

Preparing to Work with an Outside Investigator

Planning for an investigation of any type can seem a daunting task, but there are steps you can take to be well prepared. Identifying the parties involved, gathering relevant documentation, and defining the investigation's scope and deliverables are among the tasks that can expedite the process and ensure a sound approach throughout the investigation.

1. **Identify the client contact.** This individual will oversee the investigation on your organization's behalf and will be privy to attorney/investigator communications if legal counsel is involved in the case. They should not be a material witness or have some other perceived bias in the matter. For example, they should not supervise or have a special relationship with any of the parties involved.
2. **Determine 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?
3. **Gather the names of relevant parties** (i.e., the complainant, the subject of the investigation, material witnesses, and client contact) to expedite the outside investigator's conflicts check.
4. **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 parties involved until you are prepared to go forward with the conflicts check.
5. **Gather relevant policies, procedures, and applicable union or other contracts.** Other typical early document requests include written statements of the complainant, notes or documents from this or related investigations, relevant personnel records, organizational charts, and known written correspondence between the parties relating to the issues. Refer to our Pre-Investigation Checklist for a more complete listing of documentation that may be relevant to your investigation.
6. **Determine the form and content of notice to the parties.** What will you tell them about the investigation's subject matter, their role and responsibility regarding participation in the investigation, issues of confidentiality, and concerns about retaliation? Will the notice be delivered verbally or in writing, in person or by email? Consider the timing of the notice to each party (e.g., the day before an interview or weeks before an interview).
7. **Determine the location of witness interviews.** It is generally advisable to conduct interviews in a neutral and discreet location to increase reliability, reduce witness anxiety, and to minimize gossip and speculation in the workplace.
8. **Identify what, if any, scheduling constraints that may affect the investigation** (e.g., 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).

9. **Consider the type of work product you want the investigator to provide** during and at the conclusion of the investigation. Will you want interim reports, interview summaries, copies of investigative documents, and/or a final report? Will you want to receive information verbally or in writing?
10. **Determine how issues of scope will be resolved and by whom.** Generally, the client, not the investigator, determines the scope of the investigation prior to the start and as additional facts become available throughout the investigation.