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KIRK & CALDWELL

Litigation It comes naturally to us.

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**HOW TO MAKE SURE  
EMPLOYEE DISCIPLINE  
STICKS: INVESTIGATIONS  
DO MATTER**

*Sally Culley and Chase Hattaway*

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**WHEN TO INVESTIGATE**

- Issues which might require investigation:
  - Allegations of misconduct
  - Allegations of bullying/harassment
  - Employee grievances



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**WHY INVESTIGATE**

- Gather facts
- Determine merits
- Comply with legal obligations
- Preserve reputation
- Avoid liability
- Take action



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**PROCESS OF INVESTIGATION**

1. Identify individual to conduct investigation
2. Identify issues and possible violations
3. Evaluate procedural requirements
4. Identify documents and witnesses
5. Obtain information
6. Evaluate and make recommendations



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**WHO SHOULD INVESTIGATE?**

- In-house or outsource
- Things to consider:
  - Seriousness
  - Resources and time
  - Likelihood of litigation
  - Privilege issues
  - Financial exposure



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### WHO SHOULD INVESTIGATE?

If in-house:

- Objective
  - Consider conflicts (actual, apparent and potential)
- Respected
- Experienced

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### WHAT IS BEING INVESTIGATED?

- Policy violations
- Statutory violations
- Criminal violations
- Union contract
- Other contractual violations



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### PROCEDURAL REQUIREMENTS

- Check policies for:
  - Time periods
  - Notifications
  - Representations
  - Reporting requirements
  - Need for statements

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**DOCUMENTS**

- Preserve Documents
  - Evidence
  - Legal Hold
  - Spoliation
- Gather Documents
  - Document scene if applicable
  - Electronic materials
  - Request from multiple sources
- Evaluate Documents
  - Organize chronologically



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
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**DOCUMENTS TO REVIEW**

- Rules, policies, procedures, Union contract
- Prior complaints
- Employee's personnel files
- Alleged violator's personnel files
- Supervisor's notes and files
- Videos
- Computer docs, emails, text messages – limited to issues under investigation



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**WITNESS INTERVIEWS - PREPARATION**

- Prepare outlines
  - Identify facts needed
- Consider whether to bring documents
- Ensure sufficient time
- Privacy of interviews





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### WITNESS INTERVIEWS - SCHEDULING

- Conduct individually
- Order
  - Complainant
  - Accused
  - Key Witnesses
  - Other Related Witnesses
- Consider re-interviewing witnesses
- Updates to Complainant
- Prior notice?

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### CONDUCTING WITNESS INTERVIEWS

- Establish a rapport
- Control the environment
- Reiterate and recap
  - “So, you recall the incident as...”
  - “Is there anything else you can recall that would help me determine what happened?”
  - “Is there any other information you wish to share?”
- Leave the door open for future investigation

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### WITNESS INTERVIEWS- DOCUMENTATION

- Document, Document, Document



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**EVALUATE- PREPARING REPORT**

- Describe Complaint
- Identify pertinent policy/law
- Describe investigation protocol
- Set forth evidence
- Evaluation (apply facts to law)
- Conclusion
  - Internal
  - External

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**THANK YOU!**

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