



Working with an Outside Investigator: Key Steps to Getting Started with the Investigation

Before you begin an investigation using an outside investigator, there are a number of pre-investigation steps that should be considered to streamline the process and ensure that a sound framework is put in place from the beginning. All of the questions raised below may not be resolved completely before you begin the investigation, but it is important at least to consider the issues and discuss them with your investigator and your attorney in advance.

- 1) **Identify the client contact** – that is the person who will be overseeing the investigation on behalf of the client and who will be privy to attorney-investigator communications.
- 2) **Ensure that the designated client contact is not a material witness** and/or does not have some other perceived bias (supervises one of the parties, has a good or bad history with one of the parties, etc.).
- 3) **Decide if inside or outside counsel will be involved, and if so, the role of counsel versus the role of the client contact.** Who will supervise the day-to-day tasks of the investigation? Who will facilitate witness interviews and the collection of documents? Who will be the primary contact for employees directed to participate in the investigation?
- 4) **Gather the names and positions of relevant parties** (complainant, subject, material witnesses, client contact who is supervising the investigation) to expedite a conflicts check.
- 5) **Create a generalized summary of the key facts** in preparation for your preliminary discussions with the outside investigator. Do not disclose the identity of the client or the parties until you are prepared to go forward with a conflicts check.
- 6) **Start the process of document collection right away and document those efforts.** Gather relevant policies, procedures, and applicable union or other contracts. Other typical relevant documents include written statements of the complainant, other investigation notes or documents from this or related investigations, relevant personnel records, organizational charts, and known written correspondence between the parties relating to the issues. For more information see the attached **Pre-investigation Checklist**.
- 7) **Decide the form and content of notice to all of the parties.** What will you tell them about the investigation subject matter, their role and responsibility regarding participation in the investigation, issues of confidentiality and concerns about retaliation? Will the notice be orally or in writing, in person or by email? Consider the timing of the notice to each party (the day before an interview or weeks before an interview).



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(continued)**

- 8) **Determine the location of witness interviews.** It is generally advisable to conduct interviews in a neutral and discreet location to reduce witness anxiety and to minimize gossip and speculation in the workplace.
- 9) **Identify what, if any, timing constraints exist** such as a material witness going on vacation, taking extended leave or otherwise leaving the company, deadlines for responding to government agencies, and/or time periods contained in union contracts, which are often overlooked.
- 10) **Consider what work product you want** both during and at the conclusion of the investigation (interim reports, interview summaries, copies of investigative documents, a final report, orally or in writing).

There is a temptation to move quickly when confronted with serious accusations of workplace misconduct, but experience teaches us that resolving as many of these key issues as possible before starting the investigation will go a long way toward expediting the process and ensuring that a sound approach is in place throughout the investigation.