

Investigation Basics 101

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Objectives

1. Investigation warranted or not
2. Scope of Investigation
3. Witness
4. Evidence
5. Analyze and review
6. Summary and report

Initial Complaint or Notice of Issues

How do you find out if there is an issue that potentially needs to be investigated?

Written complaint

Verbal complaint

Manager/Supervisor



Investigation warranted or not?

Things to consider:

- 1. Is this a performance issue? Is your supervisor or manager looking to HR to manage employees through an investigation?
- 2. Protected class or status issue? Sexual harassment? Unprofessional conduct?
- 3. Serious violation of organization's policies?

Investigation – Criteria

Investigate promptly

- If you wait, things get worse.
- Problems can become much larger

Is any initial mitigation needed?

- Reassign employee? Time off?
- What does the complainant want? Is it a reasonable request?

SCOPE of INVESTIGATION

Analyze the complaint or issue.

1. What is needed to confirm or refute and issues? Video, email, etc?
2. Who are the witnesses? Anyone else who may have knowledge or information?
3. Record or not record?



Investigator – Choosing the right one

Who should conduct the investigation? Do you need more than 1 investigator?

Will they be impartial and fair?

Credibility issues?

Interrogate vs Investigate?

Are they involved in the situation?





Confidentiality



Can you demand witnesses to not discuss the investigation?

NLRB - has weighed in on this issue. Tread lightly.

- You can ask them to not discuss to help with the integrity of investigation.
- Can be risky to demand confidentiality. May violate employees' rights.
- Limited instruction may be appropriate when witness needs protection or evidence may be destroyed
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- **Sample statement:** This is a confidential interview and will be kept that way, except as required by law. I ask you not to discuss this with your co-workers while the investigation is going on. When employees are talking about the investigation it is difficult to conduct a fair investigation and separate facts from rumors.

Investigation records

Notes:

Date notes, write clearly, and identify who is present and their role. i.e. union representative.

Transcribe quickly or soon after the interview. Keep the originals.

Recording of interview:

Must have the consent of all parties or acknowledgment they are aware of the recording.

May chill witnesses from speaking freely or may give them confidence.

Livescribe Echo pens.



Interviewer Style – Find yours



Does this matter?

Interrogation (law enforcement) vs. Interview to find out what happened.

Have you already concluded you know what happened?

The more formal and rigid, the less likely witnesses are to talk to you.

Do you have the witness feel as relaxed as possible?

Are you reading statements? Does the witness believe you really want to know what happened from their perspective?

Witness 1: Squidward

Statement: "Make me up when I care"



WITNESSES

Who is interviewed:

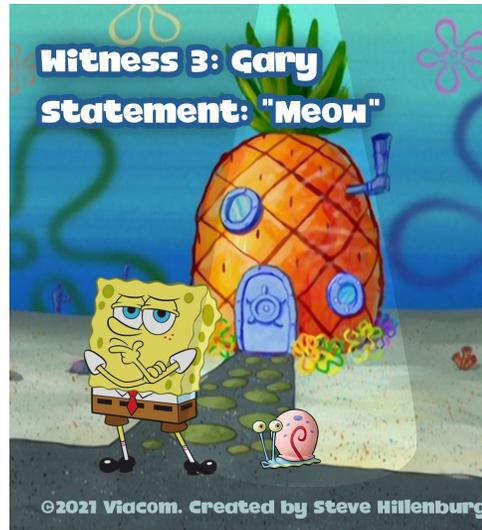
Complainant – always. Even if you have a written complaint.

Accused – always?

Third-party or corroborating witnesses – depends

Witness 3: Gary

Statement: "Meow"



Interview Basics

Order of witness interviews? Does it matter?

The severity of the allegation and scope of the investigation.

Do you have enough information/evidence for a fair and impartial investigation?

Where to conduct interviews? Does it matter?

What you say matters. Do not use phrases that lead the complainant or witnesses that you agree with them or acknowledge that the situation was harassment, discrimination, etc.

Interview of Victim or Complainant

Explain the process and timeline.

How to reach you during the investigation.

Ask open-ended questions. Who, what, where, why, how?

Follow-up questions to clarify.

Who was there, what exactly was said? Specific dates/times.

Help me understand.

Documentation?

What do they want to see happen or the outcome?



Victim or Complainant - continued

Be open to the story. Don't judge or agree with the complainant.

Don't make promises about what will happen or that the investigation will be confidential.

Explain – no retaliation allowed. Bring any new issues to you.

Other considerations:

- Safety concerns for complainant?
- Make sure no changes are made that may appear to punish the complainant. If things were already in the works, consider putting on hold. (transfers, change of duties, etc.)

Interview of Witnesses



Evaluate whether the witness is crucial or important.

Do you need them to add information to help you determine what happened?

Will the witness cause more issues in the workplace?

If 7 people were present and 3 corroborated what happened, do you need to interview the remaining 4?

Interview of Witnesses - continued

Ask open-ended questions. Start out very broad.

Do you recall something that happened last Friday? Then drill down.

Who, what, where, why, how?

Follow-up questions to clarify.

Who was there, what exactly was said? Specific dates/times.

Help me understand.

Documentation?

Interview of Witnesses - Continued

Is anyone else involved?

Anything else you need to know about that you have not asked them.

Discuss confidentiality.

Explain – No retaliation policy.

Interview of Accused or Subject

Explain the process and timeline.

How to reach you during the investigation.

Don't make promises about confidentiality.

Don't make accusations.

Explain general allegations. Not all details. Enough to respond.

Interview of Accused or Subject – cont.

Ask open-ended questions. Who, what, where, why, how?

Follow-up questions to clarify.

Who was there, what exactly was said? Specific dates/times.

Help me understand.

Documentation?

Anything else you need to know about?

Explain – No retaliation policy.

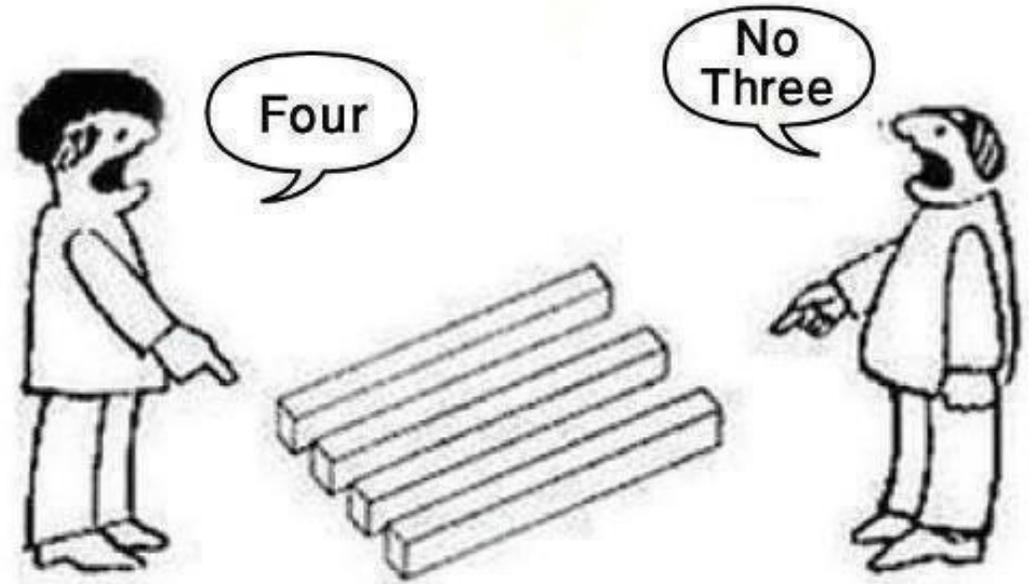
ROLE OF PERCEPTION in investigations

Perceptions are not always consistent with the facts and may or may not be shared by others.
Perceptions are not right or wrong; they just are.

Our perceptions help us to fill in the blanks when information is incomplete; they help us to make sense of our world. Perceptions can also limit our understanding.

Ignoring perceptions or insisting on our version of “the truth” will not further investigation.

It is really confusing!!!



INVESTIGATION REPORT

Does your organization have a specific format? If not, good idea to develop one.

Things to consider including:

Date of complaint, complainant or victim, allegation, Investigator, location, manager

Any background information (why or why not)

Evidence attached

INVESTIGATION REPORT

Witness interviews, including the complainant and accused/subject.

Credibility assessment of witnesses? Is that needed?

Conclusion? What does that look like?

Fair and impartial if you investigate, decide what happened and recommend discipline?

Length of time for investigation matters



Questions?

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