or complex?
- Does the complaint involve one or multiple employees?
- Does the complaint stem from a single incident or a pattern of conduct?
- Is the alleged behavior minor, moderate, or major in significance?
- Are all the facts necessary for resolution known?
- Is special expertise necessary in order to reach a conclusion?

The Difference between Workplace Conflict and the Need to Launch an Investigation

- Scheduling and work assignment decisions considered “discrimination” or “harassment.”
- Balance of workload issues.
- Legal “buzz words.”
- Discrimination and harassment are red flags.

The Difference between Workplace Conflict and the Need to Launch an Investigation (cont.)

- Examples:
 - “Please provide me with examples of exactly how you have been discriminated against, harassed, sexually harassed, treated differently, etc.”

OR

- “What exactly did your supervisor/co-worker say or do that violates one of our policies or procedures?”

The Difference between Workplace Conflict and the Need to Launch an Investigation (cont.)

- Things to consider when determining if you need to launch an investigation:
 - Formal complaint or grievance.
 - A “this isn’t a complaint, but here are examples of what I’ve seen or heard” report.
 - Unexplained changes in behavior, morale, or productivity.
 - An administrative agency’s inquiry.
 - Receipt of a lawsuit.

Investigation Planning

- Plan but be flexible.
- Select the investigative team.
- Assemble relevant documents.
- Prepare an investigation file (policies, notes, records, etc.).
- Identify any other resources needed.

SCENARIO (cont.)

- Human Resources and the EEO Coordinator work together on a plan of action.

Who to Interview?

- The alleged offender.
- Anyone who directly observed a relevant incident.
- Other witnesses with relevant information.
- The supervisor of the complaining employee and/or the alleged offender.
- People whom the complaining employee has asked you to interview.
- People whom the alleged offender has asked you to interview.
- Be prepared to conduct follow-up interviews as necessary.

Avoid going on fishing expeditions.

During the Investigation Process

- Interim Preventative Measures:
 - When possible, remove the accused from the vicinity of the complainant.
 - Temporarily remove the complainant away from the accused *at the complainant's request*.
 - Monitor and evaluate the contact between the complainant and accused during and after the investigation.
 - Include this information in the final investigation report.

During the Investigation Process (cont.)

- Investigative Interviews:
 - Setting – Protect interviewees' privacy, ensure confidentiality, and minimize any possible embarrassment.
 - Questions – Prepare questions in advance. Be prepared to ask follow-up questions.
 - Opening Statement – Prepare an opening statement that details for the interviewee(s) the reason for the interview, the interview/investigation process, and any confidentiality policies prior to asking questions. Create a sense of trust between you and the interviewee.

During the Investigation Process (cont.)

- Investigative Interviews:
 - Professionalism – Set the standard for the seriousness of the process and refrain from jokes, sarcasm, threats, etc.
 - Focus – The primary objective is to determine whether the complainant's accusations are true. Focus on the information needed to thoroughly analyze the validity of the complaint.
 - Documentation – Make sure you have enough time to take clear, detailed notes on all the relevant information obtained before concluding the interview.

Questions to Ask

- “The Complainant”: Who, what, when, where, and how?
 - Who was involved?
 - What happened?
 - When and where did the incident take place?
 - How did you react? How has your job been affected?

Questions to Ask (cont.)

“The Complainant”: Who, what, when, where, and how?

- Has the employee talked to anyone else about the situation? If so, who?
- Has the employee spoken to anyone in management about the issue?
- Has the employee kept any notes, emails, text messages, or records relevant to the complaint?
- Did the employee participate, and to what degree? How?
- What was the employee’s relationship with the alleged offender?

Questions to Ask (cont.)

“The Complainant”: Who, what, when, where, and how?

- What does the employee think the accused might say about the allegations?
- Does the employee believe that he or she can work with or around the alleged offender? If so, is there anything the employer can do to assist in order to restore or maintain a positive working relationship? If not why does the employee believe he or she could not work with the alleged offender?
- Does the employee have any suggestions or preferred resolutions? Were there any witnesses? If so, who?
- Does the employee have any additional facts or information that would be helpful in an investigation, if one is warranted?

Before concluding the interview, you should...

- Thank the employee for raising the complaint.
- Summarize the no retaliation policy, and instruct the complainant to report any further incidents or any perceived retaliation to you immediately.
- Make sure the employee knows how to contact you.
- Depending on the circumstances, request a written summary of the complaint.
- Ask the employee to come to you if they think of any other information.

Before concluding the interview, you should (cont.)

- Need to know basis.
- Confidentiality.
- An approximate time frame for completion of investigation.
- No decisions will be made until the investigation is complete.
- Tell the employee you may need to meet with him or her again to follow-up, and you will meet with him or her again once the investigation is complete to summarize the action taken.

Questions to Ask – the Accused

- Inform the accused individual's immediate supervisor of the complaint.
- Explain your impartiality and that the intent is to conduct a thorough and fair investigation.
- Need-to-know confidentiality should be explained.
- Regardless of the merits of the complaint, the employer will not tolerate retaliation against the complainant or any witness.
- No conclusions will be drawn until the investigation is completed, and review the details of the incidents.

Questions to Ask – The Accused (cont.)

- What is the accused's response to the allegations?
- If the accused denies the allegations, ask why the complainant might lie.
- Did anyone witness the incidents in question?
- How did the complaining employee respond to the alleged conduct?
- Did the complaining employee communicate that the alleged conduct was unwelcome? Did the complaining employee engage in conduct of a similar nature toward the accused?

Questions to Ask – The Accused (cont.)

- Has the accused ever asked the complaining employee or others about his or her sexual relationships, or discussed sexual relationships with other employees?
- Has the accused ever touched an employee in such a way that the employee found it offensive or inappropriate?
- Have any of the accused's supervisors ever spoken to him or her about the issues?
- Does the accused have any documents, notes, or other evidence relevant to the complaint?
- Does the accused have any witnesses he or she wants you to interview as part of the investigation?

Questions to Ask – The Accused (cont.)

- Has anyone spoken to the accused about the investigation?
- Who? When? What was said?
- Thank the employee for his or her time and cooperation, and emphasize that no conclusions will be drawn until the investigation is complete.
- Restate your expectations as to non-retaliation, reporting of additional problems, and confidentiality.

Questions to Ask – The Witness

- Individuals identified by the complainant or the accused, or otherwise known or believed to have knowledge.
- Cover your expectations as to non-retaliation, reporting of additional problems and confidentiality.
- Determine whether he or she has observed the incidents in question.
- Do not limit your inquiry to only those incidents described by the complaining employee or alleged offender.

Questions to Ask – The Witness

- Focus on facts: who, what, when, where, and how.
- Thank the witness.
- Cover your expectations as to confidentiality, non-retaliation and reporting of any problems promptly.
- Document the witness interview.

Analysis and Conclusions

- Quality Control:
 - Review your investigation plan.
 - Review all information gathered for completeness and proper documentation.
 - Second opinion from someone you trust who is not involved in the investigation (consider using your legal office).

Analysis and Conclusions (cont.)

Assess Credibility:

- What was the “body language” of the interviewee? CAUTION!
 - Obvious nervousness?
 - Sweating?
 - Tone of voice?
- How did the interviewee react to the allegations?
 - Argumentative?
 - Defensive?
 - Hostile?
- Logic / consistency of story.
- Was the person forthcoming, or did you have to “pull information” from him or her?

Analysis and Conclusions (cont.)

Assess Credibility

- Corroborating evidence. Where there any admissions during the interview?
- Did the person's version of the facts differ from anyone else's?
- Do witnesses corroborate the person's version?
- Circumstantial evidence.

Analysis and Conclusions (cont.)

- Reach a Conclusion:
 - Examine the facts.
 - Consider motivations.
 - Determine what standards of proof should apply to your investigation.

Analysis and Conclusions (cont.)

- Report Back to Complainant and Accused.
- Document your follow-up with the Complainant.
- Consider Policy, Practice and Circumstances.
 - Were any policies or instructions violated?
 - What has been done in the past in response to similar violations or incidents?
 - Does any law require you to take a certain action?
 - What is the tenure and history of the employee who violated your policy?
 - Are there mitigating or aggravating circumstances?

Analysis and Conclusions (cont.)

- Take Action
 - Caution the accused to avoid offensive conduct in the future, even if no firm conclusions can be reached as to what happened.
 - Training or educational programs, individually, as a group, agency, or cabinet-wide.
 - Verbal counseling or warnings.
 - Suspension.
 - A corrective action plan or probationary period.

Analysis and Conclusions (cont.)

- Deferral of a performance review date.
- Demotion.
- Transfer of the offending employee.
- Reduction in salary.
- Termination.
- Follow-up on additional complaints raised during the investigation.

Scenario (cont.)

- The Interview Process

Investigative Reports and Files

- The following information should typically be included:
 - The date of the complaint or incident leading to the investigation.
 - The identity, position, and department of the employee initiating the complaint, or the information that prompted the investigation.
 - The identity, title, and department of the investigation.
 - The names and titles of those who conducted the investigation.

Investigative Reports and Files (cont.)

- The following information should typically be included:
 - A summary of the complaint raised or information received leading to the complaint.
 - When the investigation began and when it was completed.
 - The identities of all persons interviewed, the dates and a brief summary of the information obtained.

Investigative Reports and Files (cont.)

- Include:
 - Final decisions made and dates of implementation.
 - A copy of any policies or guidelines relevant to the situation.
 - Summary of key facts relied upon in reaching the final decision.
 - A brief discussion of how the guidelines or policies apply to the situation.
 - The specific conclusion(s) reached on each key issue.

The Report

I. Overview

II. Individuals Interviewed

III. Interviews

a. By Allegation

b. By Witness

IV. Findings

V. Additional Items for Consideration

Report Example...

- On March 27, 2018, I interviewed Bob Smith, Division Director, CHFS, at the State Office Building in Frankfort, Kentucky. Mr. Smith is the supervisor of Mr. Jones. Mr. Smith stated that he personally witnessed Mr. Jones put his hand on the Complainant's shoulder during a meeting. That meeting occurred in February 2018. Mr. Smith could not recall anyone else in the meeting.

Report Example...

- The evidence does substantiate the allegation that Mr. Jones placed his hand on the Complainant's shoulder and that this action offended the Complainant.

Scenario Conclusion

- Conclusion and debriefing

Issues to keep in mind...

- Sometimes an incident or action will violate a workplace policy without violating the law.

Wrap-up

- Before conducting an investigation, talk to the complainant to ensure a formal investigation is necessary.
- A carefully planned investigation can save time and money.
- Make sure you talk to all parties involved in the complaint, not just the complainant and the accused.
- Review the documentation needed prior to the interview.

Wrap-up (cont.)

- Take clear and precise notes during the interview. Facts, not opinions!
- Always report back to the complainant and accused.
- Keep a detailed file of the investigation.
- Confidentiality, Confidentiality, Confidentiality!

Your Turn!

- Ask the Panel

Thank you!

