

## Conducting a Workplace Investigation: What Every Retirement Home Operator Needs to Know

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Knowing when and how to conduct a workplace investigation is an important component of managing a retirement home. A successful workplace investigation requires planning, preparation, organization, skill, speed and discretion. How the investigation is handled can affect whether a lawsuit is filed or a complaint made to a regulating body. An employer that neglects to conduct an investigation, or conducts an inadequate investigation faces increased risk of legal liability.

### Preliminary Considerations

There are a number of preliminary decisions to be made before the investigation can begin, each necessitating a frank discussion with legal counsel. This includes:

- Steps necessary to maintain privilege over the investigation and any resulting report.
- Whether to report the matter to the police; which will likely require disclosure of all relevant information.
- Whether there is a legal requirement to conduct an investigation and/or to report the outcome of the investigation to a government regulating body (e.g. in the case of a serious workplace injury).
- Whether it is appropriate for the complainant and/or subject of the complaint to remain in the workplace during the investigation.
- Whether assistance will be required from any third party expert in order to complete the investigation? For example a forensic accountant may be required to assist in an investigation involving allegations of financial improprieties.



### The Investigation Team

Should the investigation be conducted by an internal or external team? Internal investigators typically have the advantage of speed and lower cost. However, they may not have the skills, experience or time available to carry out a thorough investigation. An internal investigation team may also not be appropriate if the subject of the investigation is a senior employee.

### Gathering Relevant Documents

All documents and electronic files, including any complaints and documents relating to prior incidents, should be secured and reviewed by the investigation team as soon as possible. The investigation team should also be advised of any practices, policies, procedures or codes of conduct that are relevant to the subject matter of the investigation or that address the

investigation process.

### **Conducting Interviews**

Ideally, each interview should be conducted with two people present -one to ask the questions and the other to take notes. For investigations arising out of a complaint, the complainant will typically be interviewed first in order to get additional information about the complaint and how the complainant would like to see the issues resolved. Thereafter the person subject to the complaint and any other witnesses should be separately interviewed.

The objective of the interview is to elicit and record as much detail about the complaint or incident as possible, including: date; time; location; persons who saw or heard the incident; what happened before, during and after the incident; whether the incident was previously reported and any previous action taken, etc. Whenever possible, open-ended questions should be used to allow the interviewee to tell the story in his own words.

### **Documenting the Interview**

Careful, accurate and succinct notes should be taken at each interview. The notes may ultimately have to be produced in any subsequent litigation. They should record:

- The date of the interview
- Who was interviewed
- Who was present during the interview
- The author of the notes
- Where the interview took place
- The questions asked
- Verbal and non-verbal responses given in as much detail as possible
- Whether the information provided arises from direct knowledge or is *hearsay*

The notes should not contain any conclusions, opinions or editorial comments by the note-taker. There is no requirement for the interviewee to sign the notes to confirm accuracy, but the interviewee may be asked to do so or to sign a statement prepared after the interview setting out the information provided.

### **Assess, Evaluate and Report**

The investigation team will then analyze the evidence obtained, make conclusions based on the evidence, and prepare a report. The report should:

- Summarize the complaint
- Identify any remedial steps taken pending completion of the investigation
- Summarize of the evidence obtained
- Identify and evaluate any inconsistencies
- Assess credibility and weigh competing evidence to attempt to reach factual conclusions
- Explain the reasons for any conclusions reached

### **Communicate the Outcome**

In most cases, the report of the investigation should be kept confidential and only provided to legal counsel and the individual charged with making the final decision regarding remedial action or discipline. However, general information regarding the outcome of the investigation should be communicated to the individuals subject to the investigation. In the case of an accident investigation, the results of the investigation may also be required to be provided to the health and safety committee and/or government regulatory bodies.

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