

More **(and New)** Internal Complaints, More Investigations, and More Risk: Are You Prepared?

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ICYMI...



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The Aftermath...

- The Changing Face of Internal Complaints
 - Victims more willing to speak up and more demanding
 - Systemic racism complaints
 - Reverse racism complaints
 - Unconscious bias and micro-aggression issues
 - Systematic misogyny complaints
 - Cultural misconduct
 - Political angst



- Complaints are increasing in volume, nuance, and complexity

Adapting Your Investigation

- Selecting your investigator
 - Internal v. External (pros and cons)
 - Lawyers versus outside professionals
 - Optics (who is/are the face(s) of your investigation team?)
 - Race?
 - Gender?
 - Subject matter expertise?
 - Perceived tokenism?
 - One? Two? More?

Scope of the Investigation

- Develop an investigation plan
- Determine the scope of your investigation
 - Investigator: Understand your assignment
 - Trigger words
 - Policies implicated
 - Frame the complaint to avoid “scope creep”

Fun with technology

- Video or phone
 - Pros and cons
- Adaptability
 - Plan for technical difficulties
- Document sharing
 - Screen sharing?
 - Encrypted files?

Additional considerations

- Confidentiality
 - What do you do if there is a third party present?
- Recording of interviews
 - What do you do if the witness refuses to appear via video?
- Note-taking
- Report writing
- Reporting conclusions/recommendations

Conducting the Interviews

- Start broad and get narrow (who, what, when, where, and how?)
- Ask neutral questions (do not express judgment, do not exhibit bias, and do not agree with the allegations)
 - But ... ask the questions that address the allegations
 - But ... ask for specific examples
 - But ... ask the difficult questions
- Do not express opinions during interview (e.g. “as ridiculous as this will sound, I have to ask...”)

Conducting the Interviews

- *Consider* providing objective details to the accused about the allegations
- *Consider* demanding objective details from each interviewee
- Okay to inquire about motives, even in “he-said/she-said” and systemic investigations
 - Is there a reason he/she would allege this?
 - What would [complainant] gain from raising these concerns?
 - What is your relationship [with complainant] like?
 - What prompted you to bring this complaint forward?

Conducting the Interviews

- Do ask: Is there anyone else I should speak to?
- Do ask: Is there any document I should review?
- Do ask: Is there anything else I should know?
- **Consider asking:** Is there a specific result you want to see (to happen)?

Documenting and Concluding the Investigation

- Documenting your interviews
 - Your notes must reflect a thorough and fair investigation
 - Everyone's credibility is still key, including yours
 - Record your mental impressions
 - Be consistent with your practice
- Reporting findings
 - Attorney-client privilege or attorney work product (?)

Documenting and Concluding the Investigation

- Recommendations? Remember which hat you are wearing
- Public relations considerations
 - How has the landscape changed?

Questions?



THANK YOU!