How to Investigate Workplace Incidents

A Template for Conducting Effective Internal Investigations, Every Time
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Every Situation Is Different

When you have to investigate a workplace incident, you never know what you’re going to find: It could be a minor violation of company policies, or a serious case of harassment or discrimination. There may be just one person involved, or several. And to get to the bottom of it, you might only need to interview a few people, or talk to a dozen people and pore over financial data, email records and other evidence.

Just because every situation is different, though, doesn’t mean you can’t follow the same procedures for every investigation. In fact, it’s essential that you develop a standard process for planning, conducting and reporting on the findings of your internal investigations.

Why is a standardized investigation process necessary? For starters, without a clear investigation protocol your actions might not stand up in court. A dismissed employee’s attorney is going to work hard to poke holes in your process and attack your investigation findings, so you need to establish an investigative process and carefully document how you followed it.

But it’s not just about withstanding the occasional court challenge: A consistent process can make your investigations more efficient and effective, and less disruptive to your organization. What’s more, investigations conducted in the same way can reveal important insights that help you prevent problems from happening again, instead of just reacting to incidents.

We’ve created this guide to help you establish exactly this kind of standardized investigation process. It’s based on best practices developed by Convercent over its nearly 20 years of conducting workplace investigations, and includes advice for setting goals, identifying key tasks, gathering evidence and reporting findings. You’ll also learn how a good case management system can make the steps of this process much easier.
HOW TO INVESTIGATE WORKPLACE INCIDENTS

SEVEN PHASES OF A GOOD INVESTIGATION PROCESS

Phase 1. Assessing the Issue

Investigations are sparked by issues—but not every issue requires an investigation. That’s why the first step after receiving an incident report is to assess what’s being reported.

Start by examining the details of the issue to determine what—if any—potential violations have taken place:

- What company policies or laws may have been broken?

Potential cases of sexual harassment, discrimination, theft, fraud—or other clear violations of laws and policies—warrant an investigation. But some reports involve minor issues, such as employees complaining about something their managers or co-workers did, that aren’t actual policy violations. These could be handled by a simple call from HR or another resolution method.

- What version of that policy was in effect at the time the incident occurred?

Employees might report an incident several months after the fact—and your policies may have changed in the interim. To assess whether a violation occurred, you have to check what version of the relevant policy was in place at the time.

It helps to have a policy database that’s integrated with your issue intake and case management system. For example, Convercent’s platform enables users to easily call up the right policy version for a report received through the issue intake system.

Examine every issue to determine what—if any—potential violations have taken place and whether you can handle the investigation in-house, or need outside expertise.

Next, decide who else at the company should be notified about the incident. For example, if the issue involves potential discrimination, you should alert your legal department. Issues between two employees in the same division probably mean it’s time to alert their manager about a potential investigation. And if the case involves an accusation against a manager—or appears to be a potentially major violation—you should alert an appropriate executive.

Finally, after you find that an issue requires an investigation, you have to determine whether you can handle it in-house or you need to turn to outside investigators:

- Straightforward complaints involving simple violations of basic policies by employees can typically be handled in-house. Depending on the experience and size of your investigating team, you may also be able to tackle more complicated investigations, such as fraud or harassment cases.

- Any issue involving a C-level executive should be turned over to outside investigators, because it’s difficult for employees to conduct an unbiased investigation of their superiors.

- Issues requiring special skills, such as computer forensics or workplace violence threat assessments, should be handled by investigators trained in those areas.
Phase 2. Planning and Defining Objectives

For every internal investigation, you need a clear sense of what you’re trying to achieve and what it will take to get there. That’s why it’s crucial that your process includes a formal planning phase to outline the tasks and objectives for investigators to pursue.

The basic objectives of every investigation are to:

- Identify whether there was a problem in the workplace.
- Identify who was engaging in that behavior.
- Determine what, if any, violations of company policies or laws or regulations occurred.

An investigation should always examine why or how a violation took place, so you can prevent similar issues from arising in the future.

You should determine from the outset the standard of proof you will need for each investigation’s findings. Internal investigations are not like legal cases, which must prove guilt beyond a reasonable doubt. Instead, the typical burden of proof for an internal investigation is that you made a reasonable conclusion based on the information available at that time.

You may, however, decide on a higher burden of proof based on the nature of the case. For example, if you’re investigating fraud or theft that might call for restitution, there’s a good chance the case could end up in civil court where you need to demonstrate with a high degree of confidence, based on a preponderance of the evidence, that the employee engaged in that behavior. Next, consider what information you’ll need to help you meet your objectives. You typically can plan your investigation around gathering the following facts:

- Who was involved? The names cited in an issue report may not be the only people responsible for an incident. On the other hand, people can be wrongly named in a complaint.

- What behavior or activities took place? You can’t assume that an incident report is the entire story. Employees may use words like “harassment” for behavior that doesn’t meet the legal definition of that term. Other times, you may only have a suspicion of fraud, theft or other illegal activity, which your investigation will have to confirm or deny.

- Where did it happen? Pinpointing exactly where an incident took place is the kind of detail that goes into a thorough investigation. Knowing where an incident took place helps you find potential witnesses or other evidence.

- When did it occur? Time is another crucial detail to help identify potential witnesses, determine what policies were in effect, and corroborate stories through sources such as timesheets, computer activity, door access system records, and so on.

- Why or how did it happen? These are two of the most important questions—but ones that most internal investigators fail to ask. Your investigation can reveal problems in your organization that allowed the incident to take place. Maybe your policies weren’t clear, or you didn’t offer enough training. Maybe a manager fostered unsafe working conditions. The point is, by asking why and how, you can fix the larger problem and prevent future incidents.
During the planning phase, you also should identify which members of your team will be involved with each investigation. It’s important to divide your investigation team between fact-finders—those who will actually conduct the investigation, typically from HR, legal or other appropriate departments—and decision makers, who will make the final call on any disciplinary action. The decision-making team should include high-ranking executives who have the authority to decide on termination or other outcomes.

With a team in place, you can establish a preliminary timeline and assign tasks to appropriate individuals. Again, a good case management system can make this process much simpler. For example, Convercent users can create an investigation, invite specific employees to access it in the online system, and then assign tasks (with deadlines) directly to team members—all within the same investigation.

Phase 3. Gathering Information

When the plan is set and you’ve received buy-in from the executives on the decision-making team, you can start your investigation.

To conduct the fact-finding phase of an investigation, you can choose from six investigation methods:

- Interviews
- Research and Audit
- Physical Surveillance
- Electronic Surveillance
- Forensic Analysis
- Undercover Research

Some of these methods are rarely used by internal teams due to their complexity. For example, surveillance—whether done physically or electronically, using cameras or computer monitoring tools—is typically used only to corroborate information gained from other sources or to provide evidence that needs additional corroboration. Similarly, forensic analysis typically involves trained experts who can examine computer data, financial records, or even physical evidence such as fingerprints and bodily fluids.

It’s crucial to document all of your actions and findings as you go along in a well-organized investigation file.

By contrast, you will use interviews and research and audit in almost every investigation.

To conduct effective interviews:

- Always start by interviewing the person who filed the incident report—never approach the accused person until you have gathered enough evidence to know whether the incident or behaviors were likely to have occurred.
- Follow up with direct witnesses, co-workers who can comment on the work environment or the characters of the person who filed the complaint, and finally, the accused.
- Talk with supervisors to learn more about the accused and the person who filed the complaint. Assess any personal alliances within the team that might call into question a witness’s statements.
- Conduct interviews in a neutral location, such as a conference room, and keep the tone polite and conversational, yet professional. Let people know that their words will be kept confidential.
• Ask open-ended questions, such as “Tell me what happened next,” that enable employees to explain rather than just offer yes or no answers.

• Take detailed notes during the interviews and record them in your case management system immediately after you complete each discussion.

Research and audit refers to the process of seeking information from public sources (research) and internal company records and documents (audit). Here are research and audit tips for any investigation:

• Always examine the personnel files of the accused and the employee who filed the complaint. Look for past performance issues or disciplinary problems, read their managers’ reviews, and see if they have any accolades or significant achievements.

• Consider conducting a background check on the accused, particularly in cases of theft, sexual harassment or workplace violence. You may discover that similar charges were filed against him or her in the past.

• Examine email accounts, phone records and text messages (for company-issued mobile phones) as needed for evidence related to the case. As long as your company policy states that all company-issued property is subject to search, your employees cannot block you from examining these records.

• Review building access control logs, time sheets, attendance records and other sources of information that show where an individual might have been at a specific time.

Whatever forms of investigation you use, it’s crucial to document all of your actions and findings as you go. Not only will you need those details to write your final report, but you might also need to provide an audit trail of your investigation process if a case ends up in court.

A good case management system will make all of this significantly easier. An essential tool for investigations, your system should enable you to:

• Record all tasks and activities related to a specific investigation, along with details on who performed them, and when and where they took place.

• Record all evidence, whether that means uploading a digital file, such as an email message, or entering a description of physical evidence with where that material can be found.

• Include descriptive notes for all tasks or evidence, such as a summary of an interview or the details on a computer audit.

• Identify all team members assigned to the investigation, as well as interview subjects.

• Log all email communications related to the investigation that pass between investigating team members for easy retrieval and review.

• Provide access to certain file information for managers or other non-investigators who need to check on the status of an investigation in progress.

Always have enough evidence to determine what happened and who was responsible before you interview the person accused of the violation.
Phase 4. Verifying and Analyzing

The information-gathering phase should last as long as it takes for the investigating team to develop a clear picture of what happened, and who was responsible. In other words, you should have enough evidence to either recommend disciplinary action or confirm that no violation occurred.

Then—and only then—you should approach the person who was accused in the incident report, giving him or her an opportunity to respond to the allegations. The object of this phase of the investigation is to conduct interviews with the responsible parties to verify the facts that you’ve already uncovered.

The goals of this interview are to:

• Get the person to admit to the offense. While an admission is not necessary to draw conclusions, it makes the reporting and disciplinary process much simpler. It also makes it less likely that the employee will challenge your decision after the fact.

• Find out who else was involved, or if other offenses might have occurred. An employee who understands they’ve been caught might share details that you didn’t find through your own investigation.

• Discover how and why the employee violated your policies. Remember, your goal is not just to punish the person, but to prevent similar incidents from happening in the future.

As with your fact-finding interviews, you should conduct these conversations in a neutral location and always have a third person in the room to act as a witness. The witness can take notes or even participate in the questioning, but it’s essential that there are at least two people from the investigating team in the room to confirm the details of that interview, if necessary.

Start the interview by explaining the origin of the investigation (i.e., “We received a complaint about X and have been researching the details”) and describing all the methods you used to investigate the incident. Then, let the employee know that you’ve reached a conclusion and that this is his or her chance to explain the other side of the story.

Setting up the interview in this way makes it clear to the employee that you know what happened—and makes him or her more likely to engage in a dialog that confirms the facts of the incident and ends in an admission of involvement.

As with every investigation activity, record in your investigation file that the interview took place, and note when, where and who was present. Also provide a summary or notes that describe the details of the interview.

Phase 5. Presenting Results and Making a Decision

After interviewing the people responsible for the offense and verifying the facts of the incident, you are ready to compile an official investigation report for the decision-making team.

If you’ve been logging your investigative activity in a case management system, it should be relatively easy to compile the information needed for a report. The format you choose for this report will depend on your company’s individual needs, but in general should include:

• An executive summary outlining the basic facts of the investigation, including the original allegations, the outcome of the fact-finding process (i.e., whether a violation occurred), and who was involved with the offense.
An investigation report should provide all of the information the decision-making team will need to determine the right corrective action.

- A detailed account of the investigation that describes all the methods you used and the evidence you uncovered. This can be a longer narrative that includes which employees you interviewed, which records you examined, and which claims you’ve substantiated and which you haven’t.
- A list of evidence supporting your conclusions, including interview summaries or other corroborating documents.
- Copies of the signed admissions of the people involved with the offense.
- A final summary reiterating the investigation’s findings of fact, including which policies were violated and what past practices might exist for handling these violations.

The investigation report should stop short of making actual recommendations for disciplinary action. Not only is that the decision-making team’s job, but you could also expose your company to risk if the decision-making team doesn’t follow up on those recommendations for any reason.

Phase 6. Determining Disciplinary and Corrective Action

The decision-making team uses the findings in the investigation report to determine an appropriate response to the incident. After they have recommended a course of action, the fact-finding team should document that decision in the investigation file and note when the disciplinary or corrective action has occurred.

For example, if the decision-making team decides the employee should be terminated, ask HR or the employee’s manager to report when the termination took place and provide any supporting documents related to that meeting. Then, add that information to the investigation file to show the final outcome of the investigation process.

If the punishment falls short of termination, you can create a follow-up plan within your investigation to ensure needed actions take place. Here again, a good case management system is invaluable. For example, Convercent users can create tasks within closed investigations for follow-up actions, such as requiring employees to review specific policies and reattest to them, or retake specific training courses.

Record the decision-making team’s recommendations for disciplinary or corrective action in your investigation file.

Phase 7. Education and Prevention

A lot of investigators assume their job is done when they’ve uncovered the facts behind an incident and recorded the decision-making team’s recommendation for disciplinary action. That’s a mistake. What they’re overlooking is the opportunity to find and correct any underlying causes of bad behavior.
That’s why your process should conclude by examining the details of the investigation in the context of other recent issues. Often you can trace an incident back to problems with compliance efforts—such as policies that aren’t clearly communicated and uniformly applied, or weak training programs.

Other times, there’s a disconnect between a company’s stated values and office culture. For example, an investigation into a discrimination complaint may reveal a manager who was tolerating a culture of off-color or derogatory jokes, which led an employee to assume the company’s policy about tolerance and equal treatment was more talk than action.

Good data can be a big help in spotting these potential problem areas, which is another reason to consider a case management system. For example, a system with strong analytics and reporting capabilities such as Convercent enables users to run reports that show the number, type and severity of incidents by company location. This statistical analysis will help pinpoint areas where you need to implement additional training, or have a cultural issue to address. Users also can sort company-wide data to show the volume of incidents over time, or break down investigations by issue (e.g., fraud, harassment) to help determine which elements of your compliance program might need additional attention.

No matter what system you use, or what issues you uncover, there is one follow-up activity that applies for every investigation: Always circle back to impacted employees after the conclusion of an investigation to let them know that you’ve resolved the issue.

You don’t need to share confidential details—it’s enough to simply let employees know that the investigation is over and the matter resolved. Then, you can take time to review key policies and procedures and let employees ask questions that might have come to light as they saw an investigation unfolding around them.

At a minimum, this check-in helps you re-establish the company’s ethics and values, and demonstrate that the organization is serious about its policies and concerned about maintaining a safe, happy workplace. That reinforcement alone can go a long way toward preventing future incidents.

Conclusion

Use these phases and best practices to guide the development of your own investigation process. Naturally, some of the details will depend on the size of your team and the nature of your business. But what’s important is getting started and developing a standardized approach as quickly as possible.

Not only will a good investigation process help you achieve better outcomes for your investigations, but you might also uncover ways to improve your approach to defining ethics, values and policies. Those improvements, in turn, can help reduce the number of investigations you have to conduct in the first place.

The investigation doesn’t end when a perpetrator has been disciplined. You also must address any underlying problems that allowed the violation to take place.
About Convercent

Convercent is the first SaaS product that modernizes the way companies bring their values, culture, policies and compliance activities together with a positive employment engagement experience. Hundreds of companies rely on Convercent to systematically align corporate values with individual behavior to create thriving, productive and compliant cultures of engaged, high-performing employees. Based in Denver, Convercent funding is led by Azure Capital Partners and Mantucket Capital.