

Advanced Certificate in Conducting Workplace Investigations Program Agenda

Registration is from 8:00 am – 8:30 am on Day 1. The program begins at 8:30 am and concludes at 4:00 pm each day. Coffee is served from 8:00 am – 8:30 am, and there will be morning and afternoon breaks on all three days.

Update on Critical Legal Issues in Conducting Workplace Investigations to Minimize Your Liability Risks

Discover how to avoid the legal snares from a leading employment law attorney who has years of experience in workplace investigations. You will gain a complete update on the most recent legal developments and the latest court decisions to ensure that you stay in compliance with the laws and safeguard your organization from liability.

- Critical strategies for avoiding the most dangerous legal snares when conducting workplace investigations
- Recent changes in the law including the recent amendment to FCRA: Determining whether to bring in a third party to conduct the investigation
- Understanding how the latest court decisions are defining the key elements of a prompt, appropriate and legal investigation
- The thrill of victory: Recent case examples of employers who have emerged victorious from litigation due to properly conducted investigations
- The agony of defeat: Recent case examples of how flawed investigations continue to come at a high cost to employers
- Understanding the legal implications of recording witness interviews
- Taking precautions to ensure that you do not violate privacy rights: How recent cases are defining “reasonable expectation of privacy” in the workplace
- Utilizing the latest technological advances in employee surveillance techniques without violating privacy laws
- Recognizing red flags to protect yourself and your workplace from an incidence of violence: When can you get a restraining order to protect your workplace from the threat of violence?
- What are the legal boundaries for conducting drug tests in the workplace?
- Ensuring that you are not in violation of NLRB rules or your organization’s labor agreement
- Managing the hairy issues that can arise regarding representation during investigative interviews

Please Note: This session will take place on Day 1 from 8:30 am – 10:00 am and is staffed with an employment law attorney.

Advanced strategies for conducting workplace investigations:

This advanced certificate program focuses on 3 workplace investigations that involve the most complex challenges that you will confront in your workplace. You will return to your office with proven strategies to implement immediately. The following issues will be addressed throughout the 3-day program:

Key Preparation Tactics and Critical Communication Techniques that Will Enhance the Success of Your Investigation

- How to get managers onboard at the outset and keep them from sabotaging your investigation
- Preventing retaliation by managers against the employees who participate in an investigation
- Pointers for communicating with the accuser and the accused without violating rights to privacy
- Addressing situations where there are no witnesses, only the words of one employee against another
- How to separate the complainant from the alleged perpetrator without causing undue attention to the situation
- Diversity Issues: Preparing for diversity issues that will impact perceptions of the alleged perpetrator and the complaining party and other witnesses

Advanced Strategies for Conducting Successful Witness Interviews: Implementing Savvy Techniques to Elicit the Facts

- Constructing interview questions that will help you get to the truth of the matter when you suspect that the witness is lying
- Creative tactics for getting witnesses to cooperate: How to put witnesses at ease and get them to be forthcoming with information when they are reluctant to take sides
- Proven techniques for conducting interviews with extremely hostile witnesses
- Knowing how far you can go in questioning witnesses without making the witness feel ‘harassed’
- Reading body language: Analyzing subtle and not so subtle behaviors of your witnesses
- Taking detailed notes during interviews so that you will have the information you need
- What to do when the alleged perpetrator insists on recording the interview

Compiling Documentation and Other Key Pieces of Physical Evidence that Will Reveal the Facts

- Critical documentation and recordkeeping guidelines: Ensuring that you obtain and can account for all the documentation
- The art of taking a witness statement
- Uncovering vital pieces of physical and documentary evidence that will be extremely valuable to your investigation
- Implementing surveillance techniques: Knowing when you can and cannot use surveillance
- Determining how you might use videotape evidence to assist you in an investigation

Analyzing the Results, Preparing the Final Report and Determining What Action to Take

- Using an ideal format for your final report: What you should and should not include, using the best style for the situation to pull it all together
- Assessing the credibility of witnesses when their stories are completely inconsistent
- Honing your decision-making skills: Analyzing the results, reaching a conclusion and determining the appropriate action to take
- Presenting your investigation results to upper management and advocating your decision to take action
- Tips for testifying in court under pressure: What you should know about presenting information on the witness stand

Day 1

Mock Investigation #1

Employee Antics lead to Claims of Hostile Work Environment, Racial and Sexual Harassment and Potential Violence!

Wednesday during lunch, Jose Cruz, an operating room nurse, saunters into the hospital cafeteria for lunch. His co-workers greet him by calling him "Taco" and "Chico." Jose smirks makes a few jokes of his own and proceeds to get his lunch. Maria, a new OR nurse overhears the comments and is offended. Maria frequently hears her co-workers, and even one of the surgeons, ribbing each other as well as some of the patients. The OR nurse supervisor, Peter Snow, hears the comments too but has not made any attempts to stop the remarks. And when Maria contacts him, he dismisses her concerns as trivial and suggests that she is overly sensitive to the "good-natured ribbing" in this high stress environment. A few days later, when she arrives at work, Maria finds racial slurs and threats on her voice mail, and in her locker she discovers lurid photos of "Hot Latina Babes" with her faced superimposed on the photos. The following Monday there is an email message from Mr. Snow notifying her that she is being transferred to another shift. Extremely angry and concerned, Maria decides to talk to Human Resources.

- At what point do ribbing and workplace pranks amount to a hostile work environment?
- Does the supervisor's involuntary transfer of the employee amount to retaliation?
- How will HR be able to convince co-workers and supervisors to cooperate in the investigation?
- What action should be taken to protect the employee who has received anonymous verbal threats?

Day 2

Mock Investigation #2

Manager Accused of Retaliating Against Subordinate Who Suspects Him of Stealing!

As Alice Lee is walking out of the office late on Friday, she notices her supervisor Ted Blue loading several computer boxes into his truck. Appearing frazzled and in a hurry, Ted quickly walks back into the building without acknowledging Alice. Alice shrugs her shoulders and drives home. A few weeks later, Ted calls Alice into his office. He hands her a discipline notice and informs her that she is being written up for tardiness that occurred three (3) months earlier. Alice has a history of chronic absenteeism and tardiness, but Ted often accepts her excuses. Alice refuses to sign the form and leaves his office visibly upset. A few weeks later, Alice is called into Ted's office again. This time Alice receives a discipline notice for taking too much time at lunch, although she was out celebrating a co-workers birthday with other members of the department none of whom was disciplined. In frustration, Alice goes to the HR Manager, Jenny Jury and tells her that she thinks Ted is trying to get rid of her because of what she saw on Friday afternoon. She reports the details of what has occurred over the last several weeks. Alice is adamant that she wants Jenny to keep the conversation confidential.

- What information do you need in order to determine whether there has been a theft of company property? How should this aspect of the investigation proceed? At what point do you need to bring in law enforcement?
- How far can your search go without violating the supervisor's privacy rights? Do your policies and practices address these issues?
- Do the supervisor's written warnings amount to retaliatory conduct or are they legitimate disciplinary actions?
- How will you resolve the dispute between the supervisor and the employee?

Day 3

Mock Investigation #3

Performance Problems Raise Red Flags for Substance Abuse and Possible Leave and Disability Dilemmas!

Fred Stone, a forklift operator at ABC Distribution Company, has a seizure disorder that he generally controls with medication. Fred's employer, ABC and his manager, Joe Blow were aware of the disorder when they hired him, but were assured by both Fred and his doctor that he was not a safety risk when he was taking his medication. Recently Fred has exhibited inconsistent performance, bizarre behavior and failure to adhere to safety rules. Coworkers have reported Fred's antics to Joe, including his apparent "drug-like" behavior. Joe confronts Fred and issues a stern verbal warning, advising him that his failure to promptly improve will subject him to discipline up to and including termination. Fred apologizes and responds that he has been having trouble with his seizure medication and would like to take a week of leave to consult with his doctor and straighten out the dosage. Since Fred has used all his PTO time for vacations and sick days, he is seeking both FMLA leave and a reasonable accommodation. Over the weekend, Joe observes Fred hanging out with a known drug dealer. In desperation, Joe contacts another manager at the company for advice and tells him that he thinks Fred is a drug addict as well as a dealer. The manager advises him to go to HR and offers to accompany him. Joe decides to talk to the HR Manager about Fred.

- How will you be able to decipher whether there is a substance abuse issue and assess the potential safety risks?
- Is Fred entitled to protection under the ADA and FMLA for his seizure disorder?
- What are your responsibilities to provide a "reasonable" accommodation?
- How far should you go in taking disciplinary action under the circumstances?
- How will the investigation help you determine whether it is prudent to terminate?