HOW TO MAKE SURE EMPLOYEE DISCIPLINE STICKS: INVESTIGATIONS DO MATTER

Sally Culley and Chase Hattaway

WHEN TO INVESTIGATE

• Issues which might require investigation:
  • Allegations of misconduct
  • Allegations of bullying/harassment
  • Employee grievances
WHY INVESTIGATE

- Gather facts
- Determine merits
- Comply with legal obligations
- Preserve reputation
- Avoid liability
- Take action

PROCESS OF INVESTIGATION

1. Identify individual to conduct investigation
2. Identify issues and possible violations
3. Evaluate procedural requirements
4. Identify documents and witnesses
5. Obtain information
6. Evaluate and make recommendations

WHO SHOULD INVESTIGATE?

- In-house or outsource
- Things to consider:
  - Seriousness
  - Resources and time
  - Likelihood of litigation
  - Privilege issues
  - Financial exposure
WHO SHOULD INVESTIGATE?
If in-house:
  • Objective
    – Consider conflicts (actual, apparent and potential)
  • Respected
  • Experienced

WHAT IS BEING INVESTIGATED?
  • Policy violations
  • Statutory violations
  • Criminal violations
  • Union contract
  • Other contractual violations

PROCEDURAL REQUIREMENTS
  • Check policies for:
    • Time periods
    • Notifications
    • Representations
    • Reporting requirements
    • Need for statements
### DOCUMENTS

- Preserve Documents
  - Evidence
  - Legal Hold
  - Spoliation
- Gather Documents
  - Document scene if applicable
  - Electronic materials
  - Request from multiple sources
- Evaluate Documents
  - Organize chronologically

### DOCUMENTS TO REVIEW

- Rules, policies, procedures, Union contract
- Prior complaints
- Employee’s personnel files
- Alleged violator’s personnel files
- Supervisor’s notes and files
- Videos
- Computer docs, emails, text messages – limited to issues under investigation

### WITNESS INTERVIEWS - PREPARATION

- Prepare outlines
  - Identify facts needed
- Consider whether to bring documents
- Ensure sufficient time
- Privacy of interviews
WITNESS INTERVIEWS - SCHEDULING

- Conduct individually
- Order
  - Complainant
  - Accused
  - Key Witnesses
  - Other Related Witnesses
- Consider re-interviewing witnesses
- Updates to Complainant
- Prior notice?

CONDUCTING WITNESS INTERVIEWS

- Establish a rapport
- Control the environment
- Reiterate and recap
  - “So, you recall the incident as…”
  - “Is there anything else you can recall that would help me determine what happened?”
  - “Is there any other information you wish to share?”
- Leave the door open for future investigation

WITNESS INTERVIEWS - DOCUMENTATION

- Document, Document, Document
EVALUATE - PREPARING REPORT

• Describe Complaint
• Identify pertinent policy/law
• Describe investigation protocol
• Set forth evidence
• Evaluation (apply facts to law)
• Conclusion
  • Internal
  • External

THANK YOU!

Sally R. Culley, Esquire
Chase E. Hattaway, Esquire
sculley@rumberger.com
chattaway@rumberger.com
Rumberger, Kirk & Caldwell, P.A.
300 S. Orange Ave., Suite 1400
Orlando, FL 32801
407-872-7300