

Investigation Checklist for Employers

This is for general consideration, and not to be considered legal advice.

Interim Measures	
Are there measures that need to be put in place while the investigation is taking place?	<ul style="list-style-type: none"> ▪ Should reporting relationships be changed?
	<ul style="list-style-type: none"> ▪ Should either party be moved? <ul style="list-style-type: none"> ○ If so, who?
	<ul style="list-style-type: none"> ▪ Should anyone be placed on investigative leave? <ul style="list-style-type: none"> ○ If so, who? ○ Will they be paid?
	<ul style="list-style-type: none"> ▪ Has consideration been given to the appearance and function of neutrality?
	<ul style="list-style-type: none"> ▪ Have the possible legal implications of interim measures been considered?
	<ul style="list-style-type: none"> ▪ Have the parties been asked what they think should happen during the investigation?
Timing Issues	
Are there any timing issues that are important to consider?	<ul style="list-style-type: none"> ▪ Has the investigators' availability been determined?
	<ul style="list-style-type: none"> ▪ Are either of the parties on a medical or stress leave? <ul style="list-style-type: none"> ○ If so, have efforts been made to canvass whether they are still willing/able to participate in the investigation while on leave?
	<ul style="list-style-type: none"> ▪ Are there potential witnesses who may not be around when needed? <ul style="list-style-type: none"> ○ Can the investigators meet/speak with them now?
	<ul style="list-style-type: none"> ▪ Are there witnesses who will only be available outside of normal business hours? <ul style="list-style-type: none"> ○ Are the investigators able to meet with these people?
Communication	
Are there individuals within the organization who need to know immediately that a complaint has been received and/or an investigation is being commenced?	<ul style="list-style-type: none"> ▪ Keep confidentiality in mind, and advise only those who need to know, telling them only what they need to know – i.e. only share the identity of the parties and details of the allegations if necessary.
	<ul style="list-style-type: none"> ▪ Also consider the possibility that anyone told at this early stage may be potential witnesses.
	<ul style="list-style-type: none"> • Gather contact information for key people that the investigators may need to interview.

<p>Consider initial meetings with the parties in which the following is communicated:</p>	<ul style="list-style-type: none"> ▪ The identity of the investigator is needed. <ul style="list-style-type: none"> ○ Including their contact information, and ○ Some indication of when the party might expect to hear from the investigators.
	<ul style="list-style-type: none"> ▪ The general process which will be followed. <ul style="list-style-type: none"> ○ Typically, as defined in the policy ▪ The investigators' mandate (optional, particularly if this has not yet been finalized).
	<ul style="list-style-type: none"> ▪ The applicable policies, including providing copies.
	<ul style="list-style-type: none"> ▪ The expectation of confidentiality: <ul style="list-style-type: none"> ○ They should not discuss the complaint, investigation, or subject-matter of the investigation with anyone in the organization, or anyone who may be a potential witness. ○ In certain cases, for example, where there is a heightened risk of a confidentiality breach, consider setting out the possible sanctions for a breach, such as discipline, up to and including termination.
	<ul style="list-style-type: none"> ▪ The parties' right to representation: <ul style="list-style-type: none"> ○ The right to union representation, if any ○ The right to counsel (and who will pay) – usually a right outlined in an applicable policy ○ Any other right to have someone participate in the investigation on the parties' behalf
	<ul style="list-style-type: none"> ▪ Other applicable information, such as: <ul style="list-style-type: none"> ○ Questions about interim measures, health and safety concerns, etc. ○ Information about timing or delays ○ Information about available support, such as an Employee Assistance Plan (EAP)
<p>Method of Disclosure of Allegations to the Respondent</p>	
<p>Recognizing the importance of providing the respondent with notice of the allegations in advance of seeking his or her response, consider:</p>	<ul style="list-style-type: none"> ▪ Who will be communicating the allegations to the respondent, the organization, or the investigators?
	<ul style="list-style-type: none"> ▪ Is the initial complaint document in a form that could be released now to the respondent? Consider: <ul style="list-style-type: none"> ○ Does it contain the specific allegations, as opposed to a more generic statement of complaint or a description of the complainant's experience or emotional state? ○ Does it contain confidential or personal information about the complainant which the respondent does not need to see and/or the complainant would not wish the respondent to see? ○ Does it contain inflammatory or derogatory statements about the respondent? ○ Is the complaint against multiple respondents, such that the disclosure of this document to any particular respondent

	would disclose confidential information about the complaint(s) against the other respondent(s)?
	<ul style="list-style-type: none"> ▪ Has the complainant consented to the release of the document to the respondent?
	<ul style="list-style-type: none"> ▪ If the initial complaint document is not suitable, how will the respondent be advised of the allegations against them? <ul style="list-style-type: none"> ○ Will the complainant be asked to prepare something more suitable for release to the respondent? ○ Will assistance be offered to the complainant to generate something more suitable for release to the respondent? <ul style="list-style-type: none"> ▪ If so, will this be the investigators' responsibility? ▪ In this case, who will communicate to the respondent there is a complaint against them?
Public Relations/Media Strategy	
Is there a potential for media scrutiny, reputational risk or public relations issues?	<ul style="list-style-type: none"> ▪ Is the subject-matter of the complaint and/or the identity of one or both of the parties such that the investigation would attract public and/or media attention if news of it was leaked? <ul style="list-style-type: none"> ○ If so, should internal or external professional resources be engaged to devise a public relations/media strategy?
Specialized Support	
Do the investigators require any special expertise to assist in the investigation?	<ul style="list-style-type: none"> ▪ Is there any specialized support the investigators will need during the investigation, such as: <ul style="list-style-type: none"> ○ IT support ○ Forensic/accounting support ○ Data recovery support ○ Interpreters/translators ○ Access to surveillance or other records to confirm the location of the parties at particular times.
	<ul style="list-style-type: none"> ▪ Is the support available?
	<ul style="list-style-type: none"> ▪ Have the appropriate measures been put in place to protect confidentiality if other people outside of the process will be engaged to provide this support?