



# Investigation Mistakes

Don't risk an entire investigation by making one of these mistakes!



**Mistakes during workplace investigations can be among the costliest, damaging your company's reputation and leaving it open to the risk of an expensive lawsuit. Avoid the following mistakes to keep you and your company out of trouble.**

## **Delaying an Investigation**

Waiting too long to conduct an investigation is dangerous:

- The company could appear to not take complaints seriously
- Misconduct is likely to continue if not addressed
- Witnesses, the subject or the complainant could forget the facts of the incident
- Evidence could be destroyed, disappear or be tampered with

**Lesson:** Respond to complaints promptly and get the ball rolling.

## Promising Confidentiality

Promising confidentiality is risky as there is no guarantee that the investigation won't lead to a court case in which all the information gathered becomes evidence.

In some circumstances you can ask those involved in the investigation to keep information discussed in the investigation interview confidential, but a new NLRB ruling means you need to establish grounds for requesting confidentiality to avoid infringing on the employee's Title 7 rights.

**Lesson:** Do your homework before considering use of the word "confidential".

## Failure to Remain Objective

If an investigator has a connection to those involved in the investigation, his or her objectivity may be compromised. Depending on the circumstances, it is sometimes best to bring in an external investigator to ensure the investigation is fair.

**Lesson:** Choose an impartial investigator with the right skill set and abilities for the case.

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## Dismissing Information

Be prepared to follow the evidence wherever it leads. Some cases are more complex than they seem. New information could be presented at different stages of the investigation and investigators need to take time to review it.

Conduct follow-up interviews with people you've already interviewed if new information warrants them. Dig deeper if interviewees are vague or confusing.

**Lesson:** Dig, dig, dig, to get all of the facts.

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## Being Unprepared for an Investigation

Establish an investigation plan that addresses the following:

- Who made the complaint and what is their role in the organization?
- Should interviews be conducted offsite or onsite?
- Who should be interviewed when?
- What questions should be asked?
- Are there special legal issues based on the type of incident?
- Who else needs to be involved?
- Are there any PR issues that could arise?

**Lesson:** Be prepared but also be flexible – you never know what information you'll uncover.



## Bonus: Failure to Gather All Evidence

Evidence comes in a lot of different forms. Investigators need to think of both physical and electronic evidence that may exist. Emails, text messages, social media, videos, voicemails, etc., are all sources of evidence.