



# Effective Workplace Investigations

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# Workplace Investigations

## Introduction

# FORDHARRISON

Who will lead the investigation?

Very important decision.



# FORDHARRISON

Who will assist the investigation?

Assistant should take notes.



# FORDHARRISON

**What should the notes say?**

**Time. Date. Identify all persons.**

**Record preliminary comments/explanation of reason for interview.**

**Just the facts, ma'am.**

**No retaliation statement.**



- 
- » Notes versus statements written by the witness.
  - » Witness can review and initial notes.

# FORDHARRISON

Before beginning the investigation, suspend the accused?



# FORDHARRISON

**Who do you interview first?**

**Can vary with reason for investigation.**

**Harassment or discrimination complaint, normally the complainant.**





# FORDHARRISON

**Interview of complainant.**

**Consider the place, space and time.**

**Who is the concern? Anyone else?**



# FORDHARRISON

**Interview of the complainant.**

**For each person identified as a concern, ask “W” question.**

**When did this start?**

**What did the person do at that time?**

**Any witnesses?**



# FORDHARRISON

**Interview of the complainant.**

**Try to go chronologically and capture each event of concern.**

**Witness may say the person does certain things “all the time”.**

**Get estimate of number of times per day or per week.**



# FORDHARRISON

**Interview of the complainant.**

**Continue with asking about events chronologically until the complainant says that is all.**

**Notes should reflect complainant verbalizing that he or she has provided all information as to the person named.**

**Go through this process for each person named as a concern.**



# FORDHARRISON

**Interview of the complainant.**

**Any texts, pictures, social media posts, voice mails?**



# FORDHARRISON

**Interview of the complainant.**

**At the end, have you thought of anything else you would like to tell us?**

**Explain the investigation will continue.**

**We may need to speak with you again.**



- 
- » Interview of the complainant.
  - » Confidentiality? EEOC and NLRB oppose.
  - » We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.
  - » No retaliation statement. Be sure this is in the notes.

# FORDHARRISON

**Interview of witnesses.**

**Explain purpose of interview.**

**There have been concerns raised about [name of person].**

**Begin more general.**

**Have you observed conduct that you found concerning?**





# FORDHARRISON

**Interview of witnesses.**

**Move to more specific.**

**We have been told that on April 9, you attended a very questionable seminar. Is that true?**

**Go through the list for the witness.**



# FORDHARRISON

**Interview of witnesses.**

**At the end, is there anything else you think we should know?**

**Anyone else you think we should speak to?**



# FORDHARRISON

**We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.**

**No retaliation statement. Be sure this is in the notes.**



# FORDHARRISON

**Interview of the accused person.**

**Very important step. Do not skip it.**



# FORDHARRISON

**Interview of the accused person.**

**Prepare for the interview.**

**What have you learned via the complainant and witnesses?**

**Structure and order of questioning will vary depending on the evidence to date.**



# FORDHARRISON

**Interview of the accused person.**

**Begin more general.**

**[Name of complainant] has brought up concerns over your conduct.**

**Do you know why he/she would do that?**



# FORDHARRISON

**Interview of the accused person.**

**Consider whether to say, before getting to specifics, something like the following:**

**We understand people make mistakes sometimes. But we cannot have someone lie to us. (Pause)**

**This may result in the person confessing to what he or she may think you know already, or to what he or she may consider more minor events.**



# FORDHARRISON

**Interview of the accused person.**

**Move to more specific questions.**

**Anything else you want to tell us about that?**

**Any witnesses you believe we should speak to?**





# FORDHARRISON

**Interview of the accused person.**

**Any reason you know of that [name of complainant] would bring allegations against you falsely?**

**No retaliation statement. Needs to be emphasized with this person. In the notes.**



# FORDHARRISON

Other considerations

When to call counsel?



# FORDHARRISON

**Other considerations.**

**When to use a third-party investigator.**



# FORDHARRISON

Other considerations.

Why can't my lawyer just do it for me?



# FORDHARRISON

Other considerations.

Avoid mission creep.



# FORDHARRISON

Sample case



# FORDHARRISON



## Takeaways:

Retaliation claims are dangerous before a jury.

Good investigations matter. Those three were worth \$365 million.

# Thank you!



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