

 FEBRUARY 29 AND MARCH 1, 2024 | JW MARRIOTT BUCKHEAD | ATLANTA, GA



2024 EXECUTIVE HEALTHCARE **LABOR & EMPLOYMENT** LAW CONFERENCE




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Internal Healthcare Investigations Workshop

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Why conduct workplace investigations?

- Resolve workplace issues early.
- Ensure the safety and well-being of your patients and staff.
- Promote a positive work environment.
- Build trust in the organization.
- Act in accordance with your policies.

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Litigation-based reasons to conduct effective workplace investigations

- Provide the organization with a legal defense to liability or punitive damages.
 - *Faragher/Elleerth* defense – prompt remedial action
 - *Kolstad* defense – good faith effort to comply with Title VII
- Gain the trust of the trier of fact.
- Cost savings in litigation – gather relevant materials now, as opposed to searching for them during litigation
- Gather helpful evidence that may not exist later.
- Take statements that can be used to refresh recollections down the road.

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How are investigations in a healthcare setting different than in other workplaces?

- Highly regulated industry – CMS, HHS, CDC, Joint Commission, state departments of health, state licensing boards, etc.
- Dealing with issues of patient safety – poor performance, mistakes, or misconduct can have serious consequences.
- Unique obligations concerning the protection of patient privacy
- Unique situation where hospital staff members may take direction from non-employee physicians

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Some Initial Considerations for Investigations

- Who will be the investigator?
 - HR? Risk management? A third party?
- Should the investigation be privileged?
 - Who is the subject? How sensitive are the allegations?
- What documentation/evidence exists?
 - Act quickly to secure any documentation or physical evidence that may have a limited window of availability (i.e., surveillance video).
- What witnesses are there?
 - Can you identify all of the relevant witnesses?
 - Are they all your employees? Or do you need to loop in other stakeholders?



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Hypothetical #1

Supervisor Sam wants to discipline Nurse Nancy for performance issues. During the disciplinary meeting, Nancy tells HR that she is having a difficult time keeping up with the increased patient load because of staffing shortages. Nancy claims that nurse to patient ratios have reached unsafe levels. Nancy says she's previously raised her concerns about unsafe staffing levels in department meetings and she now feels her disciplinary action is retaliatory for her raising those concerns. What do you do to investigate?

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Hypothetical #2


You receive an anonymous hotline complaint that Dr. Simon has been "talking politics" during his surgeries, and that he has made remarks about the border, immigration, and gender identity issues that staff find inappropriate and offensive. No specific comments are provided. Dr. Simon has privileges at your hospital but is not a hospital employee.

What do you do to investigate?


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Hypothetical #3

During his exit interview, former employee John discloses that night shift nurse Kayla has been acting strangely at work, falling asleep at the nurses' station, appearing disoriented at times, and disappearing from her unit for long periods of time. He claims that other employees have witnessed the conduct, but he cannot specifically identify any witnesses by name. He claims there are rumors that Kayla is abusing prescription pain medication. He says he did not report this earlier because Kayla is close friends with the charge nurse, who knows about and is covering up the issues to protect her friend. How do you proceed?



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Hypothetical #4

Diane Daughter calls to complain that Amy Aide is failing to adequately care for Diane's elderly father, Paul Patient. When notified about this complaint, Amy denies any inadequacy of care but admits that she sometimes avoids going into Paul's room because he has made racial and sexually harassing comments to her and has twice tried to grab her breast.

What are your next steps?



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Thank you!

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