

Workplace CSI: the anatomy of a successful investigatory interview

A solid investigation is the cornerstone of any decision to discipline an employee. One of the most important and effective tools available in conducting an investigation is the investigatory interview.

Employees must cooperate and participate—and have no Fifth Amendment right against self-incrimination, unless they work for a public-sector employer.

The employer holds most of the cards and can require both participation and truthfulness. Not cooperating or lying is grounds for discipline, regardless of the original charge. The investigation may result in valuable admissions or other evidence of guilt, the commission of lies, failure to answer or even show that the employee didn't do what the employer thought he or she did.

Why the interview?

An interview offers:

- An opportunity to get unvarnished, real-time responses to questions
- A chance to observe the witness's demeanor (body language, attitude, remorsefulness or lack thereof)
- A chance to assess the likelihood that, if given another chance, the conduct would or would not recur

In addition, an interview can provide valuable evidence to support a later employment decision, if necessary.

A successful investigatory interview requires a carefully prepared agenda. Keep in mind that one size does not fit all. The nature of the offense, the nature of the evidence of wrongdoing, the culture of the organization and the personalities of the individuals involved are all considerations that can influence how you should conduct an investigatory interview.

Who should attend?

The employer needs to be represented, at a minimum, by an interrogator and a note-taker. The interrogator needs

to focus on questions, the responses and follow-up questions. Also include someone who has more direct knowledge of the subject matter at hand. If you suspect that the target of your investigation might give untruthful or exaggerated answers, you can bring in the knowledgeable witness at the

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end for another round of questioning that challenges the credibility of the information previously provided.

Obviously, the targeted employee will be present. If the target is a unionized employee and there is a reasonable likelihood that information provided in the investigatory interview will result in the target being disciplined, the employee is entitled to a representative—if the union contract requires it or the employee asks for representation. If the employee asks and is improperly refused, no information gathered during the interview may be used in a disciplinary proceeding. If the employee requests representation, you can proceed by:

- Allowing a representative
- Canceling the meeting
- Informing the employee that if the request for a representative is not withdrawn, no meeting will be held
- Holding the meeting, but not using any information that is gathered

In a nonunion setting, employees have no right to a representative or lawyer. However, since one size does not fit all, there are considerations that support allowing a “representative” to be present.

Establish the ground rules for the representative's role in the meeting. It should be limited to making sure

questions are understood and the answers provided are also understood. There will be no coaching the target or signaling answers, no answering for the target, no conferring before an answer is given and no recasting answers with spin.

The questions

Careful planning should go into the subjects to be covered, form and order of the questions, what information already possessed is to be shared and when. Use decision trees to help with a line of questioning. A script and outline can be useful to keep on track and also be useful exhibits in later proceedings.

Timing issues

Consider when the interview should occur. You could suspend the target for a day or two or conduct the interview right away before he or she can destroy evidence or make up an excuse.

If there is more than one witness or target, it may be important to interview them separately but simultaneously. This will avoid any comparing of notes or meshing of stories, and maximize the possibilities of inconsistency and valuable admissions.

Where to interview

Consider the most effective place to hold the interview. Is there a strategic reason for the employee to feel comfortable? Do you want the employee to let his guard down? Should the surroundings be familiar or unfamiliar? Do you want the employee uncomfortable and uneasy? Give thought to where attendees should sit in the room—across from each other? On the same side of the table?

Why to interview

Never lose sight of the reason for the interview. Remember that there is no Fifth Amendment right to protect a refusal to answer or a failure to cooperate. Also remember that lying can be an independent reason for discipline.