



Workplace Investigations

- A new employee tells you they saw someone take an expensive piece of equipment from the building.
- An employee comes to you and reports that he/she was sexually harassed by an employee or a supervisor.
- An employee reports that a co-worker is violating a company policy.

How you respond to complaints like these could make the difference between a prompt and effective resolution of the matter and an expensive lawsuit. In cases involving allegations of sexual harassment or workplace safety violations, California law actually requires employers to investigate. When you uncover employee wrong doing, or an employee comes to you with a complaint, you have to be ready.

At SoCal Investigative Services we understand the sensitive legal issues involved in handling these situations. We conduct prompt, objective, and thorough workplace investigations involving allegations of harassment, discrimination, retaliation, whistle-blower, and all other types of employee misconduct. The investigative process involves interviews, gathering of evidence, assessing credibility, and issuing findings of fact. From hiring or firing an employee to acquiring/merging a business, reliable information is vital and necessary. Our team of bilingual, qualified investigators and security experts have years of experience and understand the issues of concern faced by employers in today's business environment. Our proven techniques and services enable employers to reduce liability restore productivity and improve profits.

Who Should Conduct Your Investigation?

Investigation firms that truly specialize in workplace investigations are few and far between. As of May 2004, there were approximately 9,952 licensed investigators in California and it's estimated that only 10% of these investigators have experience in conducting workplace investigations. As a result, most private investigators do not have the experience or understand the sensitive legal issues involved in dealing with a situation that could result in litigation. Employers and their attorneys will often engage an independent human resources consultant to investigate a workplace matter and conduct interviews. While such consultants may have the skill necessary to do an excellent job, there may be some hidden legal problems.

Private Investigators Act (CA)

The California Department of Consumer Affairs (DCA) requires that any firm or individual who investigates alleged misconduct or makes determinations of credibility for the benefit of an employer must possess a private investigators license. Anyone who violates the law may be subject to a fine of \$5000 or imprisonment of one year in county jail or both. The Act does not apply to investigations conducted by an actual employee of the employer or to an attorney at law.

Consultant-Led Investigation

Although Human Resource consultants who conduct investigations without a private investigators license may be fined by the DCA, the law does not impose any specific penalty on the employer who retains the unlicensed HR consultant. Of potentially greater significance, however, an employee terminated for misconduct may be able to challenge the validity of the investigation that was not conducted by a licensed private investigator. This makes any actions or decisions by the employer based on the investigation vulnerable to litigation.

Attorney-Led Investigation

A qualified attorney can certainly conduct most types of investigations; however, the issue of attorney-client privilege is an important concern. If the investigation is ever the subject of litigation, the employer will almost certainly need to present all or part of the investigation as evidence at trial. If the attorney who performed the investigation is also advising the employer as to what decisions or actions to take as a result of the investigation, the attorney may be forced to testify about privileged matters. Even if the privileged matters could be compartmentalized, as a witness in the case, the attorney would be precluded from representing the employer in litigation.

So, what should an employer do if an investigation is required?

Legal Requirements

Over the past few years, a number of case and regulatory developments have occurred which have helped set guidelines for conducting proper workplace investigations. Courts have reviewed workplace investigations conducted in the harassment, discrimination, and employee misconduct areas -- and have commented on the quality of those investigations. In addition the Equal Employment Opportunity Commission (EEOC) has issued its "Guidance" on conducting harassment investigations. Together, these court and regulatory guidelines provide a fairly good outline of the requirements that must be met in conducting an appropriate investigation.

- **Promptness**-- A Company's response to harassment allegations must be diligent and timely. "As soon as management learns about alleged harassment, it should determine whether a detailed fact-finding investigation is necessary." If so, it should be "launched immediately".
- **Impartiality** -- The Investigation must be an "impartial" one. "The employer should ensure that the individual who conducts investigation will objectively gather and consider the relevant facts." The goal is to promote "neutrality in any investigation." Such a neutral investigation should be conducted by using a qualified investigator who is not employed by the same business.
- **Confidentiality** --"An employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. "However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis."
- **Training** -- The person who conducts the investigation "should be well-trained in the skills that are required for interviewing witnesses and evaluating credibility."
- **Thoroughness** --" An employer should set up a mechanism for a prompt, through, impartial investigation into alleged harassment."
- **Questioning** -- The investigator should ask relevant, open-ended, non-leading questions. He or she should attempt to elicit facts as opposed to opinions or supposition.
- **Determining Credibility** --"If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred." "Resolution of close factual questions involves difficult evaluations of witness credibility and hard choices among conflicting inferences."
- **Making a Determination** -- "Once all of the evidence is in, interviews are finalized, and credibility issues are resolved, management should make a determination as to whether harassment occurred. That determination could be made by the investigator or by a management official who reviews the investigator's report. The parties should be informed of the determination."

The sensitive nature of workplace investigations requires a knowledgeable, credible and professional investigator to navigate these specialized and complex investigations. At SoCal Investigative Services, our investigators pride themselves on exhibiting the highest degree of competency and professionalism, and can assist with any human resource investigation.

- Discrimination Investigations
- Sexual Harassment Investigations
- Workers' Compensation Investigations
- Family Leave Act and Sick Time Investigations
- Hostile Work Environment Investigations
- Theft Investigations
- Loss Prevention
- Surveillance

No matter what type of workplace investigation you may require:

LET US "PROVIDE" YOUR "INVESTIGATIVE SERVICES" TODAY!

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