



# **The HR Detective: How to Conduct Thorough and Legal Workplace Investigations**

## **Supplemental Materials**

- **Complaint Interview Guide**
- **Investigation Checklist**
- **Drug & Alcohol Reasonable Suspicion Report**

## Investigation Checklist

### General Outline/Steps of an Investigation:

1. Approval
2. Investigator's role
3. Timing
4. Interview alleged victim
5. Decide whom to interview next
6. Interview witnesses
7. Interview accused individual(s)
8. Follow-up after accused individual(s) interview
9. Was policy violated?
10. Inconclusive investigation
11. Implement the decision
12. Post decision follow-up

### I. When a complaint is received:

- First ensure complainant and any other alleged victims are safe and free from further harm during course of investigation (until permanent resolution is decided).
- Notify the appropriate management personnel (legal, appropriate top executives, appropriate line management).
- If accused individual(s) is a Company employee, remove accused individual(s) from same working vicinity as complainant (if appropriate) for duration of investigation (assign to another location or suspend pending outcome of investigation, as appropriate).
- Determine who should conduct the investigation. It is good practice to have a second person witness the interviews/investigation when appropriate.
- Ensure the investigators have no conflict of interest or history that may discredit the investigation.
- Determine who should be interviewed/investigated (names of complainant(s) accused individual(s), witnesses, etc.). Limit discussion of incident to these individuals.
- Establish a timetable, if possible, for resolution of the matter. Harassment investigations should generally begin within the first 24 to 48 hours of the time the first complaint was made.

### Consider the order in which the investigation will be conducted:

- Complainant(s)
- Accused individual(s)
- Co-workers and other witnesses
- Second interview of the complainant to discuss any factual questions as a result of the investigation.
- Second interview with the accused individual(s) to discuss any factual questions as a result of the investigation.
- Gather all relevant evidence, including documents, emails, time records/cards, photos, voice messages and videos as well as any physical evidence. Document the source of the evidence and ensure that it is handled in a way that preserves its integrity.

## II. Interview Process:

### Investigator's Role

The duty of the investigator is to get the facts straight. The investigator should not be trying to build a technical case or a defense, either for the company or for the alleged victim. Withhold any judgments until investigation is complete. It is highly recommended that the investigator has another individual witness all conversations.

### Key points for the investigator:

- Prepare a confidential space for the interview. Interview witnesses separately in an office or room where the discussion will not be overheard by other witnesses, the accused individual(s), or any other unauthorized persons.
- When possible two managers should participate in the interview process. At least one of the investigating managers should be familiar with any applicable law(s) and the Company's policies and procedures. One manager should be designated as the interviewer, and the other should act primarily as a witness and take notes of the discussion.
- Remind the investigators that confidentiality is necessary to protect the integrity of the investigation and to ensure that the Company receives trustworthy information in an atmosphere free from Section 7 Rights coercion. Identify who they should and should not share investigation information with.
- Remind the interviewers to observe and record all physical and verbal reactions of the witnesses during the interviews.

## III. Documenting the interviews:

- Use investigation interview forms where appropriate.
- Make copies of any records including documents, emails, time records/cards, photos, voice messages and videos as well as any physical evidence.
- Collect all notes and documents from the interviewer. Maintain one investigation file.
- Decide if electronic interview notes will be utilized for this investigation.
- Decide if recording devices will be used for this investigation (usually no).

## IV. After the interviews are completed:

- Review the results of the investigation. Determine whether anyone should be re-interviewed. Resolve inconsistencies wherever possible. When reviewing the evidence, consider the following:
  - The absence of corroborating evidence.
  - Whether the conduct was unwelcome.
  - Distinguish between behavior that was "voluntary" but coerced, and behavior that was clearly unwelcome.
  - Delays in complaining about the alleged behavior.



- Discuss investigation results and proposed action with the investigation team and/or Human Resources. This discussion should be limited to those with a need to know the results of the investigation.
- Consider credibility determinations, if applicable. Factors include:
  - Memory
  - Perception
  - Truthfulness
  - Corroboration or lack thereof
  - Bias of witnesses
  - Consistency of accounts
  - Prior misconduct or lack thereof, and implications of such conduct
  - Plausibility of accounts
- Review any relevant documentary evidence (records, video tapes, timecards, etc.).
- Keep secondary performance issues separate from this investigation.
- Take appropriate corrective action based on your findings and your company's policy:
  - Document in personnel file
  - Verbal warning
  - Written warning
  - Suspension
  - Demotion
  - Termination
  - Coaching / Training / Counseling
- Factors in determining appropriate remedial action to take include:
  - Credibility of accused individual(s), complainants and witnesses
  - Prior conduct, if any (positive or negative)
  - Prior discipline of accused individual(s)
  - Level of accusation, including type and frequency of conduct
  - Accused individual(s) knowledge of applicable Company rules of conduct
  - Prior disciplinary “precedent” for identical, similar or analogous misconduct
  - Public and employee relations issues

**V. Communication of findings and finalization of investigation**

- Communicate findings, determination, and actions to be taken to the accused individual(s), reminding them not to discuss situation with others and policy against retaliation.
- Communicate findings, determination and actions taken to the complainant, reminding complainant of Section 7 Rights to not discuss the situation and to report any issues of retaliation.



- Inform the complainant that action has been taken. Indicate that you will follow up with them in the future to determine if the unwelcomed behaviour has been corrected.
- Follow up with all parties involved to officially close out the investigation. Thank them for participation. Encourage confidentiality.
- Finalize documentation of investigation and place in confidential harassment investigation file.
- File the complete investigation.
- Determine if the applicable Company policy was properly written, communicated, employees were aware of policy and how to report, and any other related issues. Take action to correct any deficiencies.

## Complaint Interview Guide

It is important to approach each investigation with an open mind and consider all relevant facts before reaching any conclusions or making recommendations. It is also important to ensure that the investigation is conducted fairly and impartially, with due regard for the rights of all parties involved.

When investigating a complaint of harassment or other employee relations issues, it is important to follow a structured process to ensure that all relevant information is gathered, analyzed, and considered. Below are some best practices that can be followed when investigating a complaint.

### Do the following when possible:

1. Interview witnesses separately in an office or room where the discussion will not be overheard by other witnesses, the alleged harasser, or any other unauthorized persons.
2. Observe and record all physical and verbal reactions of the witnesses during the interviews.
3. Ask open ended, non-judgmental questions. Avoid asking leading questions or those with a simple “yes” or “no” answer.
4. Get all the facts: who, what, where when and how. Identify any witnesses.
5. Avoid the following types of questions: Multiple choice questions such as, "Did s/he touch you on the arm, the shoulder or breast?" Instead ask, "Where did s/he touch you?"
6. If the accused admits to the harassing behavior, document the response, and immediately tell him/her that it must stop immediately. Confirm his/her understanding.
7. If the accused denies the behavior, remind the person that you are merely investigating both sides of the story at this point and that you have not made a final determination.
8. Workplace harassment is a serious issue that requires a thorough investigation. When investigating workplace employee relations issues, it is important to gather all relevant facts to fully understand the situation. Here are some potential sources to consider when investigating.
  - Witness statements, performance evaluations, disciplinary records, emails, electronic records, timecards, video surveillance physical evidence (such as documents, notes, or objects) and attendance records.

### Interview Opening:

1. Introduce yourself
2. Explain the purpose of the investigation
3. Explain the purpose of the specific interview
4. Briefly describe the overall investigation process
5. Make a statement about the importance of accuracy and truth

6. Emphasize that the Company takes these allegations very seriously and that the Company is investigating these allegations by interviewing all potential witnesses in compliance with our policy.
7. Explain that confidentiality is necessary to protect the integrity of the investigation and to ensure that the Company receives trustworthy information in an atmosphere free from coercion (without violating Section 7 NLRB Rights).
8. Explain to all witnesses that retaliation will not be tolerated by anyone. If someone attempts to retaliate against them for complaining or participating in this investigation, advise the witness to contact you immediately to report such conduct.
9. Emphasis that to the best of our ability, we will maintain each person's confidentiality throughout the investigation however we can make no promises of confidentiality.

### **Sample Questions to Consider Asking During an Investigation**

#### **The Complainant:**

1. Please tell me what happened in your own words. Be as specific and chronological as you can.
2. What exactly did s/he say to you?
3. If physical contact was made, ask, where on your body did s/he touch you and in what manner?
4. Did she appear to be speaking or acting in a joking manner? How do you know that s/he was serious?
5. Where did this behavior take place? Outside the workplace? Was it in the workplace?
6. How did the behavior make you feel?
7. How did you respond to the behavior at the time?
8. Did you tell him/her to stop? What was harasser's reaction?
9. Did you tell harasser in any way their behavior was unwelcome? What was harasser's reaction?
10. Did the complainant participate in the misconduct?
11. Did you ever tell him/her that you found the behavior offensive?
12. How frequently did the behavior occur?
13. Did it increase in severity as time went on? If yes, please explain.
14. Were there any witnesses to the encounter(s)? Who? What would they be able to add?
15. How would you characterize your relationship with him/her in the past? How would you describe it? How do you think s/he would describe it?
16. Did you ever go out for lunch or dinner or other forms of socializing, alone or as part of a group? How often?
17. To whom did you originally report the conduct? Why did you choose that individual?
18. How long after the conduct occurred did you report it? Were there reasons that caused you to wait to report it?
19. Have you suffered any adverse employment actions: bad performance evaluations, demotion, denial of pay or benefits?

20. Are there any people inside or outside of the company you talked to immediately after the incident(s)? Who?
21. Can you identify a triggering event or comment? What do you think provoked the incident(s)?
22. Upon completion of each interview, ask the interviewee to prepare their own written statement documenting in their own words what occurred (or what they witnessed, heard, etc.). Attempt to get a written and signed statement from each person interviewed. If a witness is unwilling to provide a written statement, ask them to read your interview notes and sign at the bottom, acknowledging that this is an accurate record of what they communicated to you.
23. Explain the process moving forward

### **The Alleged Harasser:**

1. Explain the purpose of the interview by referring generally to the recent complaints.
  - Do not necessarily discuss the issue of type of harassment (sexual, bullying, verbal, discrimination, religious, other) so that you do not taint the witness's recollection of the events.
2. What would you like to say in response to the brief summary I've just given you?
3. Describe to me what occurred? What did s/he say? What did you say?
4. (Related to sexual harassment) Did you touch him/her? Where on his/her body did you touch him/her? What was your purpose? What did s/he say or do immediately before and after the touching?
5. Where did this occur? In a workplace location? Specifically? At a business-related function? As part of a social outing? Who else was there?
6. When was this? What time of the day?
7. Are there any aspects to the complaint that are true? What are they? What do you disagree with?
8. Are there others who might have seen or heard something relevant to our discussion? Who are they? What would they have seen or heard?
9. Did you tell anyone about the incident at the time? Later? Who did you tell and when? What is your relationship with that individual?
10. What kind of overall climate is there in the work group/department?
11. Is there any joking or teasing? Who participates?
12. How would you describe your relationship with him/her? Was it strictly business, entirely personal, or a mix?
13. How long have you known him/her? How do you think s/he would describe your relationship?

### **Witnesses/Relevant Others:**

1. Ever seen or heard of anything you considered to be inappropriate in the workplace?
2. Have you ever personally seen or heard anything to indicate that s/he was being made uncomfortable at work, or that s/he found the work environment offensive? What did you see or hear? Who was making things uncomfortable? In what way?





3. Did the complainant ever tell you about this incident? What did s/he tell you? When was that?
4. What kind of relationship would you say you had with this individual? Was it strictly business, entirely social, or a mix? How long have you known each other? What would you say is going on between them?
5. Who else might know something about this?
6. How would you characterize the workplace atmosphere?
7. Have you observed any changes in the atmosphere since the incident(s)?
8. Were you a participant in the discussion?
9. Have you seen him/her act in a similar way with other employee(s)? Females? Males?

**Upon completing the interview:**

1. Without violating employees concerted activities rights encourage any witnesses interviewed not to discuss the matters covered during the interview with any co-employee or the alleged harasser.
2. Tell them that if they remember anything following the interview that was not disclosed you would like them to seek you out and disclose what they left out.
3. Emphasize the seriousness of the complaint and thank them for their participation.



# Drug and Alcohol Reasonable Suspicion Report

**NOTE TO EMPLOYER:** These samples are intended to assist management in determining whether reasonable suspicion exists to refer an employee for drug and/or alcohol testing. They can be modified to fit the needs of the organization.

It is considered best practice to have two managers observe an employee to establish a good faith belief of drug and/or alcohol impairment in the workplace or during work hours. Each manager should complete a separate Reasonable Suspicion Report for documentation.

## NATURE OF INCIDENT/CAUSE FOR SUSPICION

- Impairment of speech, physical dexterity, agility, coordination
  - Unusual appearance, odor, behavior, or demeanor
  - Negligence or carelessness in operating equipment or machinery
  - Disregard of the employee’s own safety or the safety of others
  - Involvement in any accident that results in serious damage to equipment or property
  - Disruption of a production or manufacturing process
  - Carelessness that results in any injury to the employee or others
  - Observed/reported possession or use of a prohibited substance
  - Complaints by co-workers or subordinates
  - OTHER: (please explain):
- 

## BEHAVIOR or Demeanor

**YES      NO**

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Unusual and unpredictable response to supervisor instruction                        |
| <input type="checkbox"/> | <input type="checkbox"/> | Verbal abusiveness or intense arguing   |
| <input type="checkbox"/> | <input type="checkbox"/> | Physical abusiveness, aggressiveness, or agitation                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Withdrawn, unresponsiveness   |
| <input type="checkbox"/> | <input type="checkbox"/> | Inappropriate verbal response to questions or instructions                          |
| <input type="checkbox"/> | <input type="checkbox"/> | Avoidance of supervisor   |
| <input type="checkbox"/> | <input type="checkbox"/> | Expression of extreme frustration, discontent or tearfulness                        |
| <input type="checkbox"/> | <input type="checkbox"/> | Presents self as "invincible" (grandiose/all-powerful)                              |
| <input type="checkbox"/> | <input type="checkbox"/> | Mood swings (out-of-context displays of emotion, unpredictable)                     |
| <input type="checkbox"/> | <input type="checkbox"/> | Expressed feelings of unfounded persecution or paranoia (“out to get me”)           |
| <input type="checkbox"/> | <input type="checkbox"/> | Disrupted workflow – behavior inconsistent (“up and down” quantity/quality of work) |



OTHER: (please explain):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PHYSICAL SIGNS**

**YES NO**

Odor of alcohol

Odor of marijuana

Paraphernalia found

Describe:

\_\_\_\_\_

**Appearance:**

Normal

Disheveled

Profuse Perspiration

Flushed/Pale

Possible "Needle Tracks"

Tremors

Movement Slower than Normal

Erratic

**General Well-Being:**

No Apparent Physical Distress

Nausea/Vomiting

Fainting

Flushed

Breathing Irregular and/or Labored

**Eyes:**

Normal

Wearing of Sunglasses

Avoiding Eye Contact

Bloodshot

Watery/Glassy

**Pupils:**

Large/Dilated

Small/Constricted

Normal

**Nose:**

Normal

Runny Nose/Sniffles

**Mouth:**

Normal

Dry Mouth/Frequent Swallowing

Lip Wetting

**Speech:**

Normal

Slurred

Incoherent

Stuttering

Silent

Talking Fast

Loud



**Awareness/ Mental Status:**

- Normal
- Euphoric
- Cooperative
- Crying
- Sleepy but Arousable
- Confused
- Combative
- Uncooperative
- Bizarre/Erratic
- Sleepy and Unarousable/"Out-Cold"

**Motor Skills/ Balance:**

- Finger to Nose:
  - Normal
  - Missed
- Heel to Toe Walk:
  - Normal
  - Falls to Side
- Walk/Gait:
  - Normal
  - Swaying
  - Stumbling
  - Falling
  - Arms Raised for Balance

**Concentration:**

Three things supervisor asked employee to remember:

---

Record employee response of the three things:

---

**Document employee response and reaction after you shared your concerns:**



**YES**    **NO**

Reasonable suspicion exists to test this employee for drugs and/or alcohol

Arrangements made to escort employee to testing facility

**NOTE:** Do not allow the employee to drive themselves away from the facility. Arrange for transportation as appropriate.

\_\_\_\_\_  
SIGNATURE OF SUPERVISOR

\_\_\_\_\_  
DATE



Since 1898

## Comprehensive HR Services for Companies of Any Size

### **Missouri Office**

12851 Manchester Road  
Suite 150  
St. Louis, MO 63131

**314-968-3600**

### **Illinois Office**

300 Hamilton Blvd  
Suite L110  
Peoria, IL 61602

**309-637-3333**

### **Indiana Office**

450 E 96th St  
Suite 500  
Indianapolis, IN 46240

**317-960-3487**

### **Florida Office**

43 Skyline Dr.  
Suite 1001  
Lake Mary, FL 32746

**407-250-6556**