

SCCE Internal Investigations Workshop San Diego, California



Introductory Concepts for Investigations

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A Good Investigator Knows. . .

- Your ultimate goal is to learn the truth.
- You are not the company's morality police.
- Your investigation can be undermined if your actions can be undermined.
- You are accountable to the company for every part of your investigation.
- Your investigation may affect someone's career, their reputation and even their freedom.
- If you conduct a poor investigation, you may create legal liability for your organization, hurt its reputation, and undermine a "speak up" culture.

A Good Investigator Knows. . .

- Your findings are based only on the evidence and not what you believe happened.
- A substantiated allegation is likely the result of a perfect storm of factors.
- You should identify root causes of substantiated misconduct to improve business operations.
- A bad investigation is worse than no investigation at all.

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Elements of a Workplace Investigation

- A collegial fact-finding that arrives at a rational conclusion.
- Thorough interviewing of the Reporter, the Subject, and fact witnesses with relevant information.
- Gathering and analysis of relevant evidence.
- Comparing the evidence to the applicable standard.
- Assessing the credibility of each investigation participant and the strength of his / her evidence.
- Reaching a legally defensible determination of whether the improper conduct actually occurred.

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Ethics of Investigation

- Your tactics must be reasonable and legitimate.
- You are competent to conduct the investigation.
- You already have a factual basis to warrant an investigation.
- You consistently follow the regular investigation process.
- You give procedural fairness to all investigation participants.
- Your findings are supported by the evidence you gather.
- Your investigation files are retained according to company policy.

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Confidentiality in the Investigation

- You may not promise confidentiality but not secrecy.
- You may use gathered information only for investigation purposes.
- You must keep the existence of the investigation confidential.
- You may not guarantee anonymity to Reporters and interviewees.
- You must keep the identity of the Reporter, Subject and interviewees confidential.
- You must protect the confidentiality of any documents you created during the investigation.

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Procedural Fairness

- An investigation decision is fair, reasonable and supported by the evidence.
- An investigator is independent and gives participants a fair hearing.
- Being unbiased is a crucial aspect of procedural fairness. The investigator is impartial and open-minded.
- Justice should not only be done but should be seen to be done.
- An investigator may not have a connection to the participants or a stake in the issues under investigation.
- The roles of decision-maker and investigator are undertaken by different people.