

Conducting a Public Sector Workplace Investigation

Program Outline:

This program commences at 8:30 and concludes at 4:00. Registration is from 8:00 until 8:30.

8:30 – 8:45 **Welcome**

8:45 am

Preparing for Your Investigation Properly: Establishing a Legally Defensible Foundation Before You Proceed

- Discovering court and jury approved hallmarks of well-conducted public sector investigations
- Undertaking the 10 vital steps necessary to prepare for every investigation you conduct
- Recognizing when you have an affirmative duty to investigate even anonymous or seemingly meritless complaints and whether a formal investigation or informal inquiry is appropriate
- Taking inventory of your options: When can you legally transfer, impose leave, or segregate, an employee at the outset of your investigation?
- Who should conduct the investigation? Weighing the risks and benefits of calling in your attorney, an outside expert, or law enforcement authorities
- Developing an investigation strategy by identifying potential witnesses to interview, assessing which documents to collect, and establishing secure investigation files

9:15 am

How to Conduct Witness Interviews that Most Effectively Elicit Vital Facts Without Risking Liability

- Recognizing the three cardinal rules you must apply to all witness interviews
- Administering essential advisories at the outset of any witness interview you conduct: Ensuring you use the right words up front to protect your organization in the long run
- Asking questions proven to evoke crucial factual information (even from reluctant or hostile witnesses)
- Managing the unique issues in interviewing the accused or accuser: Balancing confidentiality with fairness and a right to know
- When do your employees have a Fifth Amendment right to decline to cooperate in your investigation?
- Must you permit an employee to bring their attorney or union representative to an investigative interview or hearing?

10:00 am: **Break**

10:15 am

Compiling Essential Documentation and Gathering Key Evidence to Support—Not Undermine—Your Investigation

- Creating positive documentary evidence—without creating liability: Understanding the critical role documentation plays in your investigation and how it can get you into trouble
- Strengthening your investigation results with supporting documentation, including personnel files and other workplace documents that could make or break your investigation results
- Document control essentials: How to manage the information you gather in your investigation to have it work for you . . . not against you

11:00 am

Preventing State and Federal Constitutional Hazards from Derailing Your Investigation

- How to determine whether an employee's speech is protected by the First Amendment and how you should respond when faced with this constitutional quandary
- Defining "reasonable expectation of privacy" and "reasonable suspicion" to determine the constraints on your ability to search desks, file cabinets, lockers, or other employee spaces
- Avoiding privacy pitfalls in investigating off-duty conduct, examining email and Internet usage
- Steering clear of personal liability for constitutional violations: Steps you must take to ensure you are protected by limited immunity

11:45 am: **Lunch**

1:00 pm

Navigating the Legal Obstacles Associated with Investigating a Protected Class Employee—Without Running Into a Discrimination Lawsuit

- Determining which State and federal discrimination laws impact your ability to get the critical information you need
- How to ensure that you maintain consistency: Avoiding the investigative mistakes that lead to Title VII liability
- Investigating suspected use of drugs or alcohol: Why you must exercise extreme caution to avoid prompting an ADA lawsuit
- Can investigating workplace hostility or violence set you up for an ADA mental disability lawsuit? The very latest developments you need to know from State and federal courts
- Handling an investigation where the subject may be protected under the Whistleblower Protection Act or where there is the danger of retaliation liability

1:45 pm: **Break**

2:00 pm

How to Investigate and Remedy a Sexual Harassment or Discrimination Complaint: Taking the Appropriate Precautions When Investigating These Volatile Issues

- Ensuring your investigation satisfies the legal requirements of a prompt and adequate investigation
- Understanding the precise legal definition of "sexual harassment" and "discrimination" so you can apply the facts you've gathered to applicable law to reach a sound conclusion
- Recognizing the five possible answers to the question "Did sexual harassment or discrimination occur?"
- He said, she said: Resolving sexual harassment complaints where the only two witnesses are the parties themselves
- Minimizing the inevitable disruption and drain on morale that accompanies sexual harassment and discrimination investigations

3:00 pm

Wrapping Up Your Investigation: Writing a Final Investigation Report, Formulating an Appropriate and Legal Plan of Action and Preparing for Inevitable Challenges and Hearings

- How to write a final investigation report: What should and should not be included
- Recommending post-investigation action: Evaluating all of your options and understanding which responses are most appropriate to particular circumstances
- Undertaking a liability risk assessment before you act on or report the findings of your investigation
- What can or should you say to coworkers about your findings or recommendations? Achieving workplace closure while remaining within the bounds of the law

- Handling post-investigation challenges: Preparing a file that presents the most legally defensible case in due process and grievance hearings
- Conducting appropriate follow-up to ensure that any misconduct ends and your investigation concludes liability-free

4:00 pm: **Workshop concludes**