

## **Guide to Conducting Workplace Investigations**

Many companies, in addition to codes of ethics and conduct, have found it necessary to create investigation guidelines to assist employees from various corporate backgrounds – law, human resources, audit, finance, etc. – to conduct workplace investigations.

In the current business environment, how companies investigate potential misconduct can affect that company's reputation almost as much as the alleged conduct itself. Consistent principles and procedures must be followed whenever allegations of misconduct are investigated.

Few people in a corporation are trained investigators. Even if you have business experience conducting interviews and obtaining information from employees and others, you may not have actively participated in many workplace investigations. The techniques and goals of these investigations are often different.

This guide gives you information and practical advice on how to handle an investigation effectively. It is true that every workplace investigation will have unique issues, circumstances, dimensions, challenges and outcomes. But an investigation can cause serious harm if it is not conducted properly.

Following the guide ensures that each of our investigations is conducted in a professionally consistent manner and will yield the best results. These guidelines should be viewed as the umbrella standard for a workplace investigation within the company.

### ***The Reasons for an Internal Investigation***

A workplace investigation is conducted when there is credible information there may have been significant wrongdoing, misconduct or ethical lapses. An workplace investigation may also be appropriate even if there have not been specific allegations against an employee or department, but there have been allegations against others, and the investigation is intended to exclude the possibility that wrongdoing occurred within the company.

An effective investigation process protects the interests of the Company and its shareholders by (i) preventing and detecting misconduct and violations; (ii) ensuring that corporate activities comply with applicable laws and regulations; and (iii) identifying areas of improvement for internal business operations. Therefore, an investigation is not conducted simply to uncover sufficient facts to justify a result or to just record somewhere that the incident occurred.

An investigation is, in the first instance, fact-finding. Investigations determine, fully and credibly, what happened with respect to a particular incident – whether suspected conduct did or did not take place; what the circumstances were; who was involved; whether a violation of law or company policy occurred. An investigation must be perceived as having been thorough, independent and analytical.

## *The Request from Compliance*

The Company's Corporate Compliance Department ("Compliance") has primary responsibility to ensure that incidents of actual or suspected violations of the Code of Business Conduct (the "Code") are properly investigated. The investigation usually begins with a report of a possible Code violation to the Company Compliance and Ethics Line. Sometimes, a possible Code violation may be reported to us by another business unit.

Colleagues in key internal departments may learn of an incident when they are contacted by The Company associates or colleagues in the field. Some of these incidents need to be reported to Compliance. For specific guidelines for your department regarding the incidents to be reported to Compliance, please consult the attachments to this guide.

Once received by Compliance, the matter is reviewed by the Investigations Manager. The Investigations Manager is responsible for developing the investigation process and monitoring all workplace investigations, regardless of the internal department actually conducting the investigation.

The Investigations Manager makes a threshold determination whether a formal investigation is needed. Some problems reported to Compliance may be resolved quickly and informally without an investigation. If no investigation is warranted, the reporter is contacted and the matter is referred to colleagues in other business units. For example, reports received by the hotline are routinely referred to Human Resources when they involve personnel-management issues.

If warranted, an investigation of the report is opened, and the relevant corporate management is informed. Until the report has been proven or a suspicion validated, however, there is no confirmation of wrongdoing.

The Investigations Manager then reviews the report and may gather some preliminary information for the investigative plan. The investigative plan identifies and lists the questions that must be answered in order to determine whether the report can be substantiated. The plan will also identify the likely sources of information needed to answer those questions.

The investigation plan also sets the scope of the investigation. This is a critical component and corresponds to the severity of the matter under investigation. The scope also focuses on the business processes, company practices and other business-related issues. Personal interviews and document reviews are then generally limited to matters within the scope of the investigation.

### **I. Basic Principles**

The Company's Board of Directors expects us to conduct a prompt, effective and thorough investigation. Without a reliable understanding of the facts, we cannot advise Company management of the consequences that may be expected to flow from the

matter under investigation. Each investigator should observe each of these basic principles:

### ***Confidentiality***

Every aspect of an investigation should be kept confidential. Maintaining confidentiality is critical to the integrity of an investigation. There can be serious consequences for failing to ensure that confidentiality is maintained. These consequences include

- Damage to someone's reputation if others learn that the allegations were made.
- The success of the investigation can be undermined if others know of the investigation.
- The subject of the investigation could try to cover-up any misconduct if they learn they are being investigated.
- The company may face liability or negative publicity.
- The company's ability to defend any legal action associated with the matter could be compromised.
- The disclosure of the information could cause retaliatory action.

The need for confidentiality begins when the report is received. The fact that an investigation is underway, its subject matter, the processes followed, the materials gathered and, especially, the results of the investigation must always be treated confidentially. This includes being careful about the using the details of the investigation at a later time if the details could identify the person or the business department involved.

### ***Proper Mindset***

Doubt is one of the primary attributes of any investigator. Investigators must be appropriately skeptical. They should not assume that management or employees are honest and telling the whole truth until the facts are gathered and the inquiries are complete. They must have sufficient imagination to develop sufficient theories against which to compare factual evidence as it develops. They must persevere until the anomalies are resolved and the fact pattern is thoroughly understood. Finally, they must have patience to find the smallest detail that less-experienced people may overlook but that can provide that vital clue or inconsistency. Investigators discover the truth as a result of their ability to inquire and learn from that inquiry.

### ***Professionalism***

The essence of professionalism is that the investigators conduct the investigation with integrity, fairness and diligence. How the investigation is conducted reflects the professionalism of the company. Often the integrity of an investigation is judged by the reputation of the investigators. The way you conduct an interview, for example, sets the perception that you and the company take the investigation seriously, that you mean what you say, and that you will do what you say you will.

Acting with professionalism means treating everyone involved with respect. It also means that you ask for help when you need it. It is not a failure of professionalism to admit that you need guidance or other assistance to complete your investigation.

### ***Independence***

Both investigators and decision makers should protect the company and those who work for it. Investigators must be free from actual or apparent bias or conflict of interest. Consideration must be given to whether an investigator's judgment may be affected or criticized by previous biases or political considerations, whether real or not. For example, an in-house investigator should not investigate the conduct of his or her superiors. Also, in-house investigators who witnessed the underlying conduct should not participate in the workplace investigation.

Independence means that everyone gets a fair chance, and that all investigation subjects are each investigated in the same manner, with the same professional, impartial, objective treatment.

### ***Competence***

The quality of an investigation also depends on the competence of the investigators. The ability to investigate and interview effectively is an acquired skill. Investigators must have the experience and the expertise to conduct a credible investigation. Investigators must understand how to interview witnesses, manage documents and other records, and to maintain any applicable privileges to the extent possible. Investigators should also be fully informed about company policies, procedures and company history. Investigators must know the management controls and strategies employed by the relevant business unit. Investigators must be able to contribute to the discussion of risks to the business, highlighting potential likelihood or severity of risk areas.

The investigative team must also be mindful of the various legal and business implications of the investigation and the techniques used to gather evidence relevant to the allegations. Structuring an interview to obtain the most information possible, either through careful questioning or through exploiting the weaknesses in a witness' story requires substantial preparation and analysis of all available evidence. The company must consider whether the circumstances of the interview and the backgrounds of the witnesses in selecting the interviewer.

### ***Objectivity and Impartiality***

Throughout our lives, we develop our own set of values. These values influence the way we live and the decisions we make. These values are subjective. They are shaped in part by gender, by education, by race, by intellectual capacity, and by personal experience. But these have nothing to do with the reported conduct in an investigation which must be viewed objectively. All information must be reviewed and analyzed using the same standards, and the findings in an investigation should be based on the facts, not an opinion filtered through the investigator's personal value system. A good investigator always understands and factors in his or her own natural biases.

## ***Preventing Retaliation***

Those who report possible or actual misconduct and those who cooperate in an investigation must be protected from retaliation. An employee will only provide information to us if they believe that they will not be penalized for doing so. You need to be alert to signs of retaliation. It can occur at any time, not only after an incident is reported or an investigation is started.

## ***Timeliness***

Each investigation is unique in some way. There are varying levels of complexity and time requirements. But each investigation needs to be done promptly. Timeliness is certainly part of professionalism, but it is important for other reasons:

- Innocent people should be cleared as soon as possible.
- Corrective action is generally more effective when taken sooner.
- Continuing misconduct must be stopped as quickly as possible.

## ***Best Practices***

Investigating an allegation is equal parts of art and science. The techniques needed to investigate allegations of misconduct competently vary. However, a good investigation begins by following each of these practices:

- You must be fair and objective. Everyone involved in an investigation deserves to be treated with respect and dignity. Under typical circumstances, the subject will receive reasonable notice of the report and be offered a real opportunity to respond.
- Words have special meanings. The person who brings a matter to our attention is a “reporter.” The report is not a complaint or claim. If the report is made regarding someone, that person is a “subject” of the investigation, not a target. Using proper terminology reinforces your role as a business-oriented truth gatherer.
- A common investigator error is to pre-judge the outcome of an investigation before all the witnesses have been interviewed and all the relevant documents have been reviewed. Resist the temptation to jump to conclusions. It could cloud your judgment. Until the report has been proven or a suspicion validated, there is no confirmation of wrongdoing. Nor should a report be dismissed simply based on your opinion of the source. You should keep an open mind to other possible explanations or scenarios.
- You should be sensitive to any actual or perceived conflicts of interest that might arise. Investigations must avoid even the appearance of bias or partiality to a particular person or result. If you believe that an actual or perceived conflict exists – such as if you know the people involved in some way that might compromise his objectivity or you have some interest in the

- Keep the interviews serious and business-like. you should remain calm and in control throughout the interview. An interview is no place for joking, sarcasm or threats.
- A good investigator never stoops to undignified tactics. At times, you may need to be aggressive or tenacious, but never insulting or demeaning. There are times in an interview when you may not be treated politely. Despite the hurt and angry feelings such conduct may evoke, you cannot lower yourself to that level. If you become angry, insulted or offended during an interview, you give up control of the interview.
- You should never mislead a witness. This will result in employees distrusting the entire process – exactly the opposite atmosphere we are trying to create.
- You should not tell the witness what other witnesses had to say. You do not want the witness to conform his or her statements to the statements of others.
- You should not try to impress the witness. Your job is to obtain information, not give it out. Similarly, you should not reveal what you know about the relevant facts. If you do, you will also tell them what you do not know.
- You should not expect an admission in an interview. The investigation should focus instead on eliciting as much relevant information as possible.
- You should not discuss your opinions or conclusions. You should keep the witness guessing as to how much you actually know.
- You should interview only one person at a time, not groups of people at the same time. Group dynamics and peer pressure may distort or suppress responses.
- You should not tape-record the interview. Recording may have a chilling effect on the person being interviewed. While a taped account may maximize accuracy, the better approach is a more conversational format with one or two notetakers present. Thereafter, the interview notes can be reviewed and cross-checked to have an accurate account of the interview.
- The interview approach should be to facilitate a candid discussion. You should consider the comfort of the witness. You should conduct the interview occur at a place where the witness is comfortable and most likely to be forthcoming with information. You may consider whether an on-site interview may be inhibiting.
- Sometimes you will conduct the interview by telephone. If the person being interviewed puts you on hold, you should note the times. It may be related to a call the witness makes to another person while you are waiting.
- You must also protect the confidentiality of the investigation. Not every report is substantiated. Some investigations are closed without the need to discipline anyone involved. However, allegations of misconduct, even if later found to be groundless, can still damage someone's reputation. You should not disclose the allegations or the existence of an investigation to anyone who does not need to know. Curiosity by others, including executive management, is not a basis for sharing information about an investigation. The inadvertent disclosure of information could lead to the subject employee bringing claims for defamation or infliction of emotional distress.

- When considering who should be interviewed, please remember that an interview will result in the witness learning that there is an issue or concern relating to the facts discussed in the interview. You should impress upon them the need for confidentiality.
- Documents should be safeguarded against inadvertent disclosure. You should keep them in a secure place.
- You should make the inquiries promptly, but take the time needed to exercise appropriate diligence. You should make sure the inquiries are made timely to ensure that appropriate documents and e-mails are preserved, and that all steps are taken to stop continuing or imminent noncompliance.
- Every interview should identify, to the extent possible, the witness' personal biases and the basis of their knowledge of the operative facts. Each witness has some bias, and that bias is not fatal to the witness' recollection of facts. However, the interview must identify whether there is some personal feelings – animosity, friendship, anger, fear, etc. – which may color the witness's perceptions.
- Those participating in investigations should take all steps necessary to protect whistleblowers and those who cooperate in the investigation. You should avoid disclosing to the witness the source of the report. Any report of retaliation that emerges during the investigation should be treated as an additional report of possible misconduct and reported to the Investigations Counsel immediately.
- When making inquiries, you should consider the broader implications of what you have discovered for the affected business unit or the company as a whole. In addition to making recommendations to management about what, if any, action should be taken with regard to the person involved, you should recommend appropriate changes to policies, procedures, training, monitoring, audits, or other steps to prevent a recurrence. The investigation should be used as an opportunity to improve the business.

### ***Business Goals of the Investigation***

Properly conducted investigations improve the business, either by identifying areas of unacceptable business risk or flawed business operations which expose the company needlessly. you should have a clear idea from the outset about what the purposes of the investigation are and what the goals to be achieved are. The goals could be any of the following:

- Minimizing business risk.
- Identifying weaknesses in business operations.
- Removing certain individuals from the company.
- Recovering company assets that were lost because of the misconduct.
- Obtaining the criminal prosecution of those involved.
- Protecting the company's public image and reputation.
- Preparing for anticipated civil or criminal litigation involving the company.

Understanding your goals ensures that the investigation stays focused.

## II. The Interview Process

### *Preparing for your Investigative Interview*

Before you start asking questions, you need a plan. Without a plan, your inquiries will be ineffective. A poorly planned or ineffective investigation may actually be worse than no investigation at all.

Prepare an outline before the interview. What information does the witness have that you need? Careful planning will usually eliminate the need to re-interview people. A list of questions prepared before conducting an interview is a good basis for the interview. However, the list should serve only as a guide to ensure that all questions are asked. Please do not use an interview script. Remain flexible and attuned to what the witness says so that strategy can be changed if necessary.

Generally, you should inform a witness' immediate supervisor of the investigation and your intention to interview the witness. Ask the supervisor to be vigilant for further problems, retaliation or other reactions which may affect the situation.

### *The Difference between Interviews and Interrogations*

But please remember that an interview is not an interrogation. The difference between the two is generally determined by the willingness of the person from whom you are to gain information. Interviews are generally taken with willing witnesses, those who are ready to tell you whatever they need to know. Simply put, the individual is willing to cooperate, and you need only to ask the questions for which they want answers.

On the other hand, the witness may be reluctant to provide the needed information, or to cooperate. In these situations, you have a two-step task: first, to make the subject willing to cooperate with the questioning, and secondly, to interview him. This is the challenge to you. There are a number of ways you can use to get a reluctant witness to cooperate:

- Ask general questions.
- Explain the advantages of cooperation.
- Downplay the disadvantages of non-cooperation.
- Play on their conscience.
- Speak their language and empathize.
- Give them a chance to explain.



Whatever the methods, the basic need for you is to develop a rapport with the witness. This creates a connection between you, and it then becomes possible to create a change in the behavior of the witness. The dynamics of rapport constitute the foundation of the inquiry-persuasion process. It allows you to enter the world of the witness.

### ***Meeting the Reporter***

You want the reporter to give you a complete account of the facts relating to the report. Please deal with the reporter in such a way that makes the reporter feel that he did the right thing by making the report.

Generally, someone interviews the reporter to gather the operative facts fully and in more detail than the initial report. When conducting this interview, you should:

- Determine who, what, where, when, why and how.
- Ask the reporter with whom do they think you should talk.
- Ask whom the reporter has spoken to about the issue.
- Ask what steps the reporter has taken to resolve or correct the issue.
- Ask whether the issue has affected the reporter's job in any way.
- Explore any surrounding circumstances, such as the relationship between the reporter and the subject, possible motives or bias.
  - Request any relevant documents.
- Get as much detailed information as possible. A detailed first discussion helps to prepare a good, efficient investigation plan and reduces the number of times you may need to contact the reporter for more information.
- Not express opinions about the alleged conduct, and avoid opinions or comments about the character or ability of the others involved.
- Advise the reporter not to discuss the matter with others within the company except those with a need to know.
- Reassure the reporter that the company takes these reports seriously and will determine whether an investigation is needed. You should make clear that no final conclusion will be reached until the investigation has been completed.
- If the reporter asks whether he will receive a copy of a final report of the investigation, the reporter should be informed that although a final report will be prepared, they will not receive a copy. Similarly, no specific, detailed report will be made to the reporter on management's response to the allegation.
- Advise the reporter to immediately report any actual or perceived retaliation for making the report.

Anonymous reports, however, should not be discounted unfairly. An anonymous report may be malicious or it may be valid and accurate. Remember that most employees do not trust management to keep their names confidential. Most people also do not want to be identified as the person responsible for bringing the matter to the

attention of management. The detail provided in the anonymous report, or the lack of it, may either validate or invalidate the report.

Whether anonymous or not, please keep some pointers in mind. First, one should consider the source of the report. Some reporters are simply more credible than others. No reporter's allegations should be rejected out of hand, although issues of bias or self-interest must also be considered.

Second, consider the substance of the report. Is it an employee-specific allegation, such as a payroll issue, that does not have systemic implications to the business? Or does it appear to be a process failure that impacts a significant business practice issue? Is there a possible legal or criminal violation? Is it a violation of shared values? The substance of the report is a key factor in determining how we should allocate resources in the investigation.

Third, determine whether there is sufficient information to determine if the allegations should be investigated. Additional inquiries should be made if additional facts are needed, the person raising the issue cannot supply the relevant facts, or there is a need to review documents.

Fourth, consider the credibility of the accusation. Have we received complaints like this before? Has this reporter made accusations in the past that demonstrate a motive other than to redress the matter? Does the reporter support the allegations with specific facts that show personal knowledge or furnish documents proving his or her claims?

### ***The Personal Interview***

While documents may give you the clearest record of key events, the most revealing information comes from employees. The pivotal element of almost every workplace investigation is the employee interview.

Employees are sources of tremendous information. When they cooperate, they can explain relevant facts and interpret relevant documents. They can give insights into management styles and corporate cultures that put specific employee conduct into context.

### ***Whom to Interview***

Investigators generally interview every person who has possible knowledge of relevant facts. These would include, therefore, some or all of the following people:

- The reporter (if identified).
- The subject of the investigation.
- Anyone who observed a relevant incident.
- Other witnesses with relevant information, whether identified by the complaining employee or the subject.
- Authors of relevant documents.
- The supervisor of the subject.

- People whom the reporter has asked you to interview.
- People whom the subject has asked you to interview.

Interviews should focus on those with first-hand knowledge of the situation. you should resist the temptation to interview as many people as possible. you must keep the scope of the investigation as limited as possible.

### *Order of Interviews*

Once you know who you want to interview, you then have to decide in what order to do it. Witnesses should then be interviewed in a logical fashion from the least likely to the most likely to be involved. Interviews can

As a general rule, documents should be examined before interviews begin. This will give you an understanding of the potential evidentiary value of the investigation, as well as to protect the security of documents. It will also allow you to understand the nature of the matters at issue, to identify key players, and to plan for interviews.

Interviews from witnesses to corroborate facts should be done after the neutral third-party witnesses. These witnesses may be cooperative or uncooperative. The focus of the interview should be to determine whether the witness observed the incidents in question, but do not limit the inquiry to only those incidents described by the complaining employee or the alleged offender. You should find out how the witness has been affected by observation of the incidents, and what he has done about it.

Those suspected of complicity should be interviewed next, from the least culpable to the most culpable. If appropriate, law enforcement could be contacted and involved in the process.

Generally, the subject of the investigation is interviewed last. There will be a natural tendency and irresistible impulse to confront and/or suspend those suspected of misconduct. However, this must be balanced against the extent to which critical fact-finding will be impeded at an early stage of the investigation. Pre-confrontation investigation will frequently uncover important facts reflecting the nature and extent of the misconduct, allowing the company to assess the harm. Facts which directly or circumstantially implicate the investigation subject may also be uncovered. This will enhance the likelihood that the later confrontation will be successful.

Even if it is believed that the subject will admit wrongdoing at the interview, an interview is still necessary. You should inform the subject individual's immediate supervisor of the report and your intention to interview the individual, requesting that the supervisor be vigilant for further problems, retaliation or other reactions which may affect the investigation. The subject should be given full information about the report against him and a full opportunity to explain and defend against the allegations. You should reinforce the fairness of the process by giving the subject every opportunity to explain his or her actions.

There is an exception to this interviewing order. In some circumstances, it may be best to conduct interviews without advance warning. Surprise interviews may be necessary when there is a concern that witnesses will alter or destroy evidence or that witnesses will confer with each other in an attempt to make their accounts consistent.

If all else fails, begin at the bottom and work up the chain of responsibility rather than begin at the top and work down. Productive sources can always be re-interviewed later.

### ***Where to Conduct the Interview***

The location of the interview should be a place that is conducive to effective information-gathering and protects the fairness of the process. You should pursue an interview as a business function and not as a criminal interrogation. It should be a relatively benign environment, and the witness should be physically free to get up and leave at any time. The room should be at normal temperature and should be free of distractions.

A comfortable setting encourages candid disclosures. Telephone interviews should be done as a last resort because the witness controls his or her setting, and you cannot observe the witness' body language or anything the witness is reading or doing. You may not even be aware that someone else may be monitoring the conversation.

Interviews in restaurants or other public places should be rarely used because there are too many distractions and risks to confidentiality. Off-site and home visits can be useful, however, when you seek to gain the witness' cooperation to further the investigation. Maintaining the secrecy of the interview enables the investigation to remain secret if the witness agrees to cooperate. An off-site location might also be chosen if there is any concern about violence or other disruption in the workplace as a result of confronting the witness.

You should also consider the psychological impact of an off-site confrontation. Confronting a subject at home, for example, can be effective if you are concerned that the witness may give false information to protect the company. A home confrontation conversely may backfire as it might offend the witness. You must balance the benefits and disadvantages.

### ***Interview Dynamics***

Every human interaction has interpersonal dynamics. In an interview, you must gain and continually control the discussion. If you do not control the witness, the witness will likely divert the interview process, leading the interview in directions the witness chooses. Worse, the witness can become you.

In an interview, control means the ability to get a witness to respond to your questioning. Response is the key element. The witness will always respond somehow. The critical issue is whether the witness will respond as you wish. Control over the

interview is derived from your ability to persuade the witness to respond in the desired manner to your questions. An interview is neither an argument nor a debate.

You should never get angry. Becoming angry amounts to giving control of one's emotions to the witness, which is the opposite of the goal – to control the witness' emotions. If you cannot control your own emotions, you cannot control the witness. Whatever the subject of the investigation did, he did not do it to you personally. (And if the subject did, you should not be conducting the investigation.) You should recognize the investigation as a business problem that needs to be resolved in a business-like manner.

### ***Giving Instructions to the Witness***

It is likely that many or most of the employees you interview in an investigation will be nervous and understandably apprehensive. You should briefly explain at the start of the interview what is going on and what is expected of the witness. Consider these preliminary steps to create the right atmosphere:

- Please read the “Instructions for Witnesses” aloud to the witness. These instructions are attached to this guide.
- You may give the witness a brief explanation of the matter we are investigating. You may also explain why the witness has been included in the investigation (e.g., that they have been identified as someone with a complaint, have been accused of misconduct, or have been identified as someone who may have information relevant to the investigation). Reinforce your role as a fact-finder by asking for the witness' help in determining what happened.
- You should not stress any time limits on the interview. The witness should never be given the impression that there is a time limit on the meeting. Make the witness believe that the company is sufficiently concerned about the matter. Conversely, you should not accept unreasonable limits on their investigations that would interfere with their ability to conduct a professional interview.
- The witness may ask if he is being forced to submit to an interview. An employee should be free to leave at any time. Make it clear that the witness can leave or terminate the discussion at any time. Never force an employee to present himself against his will – either physically or through threats of termination – for an interview. However, an employer has the right to question employees regarding conduct connected with work, and to require cooperation as a condition of employment. If an employee does not wish to cooperate, they may refuse, but they may lose their job for refusing to cooperate. If the witness refuses to be interviewed, call the Investigations Manager for assistance.
- Employees often ask whether they are in trouble or whether they will be disciplined. The best answer is usually to be straightforward – it is certainly possible that employees may be disciplined if they engage in misconduct, but at this point in the investigation you are just gathering the facts. Never represent to a witness that their cooperation may be offered as a *quid pro quo* for avoiding any disciplinary, civil or criminal action.
- A witness may ask if he needs a lawyer. You must offer no opinion on that. Management is not required to allow interview subjects to have a lawyer and can insist that the interview continue with the witness without a lawyer present.

However, if the witness insists on having a lawyer present or he will refuse to be interviewed further, please stop the interview and call the Investigations Manager for further assistance

- A witness may ask if he may have a co-worker present during the interview. Generally, this should be discouraged. However, if a witness reasonably believes that the interview will result in disciplinary action against them, this may be allowed. The co-worker should be admonished not to interfere with the questioning or the answers offered by the witness. The co-worker cannot play any role in the interview. The co-worker should not be someone who may have some connection – especially as a witness – to the matter you are investigating.
- Please be sure that your witness is speaking from personal knowledge. If he is relying on some information that they, in turn, learned from someone else, please note that as well as the identity of that other person.
- You should invite the witness to give a written personal statement of the relevant facts if the witness wishes to do so. (This is contained in the witness instructions, and a template form is attached to this guide.) The statement should contain a record of the issues raised, the witness' version of what happened, who was involved, witnesses, dates, etc. The statement should also respond to or explain any evidence. The reason to offer this is because questions necessarily reflect those matters about which you wish to get information. The witness statement, by contrast, reflects what the witness wants to say about the matter. The written statement may give you additional information about the investigation. Additionally, the offer to the witness reinforces the fairness of the investigation process by allowing them to present their views. The written statement should be signed, dated and added to the file. Please remind the witness, however, that this is not substitute for the interview.

### ***Asking the Best Questions in the Interview***

You now have your witness, the place for the interview, and all the preliminaries are done. You are ready to begin.

Witness interviews as part of a workplace investigation are neither pretrial depositions nor cross-examinations at trial. The purpose of the interview is simply to elicit truthful, relevant information. You should phrase your questions and ask them in a manner designed to achieve that purpose. For a productive interview, please keep the following points in mind:

- Remember the 80:20 rule. You are there to acquire knowledge, not disclose it. Generally, the witness should be talking 80% of the time, and you only approximately 20% of the time.
- The interview should center on the specific misconduct at which the investigation is aimed. Transforming the interview into a wide-ranging inquisition into all possible areas of misconduct is counterproductive because it detracts from the focus of the investigation.
- The initial discovery of what appeared to be isolated misconduct may be just a symptom of a much larger problem. You should keep alert to that possibility.

- Sometimes, managers may want to participate in, or attend, interviews of various witnesses. This can have a chilling effect on the witness. Generally, it is best to conduct the interviews of employees without their managers present.
- You should use a non-confrontational approach. A witness is more likely to cooperate with someone he likes, or at least feel reasonably comfortable with, rather than someone he considers threatening. There may be times when it is necessary to take a more harsh approach. Nonetheless, in the first instance, it is almost always beneficial to try a more disarming approach.
- You should ask questions in chronological or other systematic order, not randomly. If questioning is confusing, you will lose the witness's train of thought and risk missing information.
- You should not expect the witness to have an exact recollection of events that occurred some time ago. Even honest people don't remember everything. It is your obligation to refresh the witness' recollection with documents or other information, if needed.
- There are no "magic questions" to ask when interviewing someone. But you will never fail if you ask the "who, what, where, when, why and how" questions.
- However, you should avoid asking "why" questions until the end. These questions are usually antagonistic because they sound moralistic.
- You should ask open-ended questions. Open-ended questions are more likely to result in your learning what the witness knows. "Who was there?" "What was said?" "Why did you do that?" Open-ended questions encourage the witness to respond. They allow you to learn about the subject, based on how the witness describes himself. They help the witness relax.
- You should not ask close-ended questions. This type of question tends to require a "yes" or "no," or a brief statement at most. These questions do not provide for extended responses and, as a rule, do not cause the witness to relax. The witness is more likely to provide the answer and then stop talking.
- You should ask straightforward questions. You should not be cute, tricky or shrewd.
- The basis of the witness' knowledge is always important. You must determine whether the witness is speaking from personal knowledge or just relying on the hearsay statements of others. "How do you know that?" is a question to ask often.
- You should ask the witness to list all individuals who have knowledge of any of the events. "Who else might know?" is a question to ask often.
- You should ask short, simple questions. You are more likely to get clear, responsive answers by asking understandable questions.
- You should distinguish between words used by the witness and situations where the witness simply agrees with a question or statement. You should consider the wording of leading questions and whose words were used. You should identify situations where there were only agreements with statements made by you or the witness made the actual statements.
- The investigation should identify any mitigating circumstances that may affect the assessment of fault, such as personal or health problems.
- It may not always be possible, but you should try to structure questions which do not call attention to particular problem areas. The order of questions as

well as your demeanor in asking them can alert a witness to the focus and severity of the problem being investigation. If there is something you would prefer to remain highly confidential, you should take care in structuring and asking the questions to the witness. (Some questioners even include subjects of no real relevance to avoid tipping the witness to the nature of the inquiry.)

- You should save unfriendly or embarrassing questions until the end of the interview. Beginning with the “tough” questions may cause the witness to become defensive.
- On key factual questions it can be valuable to return to the same question more than once in different ways. People often remember things in waves, and this approach may develop additional detail.
- If a person does not remember, you should try to help by asking questions that help recreate the situation when the event occurred, but do not suggest an answer.
- Silence is a great technique. Many people cannot stand silence and find this unnerving. They will fill up the void with talk, often saying something they had no intention of revealing. The average person expects no more than seven seconds of silence during a conversation. If you don’t say anything after the witness answers a question, the witness will frequently give you more information than he intended to give you. The silence effectively pressured the subject into offering more information by communicating that you felt that the answer was not complete. Silence can also be an effective way to undermine a witness who is cocky and confident in his or her own ability to control the discussion. The witness, and not you, should become uncomfortable with the silence.
- You should avoid doing anything that might be taken as an attempt to influence the witness’ answers. You should avoid characterizing the company’s position, summarizing the statements of other witnesses, or selectively presenting documents in a way that may distort the facts.
- There is always the possibility that the information the witness is providing contradicts either something they said earlier or a piece of information gathered from another source. One of the most effective techniques is to note the contradictions and then, at the appropriate point, ask the witness how these contradictory facts could be true (or reconciled). You may recall them individually and review the facts again.
- You should ask again at the end of the interview: “Is there anything else relevant to this matter that I should know? Is there anything I missed? What else should I ask you? What other documents are important? Who else knows about this? Who else can help me with this information? Is there a question I should have asked and didn’t? Is there anything else you know about this?” Ask several of these questions. It is very important to document these questions to support the fact that the witness was asked for all relevant information.

### *Listening and Observing in an Interview*



Actively listen. You must work very hard at listening. It is much more than concentrating. You must also be thinking about what the person is telling you. Is what he is telling you logical? Does it make sense? Is there a “backstory” to explain what happened?

Show interest in what the speaker has to say. Ask questions to clarify, gather information and focus the conversation.

Carefully observe the witness’s body posture and physical activity. Everyone uses body language to express themselves. Watch for changes in appearance in response to certain questions. Most people under stress are unaware of their reactions. Use your observations to aid in formulating questions.

Gather information to assess the witness’ credibility. How did the witness react to the allegations? Does the person inspire confidence in the listener? Does the witness’ chronology of the relevant events differ greatly from those of others? Was the witness forthcoming with information?

### ***Closing the Interview***

At the end of the interview, you should thank the witness for the information furnished. You should give the witness your telephone number if more information becomes available or is remembered. You should keep the door open for future contact if they would like to add or change anything. The goal is to obtain the most accurate information possible. An interview is not intended to be a memory test.

If you asked the witness to furnish documents, this is the time to renew that request and agree to a list and date for production, if possible, of the needed documents. You should consider giving the witness a written list of the items he has to furnish. You should follow up a few days later to confirm the request.

You should tell the witness that appropriate management personnel will make any final determination regarding the best way to resolve the issue, but you should stress that the witness’ input is valuable and will be considered seriously. The witness should be told that the results of the investigation remain confidential and that the specific corrective actions may not be communicated to the witness.

The interview does not need to have covered all the facts, events and conduct. All you need to move forward are the basic elements of the conduct alleged.

### ***Collection and Review of Documents***

Witnesses may be reluctant to supply information voluntarily, especially when it may implicate their own actions or the actions of those they supervise or with whom they work. Similarly, witness recollections of events often fade with time and may be inconsistent with recollections of other witnesses. Documents are essential in the process of refreshing a witness’ memory and might also help you reconcile conflicting recollections. Documents can also help determine or assess a person’s intent or motive in doing something.

Please take certain precautions when handling documents in an investigation. Original documents should not be marked or altered in any way. An original document is any document that is *received* by you, even if it is a copy. It does not include any copies *made* by you. If you need a working copy of the document, please copy the original. Put the original in your file, and mark the copies up as needed. Following this practice will prevent an inadvertent alteration of original documents and ensure that these documents will not be invalidated or challenged later as a result of your markings.

The authenticity of documents may become very important in cases where document tampering is suspected. Therefore, in some instances it may become necessary to obtain the same documents from more than one independent source. Be sure to indicate which copy of the document came from which source.

### III. Reporting your Results

#### *Interview Memos*

What a witness says in an interview is critical to the investigation. An accurate written record of what they say is key to the integrity of the investigation, the success of the investigation, and the fairness to those involved.

You should draft a memorandum shortly after the interview. The interview memo must represent exactly what went on in the interview in detail. If the interview took an hour, the hour must be accounted for on paper. The interview memo simply cannot be three lines long. Include everything that was said and done. Please keep the following points in mind:

- The interview memo must be factual and should not contain your opinions. Don't say, for example, that "John Smith appeared uninterested." Say (only if it is accurate), "John Smith continually looked around the room and requested that questions be repeated to him two or three times before he would answer."
- Use direct quotes whenever possible. They strengthen the factual assertions.
- When possible, refer to relevant company policies, practices and written procedures. If possible, reach findings that are supported directly by the information you gathered.
- Avoid expressing opinions because opinions can easily be challenged. Once doubt is brought to opinions expressed in the interview memo, the credibility of the interview memo, report and investigation may also be challenged. It is better to focus on what the facts show, rather than what you personally conclude from your inquiries.
- Avoid inflammatory or judgmental words. The interview is intended to gather facts only, not pass judgments on others. Also, write your interview memo as if your report will be published. It might be included in documents that are more widely circulated.

- If you want to make an assertion about some aspect of your inquiries, please support it with the facts you gathered. Our goal is only to determine whether the report can be substantiated.
- Do not make legal conclusions about any perceived law violations, breaches of contract, or potential corporate liability. These conclusions would be outside the scope of the investigation.
- The interview memo should also include any contradictions surfaced during the interview. Contradictions can exist between documents and interviews, among different witnesses or when the witness contradicts himself. Please indicate whether, through your efforts, you were able to resolve any conflicts in testimony or documents.
- If any documents were used, be sure to mention them, whether or not their use resulted in any response from the witness such as an admission. Their use demonstrates how diligently you attempted to get the truth and how professionally they conducted themselves. In a particular case, for example, they could show how, in spite of all the proof, the witness denied the act or contradicted himself, herself, others or documents. If a document was used, mention that fact.
- If an acknowledgement, admission or confession is made, be specific as to exactly what was admitted. If the individual acknowledged doing two things, write out exactly what happened so that a reader cannot possibly incorrectly believe that he admitted to doing ten or only one.
- Record any other significant events that occurred during the interview, such as *the witness began to cry, or shouted, or refused to speak any further.*
- Be brief, but please tell a complete story. Write for an educated audience, but not someone who is knowledgeable about your business.
- Handwritten notes taken by a questioner during an interview are very subjective and often written in shorthand form. As a result, the true interpretation of the notes may be known only to the questioner and could be subject to a variety of interpretations by other readers. Therefore, once you have written your interview memo, discard your notes. A complete, strictly accurate interview memo should be the only documentation of the interview.

### ***The Final Report***

Your work may lead to the creation of a second type of document, the Final Report. The Final Report is created at the conclusion of the investigation and includes the report and a summary of the facts gathered throughout the investigation.

Written reports can be valuable aids for management to develop corrective procedures to avoid repetitions of questionable conduct. A written report may also be a persuasive way of communicating to third parties that wrongful conduct did not occur or that corrective action has been taken internally. The report also forces us to reach firm conclusions and is an easy way to review the results of the investigation with executive management.

The quality of the Final Report depends almost entirely on your efforts. The Final Report is not a chronology of the investigation. The report states whether the report was substantiated, unsubstantiated, or that the findings were inconclusive. If the report is substantiated, the Final Report will cite the policies violated and the harm the company suffered as a result. If the employee admits wrongdoing or resigns before the Final Report is issued, the report will include that information as well.

The Final Report is limited to the scope of the investigation. The scope will be clearly specified in the report. This will provide a clear understanding to anyone to whom the report is disclosed regarding the investigation's limitations.

Once all the questions are addressed and the investigation is concluded, the Final Report is prepared. The report includes:

- The nature of the report and how it brought to our attention;
- A summary of the facts gathered throughout the investigation, including a chronology of events,
- The people interviewed and the documents reviewed;
- A brief discussion of any credibility assessments reached;
- Whether the report was substantiated or unsubstantiated or the results were inconclusive. If substantiated, what conclusions are supported by what was found;
- The specific conclusion(s) reached on each key issue;
- The identification of any issues that could not be resolved in the investigation;
- A brief discussion of how the company guidelines or policies apply to the situation;
- Whether a breakdown in an internal control occurred to allow the claimed problem to occur;
- Whether any relevant internal controls were followed to prevent other problems or reduce the impact;
- For what period did the problem occurred, and what, if any, is the financial impact to The Company or third parties;
- How is The Company responding to the report, if it is substantiated; and
- A list of the documents gathered for the investigation.

The Final Report offers no recommendations regarding how an employee should be disciplined, whether the Company should compensate someone, or similar post-investigation activity. Those steps are outside the scope of the investigation. However, if the appropriate business unit makes such a determination before the Final Report is drafted, that information is included as part of the facts of the investigation.