



PROGRAM MATERIALS

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Nuts and Bolts of Workplace Investigations

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The Nuts and Bolts of Workplace Investigations

A Practical Guide to Conducting Prompt, Thorough, Impartial, and Defensible Investigations

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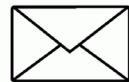
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Program Roadmap



- The Why and When to Investigate
- Choosing an Investigator
- Complaints Overview
- Timeliness
- Defining Scope
- Conducting Interviews and Receiving Evidence
- Weighing Evidence
- Credibility Determinations
- Findings

Why Workplace Investigations Matter More Than Ever

- Increasing Scrutiny
- Sophisticated Complaints
- Generative AI
- Workplace Culture in an Increasingly Polarized Era



The Why and the When; Deciding to Investigate

WHY

- Title VII: Requires employers to take “all steps necessary” to prevent harassment from occurring. 29 CFR Section 1604.11(f)
- SCOTUS: The Faragher-Ellerth Defense
- State Law: California FEHA, New York NYSHRL, Washington WLAD, Illinois IHRA etc.



The Why and the When; Deciding to Investigate



WHEN

- There is a complaint of harassment, discrimination, or retaliation
- There is a complaint where, if true, the actions would violate a law, policy, or workplace expectation
- There would be impact to the workplace if the behavior is not addressed

Who Should Investigate?



- **External v. Internal**
- **Attorney v. Non-Attorney**
- **Considerations**
 - Impartiality
 - Cost
 - Privilege
 - Business and Professions Codes

Complaints

What do complaints look like today?

- Harassment
- Discrimination
- Retaliation
- Whistleblower
- Bullying
- Toxic culture
- Anonymous complaints
- AI-assisted complaints

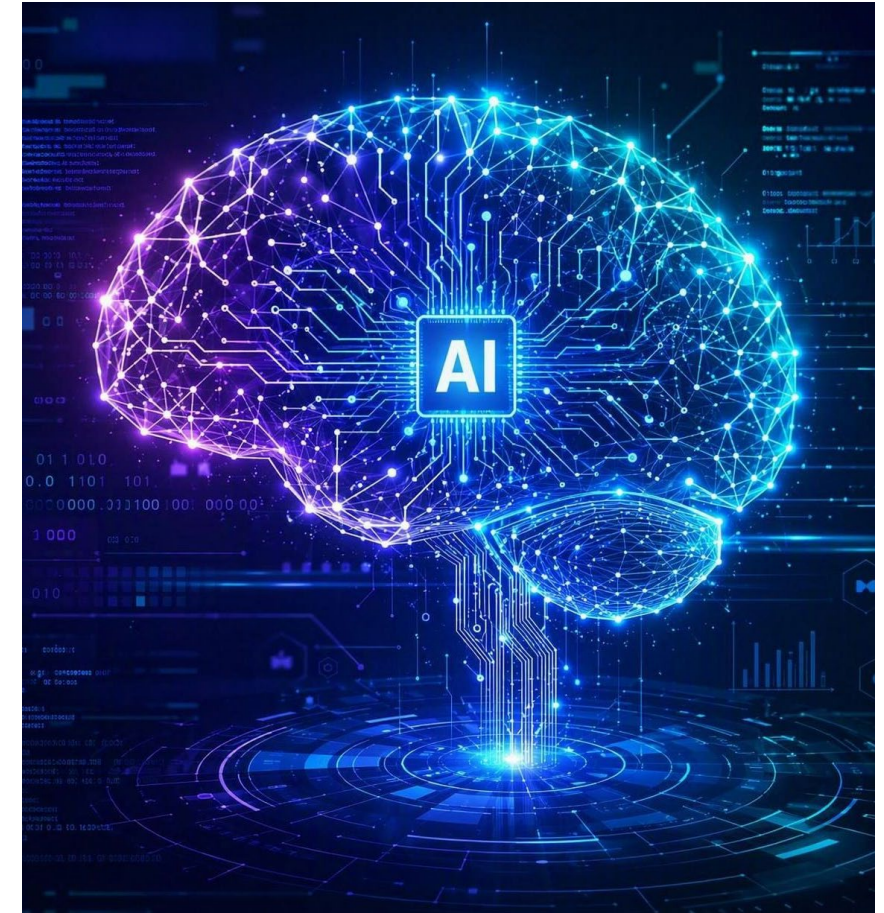
AI – Assisted Complaints

Investigator Pitfalls

- ✘ Assuming a well-written complaint is more credible
- ✘ Giving undue weight to legal buzzwords
- ✘ Mistaking AI-generated framing for evidence
- ✘ Overlooking inconsistencies hidden behind polished language

Best Practices

- ✓ Focus on facts, not formatting
- ✓ Evaluate evidence independently of the complaint's drafting style
- ✓ Separate legal conclusions from factual allegations
- ✓ Probe for the employee's personal knowledge and experiences
- ✓ Apply the same credibility standards in every case



Anonymous Complaints

Common Mistakes

- ✘ Disregarding the complaint because the source is unknown
- ✘ Treating Anonymous reports differently
- ✘ Abandoning an investigation without gathering more information

Best Practices

- ✓ Assess whether the complaint contains sufficient detail
- ✓ Conduct reasonable due diligence to identify the source, when appropriate
- ✓ Maintain confidentiality while seeking additional information
- ✓ Interview witnesses who may have relevant knowledge
- ✓ Continue the investigation even if the complainant cannot be identified



Timeliness

- Investigations must be timely and prompt
- When an employer becomes aware of potential workplace misconduct, the obligation to respond is triggered.
- Failing to act quickly can create the appearance that the employer did not take the complaint seriously and may expose the organization to increased legal and operational risk.

A timely investigation is not necessarily a fast investigation. It is an investigation that moves forward diligently and without unnecessary delay.



Why Scope Matters

- **A well-defined scope:**
 - Keeps the investigation focused and efficient
 - Prevents unnecessary interviews and review
 - Reduces “scope creep”
 - Created a clear road map for findings

The scope should identify the ultimate factual questions the investigator must answer and not simply repeat the allegations.

Drafting Effective Scope Questions

Characteristics of a Good Scope Question

- Neutral and unbiased
- Fact-focused rather than conclusion-focused
- Specific enough to guide the investigation
- Broad enough to capture relevant evidence

Poor:

- ✗ Did the supervisor discriminate against the employee?

Better:

- ✓ Did the supervisor treat the employee differently than similarly situated employees? If so, was the employee's protected status a factor?



Sequence of Interviews

It is always best practice to interview the Complainant first.

Next - There Is No One-Size-Fits-All Approach.

- Sometimes it makes sense to:
 - ✓ Interview witnesses before the respondent
 - ✓ Interview the respondent immediately after the complainant
 - ✓ Re-interview key witnesses later in the process
- The interview sequence should be driven by the facts, available evidence, and investigative strategy.
- **Interview the complainant first whenever possible. From there, let the evidence—not habit—dictate the next steps.**

Collecting Evidence

Best Practices

- ✓ Obtain evidence directly from the source whenever possible
- ✓ Request emails, text messages, screenshots, documents, photographs, and recordings
- ✓ Preserve metadata and original versions when available
- ✓ Follow up on references to additional evidence



Authentication Matters

- Who created the document?
- When was it created?
- How was it obtained?
- Is this a complete copy?
- Has it been altered in any way?

Collecting Evidence



Common Mistake

✘ Accepting screenshots or excerpts without asking for the original source material.

Evidence is most valuable when you understand where it came from and can establish its authenticity.

Confidentiality, Retaliation, and Interview Logistics



Interview Environment

- The setting should allow for:
 - ✓ Privacy and confidentiality
 - ✓ Freedom from interruptions
 - ✓ Reliable technology for remote interviews
 - ✓ Video capability when appropriate

Consider:

- In-person versus remote interviews
- Witness comfort and accessibility
- Security of virtual meeting platforms

Confidentiality, Retaliation, and Interview Logistics



Confidentiality Admonitions

At the outset of each interview:

- Explain that information should be shared only as necessary
- Avoid promises of absolute confidentiality
- Explain that information may need to be disclosed as part of the investigation

Caveat:

- NLRB: Remember that you cannot restrict employee's rights to discuss the conditions of their workplace.

Confidentiality, Retaliation, and Interview Logistics



Retaliation Admonitions

Remind participants:

- Retaliation is prohibited
- Concerns about retaliation should be reported immediately
- Participation in the investigation should not result in adverse treatment

The interview begins before the first question is asked. The setting, expectations, and admonitions help establish trust and preserve the integrity of the process.

Conducting Interviews

Practice the funnel method!

Starts with broad open-ended inquiries and gradually narrows down to specifics and targeted facts

Resist the temptation to jump straight to the evidence. Let witnesses tell their story first, then use increasingly focused questions to develop the facts and test the evidence.



The Importance of Documenting Interviews

- Investigator Notes (Typed or Handwritten)
- Audio Recordings
- AI-Generated Transcripts

Remember:

Good interviews are conversational, not interrogational. Ask open-ended questions first, document carefully, and preserve a reliable record of what was said.

When is Enough,
Enough?

Knowing When to Close the Investigation: *The Goal Is Reasonable Thoroughness*

Investigators are expected to conduct a **fair, thorough, and impartial investigation**—not an endless one.

Ask Yourself:

- ✓ Have all material witnesses been interviewed?
- ✓ Has all reasonably available evidence been collected?
- ✓ Have key factual disputes been explored?
- ✓ Is additional investigation likely to produce meaningful new information?



When is Enough, Enough?

Avoid the Trap of Perfection

- ✘ Chasing every tangential lead
- ✘ Conducting interviews that are cumulative or redundant
- ✘ Delaying findings in search of certainty

An investigation is complete when the investigator has sufficient information to make reliable findings under the applicable standard of proof—not when every conceivable question has been answered.

At some point, additional investigation produces diminishing returns. The investigator's job is to gather enough evidence to reach a well-supported conclusion, not to eliminate all uncertainty.



Preponderance of the Evidence

The Standard Used in Most Workplace Investigations

- **What Does It Mean?**
 - A finding is substantiated when the evidence shows that it is **more likely than not** that the alleged conduct occurred.
- **Think of it as:**
 - 50% + a feather
 - Just over the tipping point
 - More probable than not



Preponderance of the Evidence

What It Is Not

- ✘ Beyond a reasonable doubt (criminal standard)
- ✘ Clear and convincing evidence (higher civil standard)
- ✘ Absolute certainty
- ✘ Proof beyond all dispute

Investigators are rarely asked to determine what happened with complete certainty. They are asked to determine what is most likely to have happened based on the available evidence.

Preponderance of the Evidence

Applying the Standard

- **Ask yourself:**
 - What evidence supports the allegation?
 - What evidence contradicts it?
 - How does the evidence fit together as a whole?
 - Which version of events is more likely than not to be true?

Preponderance of the Evidence

Common Mistake: Concluding that an allegation cannot be substantiated simply because there is conflicting evidence.

Conflicting evidence is common. The investigator's responsibility is to weigh the evidence and determine which account is more likely than not.

The preponderance standard does not require certainty. It requires judgment. After considering all of the evidence, the investigator must determine which version of events is more likely true than not true.

Credibility Determinations

EEOC Guidance

If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred.



Credibility Factors

- **Inherent plausibility**
- **Motive to lie**
- **Corroboration**
- **Witnesses' ability to perceive and recall**
- **History of honesty/dishonesty**
- **Inconsistent statements**
- **Manner of testimony**
- **Demeanor**



Credibility Factors



Inherent Plausibility

- Does the account make sense?
- Is it logical and consistent with the surrounding facts?
- Is the version of events believable on its face?

Motive or Bias

- Does the witness have a reason to misrepresent events?
- Are there personal, professional, financial, or relational interests that may influence the testimony?

Credibility Factors



Corroboration

- Is the account supported by documents, emails, text messages, other witnesses, or other evidence?
- Independent corroboration often strengthens reliability.

Consistency

- Has the witness provided a consistent account over time?
- Are there material inconsistencies within the witness's own statements or when compared to other evidence?

Credibility is rarely determined by a single factor. Investigators should evaluate all relevant credibility factors together and consider the totality of the evidence

Credibility Factor: Demeanor



- **Demeanor should be used with caution**
- A witness's demeanor—such as eye contact, confidence, nervousness, emotion, or body language—can be influenced by many factors unrelated to truthfulness.
- **People may appear:**
 - Nervous when telling the truth
 - Calm when being deceptive
 - Emotional due to stress, trauma, or personality
 - Reserved because of culture, communication style, or neurodiversity

Credibility Factor: Demeanor



Better Indicators of Reliability:

- ✓ Corroboration
- ✓ Consistency
- ✓ Inherent plausibility
- ✓ Motive or bias
- ✓ Documentary and electronic evidence

The most credible witness is not necessarily the most confident, articulate, or emotional witness. Investigators should place far greater weight on what the evidence shows than on how a witness appears during an interview.

Findings

Why Findings Matter

The findings are the most important part of the investigation because they explain how the investigator moved from evidence to conclusion.



A strong finding should:

- Answer the scope question directly
- Identify the applicable standard
- Explain what evidence was considered
- Address disputed facts
- Show how credibility was assessed
- Explain why the evidence supports the conclusion

Findings



Avoid One-Sided Reasoning

- An investigator is not an advocate for any party. Their responsibility is to fairly evaluate the evidence.
- So, a finding should not read like an advocate's brief. It should show that the investigator fairly considered the record as a whole.

Tips:

- ✓ Acknowledge evidence that cuts against your conclusion
- ✓ Explain why certain evidence was more persuasive
- ✓ Address competing explanations and theories
- ✓ Demonstrate that both sides were fully considered
- ✓ Use neutral, objective language

After Investigation Next Steps



Communicating the outcome to the parties

- Best practice is not to disseminate the report but to read out the findings
- Could provide an executive summary
- Remember to protect confidentiality – while also communicating the outcome

Investigation Next Steps



The Investigation Is Not the End

- Even after findings are issued, employers should continue to monitor the work environment to ensure that workplace issues do not reemerge and that employees can move forward productively.
- **Watch for Retaliation**
 - ✓ Monitor for adverse treatment of participants
 - ✓ Follow up on concerns raised after the investigation
 - ✓ Reinforce anti-retaliation expectations with managers and employees
 - ✓ Address concerns promptly if they arise

Investigation Next Steps

Repair Workplace Relationships

- Depending on the circumstances, consider:
 - Team-building initiatives
 - Communication training
 - Coaching for leaders
 - Mediation or facilitated discussions
 - Clarification of workplace expectations



Key Resources

Key Resources for Workplace Investigators

State Specific:

California Civil Rights Department (CRD), *Workplace Harassment Prevention Guide for California Employers (2025)*

Equal Employment Opportunity Commission (EEOC), *Enforcement Guidance on Harassment in the Workplace (2024)**

Association of Workplace Investigators (AWI), *Guiding Principles for Conducting Workplace Investigations (2024)*

**The EEOC's 2024 Harassment Guidance was rescinded by the Commission in January 2026. Investigators should continue to monitor EEOC developments and applicable federal and state law.*

Let's talk.

Questions?

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