

Employment Practices *Update*

Bringing important information to emergency service organizations

VOLUME 09 • NUMBER 2

Conducting Internal Investigations

Guidelines to Insure Fairness

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Published by the
Glatfelter Insurance Group
York, Pennsylvania

As a leader of an Emergency Service Organization (ESO), are you prepared to investigate an employee or volunteer's allegation of workplace wrongdoing, such as discrimination, harassment, or retaliation? This article offers guidance on conducting investigations that are fair to all involved parties—the complainant, accused, and witnesses.

To instill confidence within ESO membership, communicate specifics about what steps have been taken to prepare the ESO to facilitate investigations. With a genuine belief that complaints will be handled professionally and seriously, ESO members are more likely to allow their allegations to be addressed in-house rather than at the courthouse.

Purpose of the Investigation

The purpose of an investigation is to objectively and reliably make a determination of the facts of reported or suspected wrongdoing. The composition of an investigation depends on the nature and severity of the alleged or potential wrongdoing. No internal response process is perfect, but ESO investigators must be timely and diligent in their efforts to stop real or perceived wrongdoing and prevent future occurrences.

What Triggers an Investigation?

The organization's duty to respond to official notice or complaints is clear. But don't make the mistake of believing that only formal complaints of workplace wrongdoing require an investigation. An ESO can be held liable for workplace harassment, discrimination, or retaliation that it should have known about, even when an official complaint wasn't lodged. Be prepared to conduct internal fact finding or an investigation under the following circumstances:

- An employee complains that he or she is the target of behavior that may constitute harassment or discrimination
- An employee reports that another employee is being subjected to behavior that may qualify as harassment or discrimination
- A supervisor personally observes wrongdoing
- Information is obtained in an exit interview
- Informal complaints are made
- An outside third-party brings forward information
- Anonymous complaints are lodged
- Rumors circulate

An ESO should initiate an investigation even if it is believed the incident was a one-time occurrence and will never happen again.

What Makes an Investigation Equitable and Defendable?

The following are attributes of a sound investigation:

- Enforce ESO policies.
- Promptly take action and address employee relations problems before allowed to escalate further.
- Ensure objectivity by using investigators not directly involved with the incident or closely associated with interested parties.
- Be fair to all involved (complainant, accused, witnesses, and uninvolved coworkers).
- Conduct comprehensive fact-finding by facilitating interviews and reviewing documents or personnel files.
- Keep methodical and well-documented notes of interviews and the investigation findings report process.
- Maintain confidentiality to the greatest extent possible by communicating with the Internal Investigation Team or others responsible for determining and administering discipline.
- Conclude and follow up in a timely manner.

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Selecting Internal Investigators

Before an actual incident arises, designate who will serve as the ESO's internal investigators and train them on uniform investigation guidelines. Look to employees whose job description includes administrative leadership or human resource management. Select well-respected employees who are able to keep emotions in check and matters confidential. When possible, investigative team members should reflect the makeup and diversity of the workforce.

Two Persons Facilitating Interviews?

Two minds are better than one for formulating strategy and making decisions and recommendations pertaining to investigations. A possible negative to the approach of multiple interviewers is some employees may be intimidated by having two questioners. Also, both interviewers will be pulled away from regular job duties.

Role of the Investigators

The ESO should define the role of the investigator before commencing interviews. The investigators may be limited to fact finding, or could have expanded responsibilities that include:

- Providing an opinion as to the validity or truthfulness of allegations.
- Determining whether the conduct likely constitutes wrongdoing (policy violation, unlawful act).
- Recommending appropriate disciplinary or corrective action when warranted.

Issues to Cover before Questioning

Ease anxieties and impart confidence at the beginning of the meeting by addressing the following issues:

- The purpose of the interview and how the information will be used.
- Your ESO's policy of providing a safe and productive work environment, free from workplace risk and wrongdoing.
- The taking of all complaints seriously.
- The consideration of all information obtained in the interviews as allegations only, until the investigation is completed.
- Your expectation for openness, accuracy, and detail.
- The importance of confidentiality on the part of the ESO and the person(s) interviewed.
- Non-retaliation measures and reporting procedures for retaliation or further wrongdoing.
- The discipline that will result if it is determined that policy or laws were likely violated.
- Disciplinary action that may be taken if interviewees are not truthful.
- The possibility of future interviews if necessary.
- The anticipated timeline for resolution.
- The reservation of the right of the ESO to utilize an outside third-party investigator under certain circumstances.

Internal or External Investigator?

Depending upon the nature and severity of the allegation, hiring an external (outside third-party) investigator may be in the best interest of the personnel involved and the ESO. Likewise, under certain circumstances it may be perceived that an internal investigation would be biased to protect interests of the ESO. Other examples of when an external investigation may be appropriate include:

- multiple complainants
- a high-ranking official accused of wrongdoing
- no one qualified internally to investigate a complex complaint
- a small organization where an employee has the perception that there is "nowhere to turn"

INTERVIEW QUESTIONS

For all interviews, keep it simple by asking who, what, when, where, why, and how? Ask open-ended questions, allowing interviewees to fill in the blanks.

Questions for the Complainant

- Have you taken any actions to stop the behavior?
- Are you aware of the organization's relevant policies and reporting procedures?
- Have you complained to anyone else?
- What actions and remedies do you recommend?
- What can the organization do to make your work experience better?
- Do you feel you can continue to work with the accused?

Questions for the Accused

- Have there been any incidents or issues in your work environment that the ESO would need to know about?

The interviewer should say: "Let me outline the nature of the complaint we have received from [the complainant]." (Consider the appropriateness of stating the name of the complainant and describe the allegation brought forward.)

- What is your response to what you have heard?
- What is your version of the events that took place?
- Are there any witnesses who support your position?
- Why do you think that [the complainant] would make such an allegation?
- Do you have any constructive ideas on how this issue may be resolved?

Questions for Witnesses

The interviewer should start by describing the nature of the complaint, without identifying the complainant or accused. You may later decide to name the parties involved.

- Are you aware of or have you witnessed inappropriate behavior by anyone in the organization?
- What have you observed or heard? (Is this first- or secondhand information?)
- Do you know of additional witnesses?



- a publicized complaint in the workplace or in the media
- a complainant who has hired an attorney or filed a complaint with the EEOC or other governmental agency, or filed a lawsuit

Hiring an outside investigator does not automatically shield or protect the ESO from liability for the investigation or for decisions made based on that investigation. The ESO is still responsible for action taken based on the outside investigator's findings.

Involve Legal Counsel?

Many personnel problems can be handled internally. However, don't hesitate to consult with an experienced employment and labor attorney when addressing complex problems. For instance, legal counsel can help navigate requirements set forth in labor agreements in regard to investigations that may result in disciplinary action.

Conclusion - Investigation Findings Report

The investigators' Investigation Findings Report should include:

- statements of alleged wrongdoing, and the identification of the complainant and accused employee(s)
- a description of any investigation steps taken
- the names of persons interviewed and information gathered
- any documents reviewed

The Report may evaluate whether there is factual evidence to substantiate the complaint, and may contain the following findings:

- Wrongdoing did or did not occur.
- An incident did occur, but it may not have been considered unlawful or against ESO policy.
- A definitive determination cannot be made.

In the end, the findings of the Investigation Report may not be as important as the ESO's process used in investigating the complaint. Take reasonable measures to ensure your ESO can defend the consistency and fairness of its investigation practices.