The Duties of Employers and Employees

- The duty to maintain a safe workplace leads to the duty to investigate.
- Negligent hiring and retention of employees.
- The duty of loyalty and fair dealing.
- The duty of an employee to cooperate with an investigation.
- The employee’s rights to privacy and to work free from harassment.
- The right to have your reputation protected.
Legal standards in investigations

- A reasonable, fair, thorough, and prompt investigation, and reached reasonable conclusions usually protect employers against claims.
- The qualified privilege to disclose matters relating to the investigation.
- The investigation process must be consistent throughout the organization.
- An investigation cannot begin without probable cause.
- A finding must be based on a preponderance of the evidence.
- Right of employee to know results and review investigation report.
- The attorney-client privilege doesn’t apply.

Legal standards in interviews

- Employees cannot refuse to cooperate and be interviewed.
- Do employees have Miranda rights?
- Employees have a moral right to due process.
- The right to be confronted with the proof and the opportunity to respond.
- The prohibition against retaliation.
- Confidentiality in the interview.
- The right to counsel.
- Proper instructions protect the evidence.
Evidence collection in investigations

- You must prove each element of the allegation using proper evidence.
- Proper evidence is relevant.
- Proper evidence is material.
- Proper evidence is competent.
- Proper evidence is authentic.
- Proper evidence can be direct or circumstantial.
- You can use hearsay evidence – statements against interest and business records.

Legal claims when things go wrong

- Defamation of an employee.
- Retaliation for cooperating with the investigation.
- False imprisonment in interviews.
- Intentional infliction of emotional distress.
- Assault and battery.
- Invasion of privacy.
- Malicious prosecution.
Contact information

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