

Electronic Alert

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Now is the Time to Update Your Policies: Best Practices for Responding to Complaints & Conducting Remote Workplace Investigations

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As we near the holidays and the end of the year, now is the perfect time to evaluate your policies and practices regarding the handling of internal complaints and the conducting of investigations. Some employers may have felt (or hoped) that remote work during the pandemic would itself resolve pending complaints, or permit putting off an investigation, but this is often far from the truth. Now, more than ever, it is important to promptly and thoroughly address and investigate complaints.

Over the last year and a half, many employers shifted from an office or in-person work environment to a remote, virtual one due to COVID-19. While initially thought to be a temporary move, increasingly employers are choosing to remain virtual or are adopting some form of hybrid work environment. We frequently hear from employers that they cannot adequately address or investigate complaints involving employees working remotely. Others believe that investigations can be conducted remotely the same as they were before, without consideration for the change in circumstances. Both of these attitudes are misguided. Although it requires consideration for the change in circumstances, it is both possible and necessary to conduct a thorough and timely investigation while operating in a remote work environment.

The most significant difference with remote investigations comes in conducting witness interviews. Although the previous gold standard was to interview witnesses in person, research has increasingly shown that this is not necessary in order to make accurate credibility determinations. Additionally, the increasing use of videoconference software by the average workforce allows investigators much of the same advantages afforded by an in-person interview. However, that is not to say that these interviews should be treated identically. Most interviewers will have to be more conscious of building rapport with remote interviewees, and more emphasis may need to be placed on avoiding crosstalk and utilizing non-visual listening cues. It is often helpful to take steps to communicate with the witness in advance of the interview to ensure that they are comfortable and confident in the process and to establish ground rules for how the interview will be conducted. Consideration should also be given as to how documents might be shared in a way that preserves necessary confidentiality. Further, interviewers must ensure that the interviewee is in a quiet, private, and secure location with adequate hardware and an internet connection capable of supporting the video call – considerations best communicated in advance. Other aspects of workplace investigations translate more naturally to a remote environment, but the individual requirements of an investigation may call for a different or more deliberate approach.

Despite the advantages of conducting a remote investigation, there are situations in which an investigation cannot be conducted 100% remotely. Careful consideration can result in a remote interview that gathers all the same critical information as one conducted in person, but a fully remote

investigation results in the loss of the ability to see the worksite and physical space at issue. Although not always relevant, depending on the complaint, a site visit can be crucial to understanding or evaluating allegations. Investigators should evaluate whether a site visit would be useful, and whether they should visit with or without the witness.

Investigations remain a critical tool in an employer's toolbox, and failure to properly conduct a timely investigation when necessary could hurt employee morale and expose an employer to unwanted liability. While in-person investigations will increasingly become more feasible, they may also increasingly require justification, given the time and cost advantages of a remote investigation, which in many circumstances can result in equally adequate work product. Employers should proactively take the necessary steps to ensure that effective remote investigations are carried out in response to employee complaints.

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