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### They did what? Conducting effective workplace investigations

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Workplace investigations can often be a business's and supervisor's worst nightmare. A formal workplace complaint from a government agency that needs investigation can cause many supervisors, compliance professionals, and human resources professionals to panic. No one wants to be in this position. Fortunately, there are a number of things that can be done before an investigation, during an investigation, and after an investigation to minimize the risk to the company even when you first discover the allegations of a discrimination charge from the Equal Employment Opportunity Commission (EEOC).

### **Before an investigation or incident occurs**

Before an incident occurs, there are a number of things that can be done by a company to ensure that it is properly prepared to respond. Here are some items for employers to consider:

1. Make sure that your employee handbook contains all the workplace rules and is up to date.
2. Ensure that employee job descriptions are up to date and that they contain all the necessary duties of each employee. Many companies use catch-all language to capture duties that are only sometimes done by the employee.
3. Conduct training for managers and supervisors regularly on various employment policies (meal and rest breaks, disability and religious accommodation requests, complaint procedures, the basics of investigating complaints, bystander training) and techniques to respond to employee problems and manage employees.
4. Conduct bystander training for employees to help employees recognize the signs of sexual harassment.
5. Ensure employee records are up to date and employees are issued discipline notices when there is problematic behavior.

By ensuring that their policies and practices are up to date, companies can greatly reduce the likelihood of problematic behavior.

### **What to do when a complaint or problem is discovered**

The first thing a company must do when it receives a complaint is to assess whether it needs to be investigated and what, if any, action must be immediately taken. Every allegation is different. Many problems require the company to take immediate action. For example, an allegation against the CEO of sexual harassment may require the company to suspend the CEO while the company conducts the investigation and prepares a statement to the media. Other incidents might be resolved without taking immediate action to remove an employee from the

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situation. Here are some of the initial items that every investigator needs to consider the moment that a problem occurs:

1. Does the accused employee need to be suspended while the investigation is conducted?
2. Does the company need to make a public relations statement related to the investigation?
3. Should inside or outside counsel be used to investigate the problem?
4. Who witnessed the event? You may need to briefly meet with possible witnesses to set a time for a further interview, gather information about where the incident occurred (e.g., on Snapchat or in the breakroom around 11:30 a.m.), and ask whether any other witnesses were present.
5. You may need to review any statements that were taken immediately following the incident or decide to get a written statement following an incident.
6. There may be a report from a manager regarding the incident. If there is not a report, then you may wish to have the manager create one.
7. Consider whether you will need a special investigator. Does it involve computer hacking, or will you need a forensic accountant to determine the extent of the problem? Was a trade secret or confidential information stolen? Do you need to hire an attorney immediately to prepare to file or defend an eventual lawsuit?
8. Is there a need to report the incident to a government entity or the police? In the case of workplace accidents, there may be a duty to report the matter to the Occupational Safety and Health Administration. If child pornography is found on a company laptop, a theft occurred, or there was another violation of law, then you may need to file a police report.

All companies can benefit from having a basic investigation plan that contains relevant contact information and next steps to follow once an investigation is needed.

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