Compliance with Confidence:
The Roles of a Workplace Investigation
Throughout my twenty-five years in Human Resources, I have found that even the most seasoned HR professionals and managers find the process of conducting a workplace investigation to be daunting—and rightly so. What other functions of your job are this urgent and emotional and carry such impactful outcomes? Since they are not a part of your daily routine, it often feels like recreating the wheel every time an investigation is required.

Imagine if you could break down the investigation into several roles that you can train others to do, or take on one step at a time on your own. Learning each role helps create a more standardized process and ensures each person involved in the investigation has the right training and mindset needed to work together toward a consistent and unbiased outcome. Interested? Keep reading and we’ll show you how.
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How to Use This Book

This book can be used in several ways, depending on your needs. For example, if you are a Director with an HR staff, each member can be assigned a section based on their experience level to provide training on their role in the investigation. For example, an HR Business Partner may be trained as an Interviewer, while an HR Coordinator may be trained as a Note Taker.

For multiple locations with centralized HR, you may want to train your General Managers as Interviewers and Note Takers but leave the primary Investigator and Decision Maker roles to HR. And if you are a superhero known as “Solo HR,” this book is also for you! By learning the roles you will play in an investigation, you will be more able to switch gears as needed and be more objective as you look at each piece of the investigation.
Why Roles are Necessary

Most of the training resources available on conducting workplace investigations focus on the process and documentation. Although this information is important, it often doesn't transfer over to the act of actually conducting the investigation. An investigator will wear many different “hats” as they move through the investigation, which we refer to as roles. We believe that each role has a different task and focus, therefore requiring a different skill set.

This is not to say that one person cannot conduct an investigation on their own, but rather that anyone conducting any part of an investigation must be prepared for each role they play. Ultimately, there will be additional people in the company who can take part of the investigation off the shoulders of an HR solo practitioner, as this provides stronger support of an unbiased outcome for defensibility. While learning the roles of the investigation, keep in mind staff members in your organization who may be a good fit for each role.
Meet the Roles

**Investigator**
Oversees the entire investigation, ensuring each step is completed in a compliant and timely manner, and conducts the final assessment and determination.

**Note Taker**
Documents both the questions and responses exactly as stated. Acts as secondary witness to the interview, assesses credibility, and may ask clarifying questions.

**Interviewer**
Conducts one or all of the interviews, asking questions, assessing credibility, and listening for clues and inconsistencies.

**Decision Maker**
Determines most appropriate corrective and preventative actions based on investigation findings and company policy.
How They Work Together

In any investigation, one Investigator must take the responsibility of overseeing the entire investigative process. This, however, does not make the other roles any less important.

The Investigator relies upon the Interviewer and the Note Taker to perform one of the most critical functions in the Investigation. These two roles must work together to obtain and be witness to what can be highly emotional and private information, documenting every word without opinion or conjecture. The Investigator must trust the information provided in order to make an accurate final determination. The Decision Maker relies on the Investigator’s determination to assign appropriate corrective and preventative actions, ensuring consistent application according to company policy and past practice. Yay, teamwork!

It is common to feel overwhelmed when undertaking an investigation, which is why we believe it is helpful to find others who can assist. They may be hesitant and believe this is the job of HR, but explaining why can help enlighten them and may create a more collaborative relationship with HR. If you conduct the investigation on your own, we strongly suggest an additional Decision Maker for reasons described later in this book.
Each participant in an investigation should be informed of what the company can and cannot promise regarding confidentiality and what can and cannot be expected of the participant regarding confidentiality. The following is a sample of that promise.

The Confidentiality Promise

A Promise to confidentiality Investigation Participants

Although I can promise you that I will keep the information you share as confidential as possible, if the information includes potential sexual harassment, discrimination, bullying, safety, or a serious policy violation, I am legally obligated to share the information with those who need to be involved in order to take appropriate action.

What I can promise you is that I will inform you of who will be told and what information will be shared before I pass on the information.

If an investigation is needed, the employee accused of wrongdoing and any potential witnesses will only be told the minimum amount of information needed to conduct a fair and impartial investigation. The statements and investigation files will not be shared with investigation participants.

And remember, there are whistle-blower and retaliation protections in place to protect you and your job. I will follow up with you periodically to ensure that no retaliation is taking place.

This is provided as an example and is not intended as legal advice. Consult with your attorney before use.
The Investigator

Background

In the past, many organizations would call an attorney to conduct their workplace investigations. However, with court opinion stating that attorneys who participate in the investigation may not be allowed to represent their client in litigation, this is likely not an option. The good news is that most workplace investigations can be completed by an HR representative, a senior level manager, or the business owner.

As long as the investigator is of a sufficient level to understand the importance of the investigation, the steps that are legally required by state and federal laws and company policies and procedures relating to the matter, an internal investigator may be assigned. Let’s look closer into the role of the Investigator.

Solo HR

Although you may be undertaking all or most of the roles in an investigation, it is important that you take the time to step out of the details and fact finding and take a high-level view to ensure the investigation stays on track. Creating an investigation plan before you begin can be helpful too.
Investigator Qualifications

Unbiased
Must be able to remain open-minded and unbiased throughout the investigation. This can be more difficult than it seems. If the investigator has had direct problems with the accused or complainant in the past, another investigator may be required.

Respected
The investigator does not need to be liked by the parties involved but must be respected and seen as fair and impartial by employees and management in order to be effective.

Prepared
A clear understanding of the process and legal requirements of an investigation is necessary, or the use of a compliant platform such as InvestiPro can be substituted. Must be familiar with related company policies.

Available
This may take some shuffling, but the investigator must set aside sufficient time to perform and document the investigation thoroughly and completely, beginning within three days of the complaint. This is easier if some of the roles are assigned to other parties.
It is critical for the Solo HR (Superhero!) to stop between steps to reset. For example, it is best to insert some time in between interviews to ensure that emotions, opinions, and information are not crossed over into the next interview. Each interview must be conducted and documented as an individual event and is assessed on its own merit. It is also a best practice to avoid reviewing the notes of a completed interview until all the interviews are complete and the assessment has begun.
**Investigator Keys to Success**

- **Focused**
  Ensure that time scheduled for investigations is uninterrupted time to ensure proper mindset and focus.

- **Confidential**
  Provide each investigation team member with confidentiality instructions and role training.

- **Timely**
  Schedule investigation to begin and conclude within a reasonable and compliant time frame.

- **Appreciative**
  Let your investigation team and all participants know that their efforts were appreciated.
The Interviewer

Background

The Interviewer’s role is to establish a calm and respectful rapport with each interviewee, in order to encourage open discussion and obtain all information relevant to the incident(s) being investigated. To do so, it is helpful to remind the interviewee that your goal is to be unbiased and obtain the information needed to come to a fair and appropriate outcome.

Begin with general questions such as, “What time were you working on the day the incident occurred?” These questions allow the interviewee to relax. Follow with a few broad questions, sitting quietly and allowing the interviewee to provide as much information as possible before asking another question. The exception to this is if the interviewee goes off topic. Then you should direct the conversation back to the question asked.

Continue with open-ended questions until the entire story has been told. Follow up with clarifying questions and ask about responses that create inconsistencies. Finally, thank the interviewee for their participation and review the confidentiality promise.

If you will be conducting the interviews yourself, we strongly suggest having a Note Taker with you. It is important to have a third party to witness and document the interview, so you are able to be completely engaged in the conversation.
Interviewer Qualifications

Responsible
Must have a basic understanding of why an investigation is needed and the potential liability if the process is not followed properly and consistently.

Calm
Able to handle emotional and confrontational interactions without getting agitated or defensive. Can be trusted to walk away if a situation escalates to a level of risk.

Fair
Must be able to remain open minded and unbiased throughout the interview, no matter what information is provided. For example, they may not question the response of one interviewee but not another.

Inquisitive
Have an awareness of situations when details are being left out and an instinctive need to search out pertinent details within the scope of the investigation.
It is critical for the Solo HR (Superhero!) to stop between steps to reset. For example, it is best to insert some time in between interviews to ensure that emotions, opinions, and information are not crossed over into the next interview. Each interview must be conducted and documented as an individual event and is assessed on its own merit. It is also a best practice to avoid reviewing the notes of a completed interview until all the interviews are complete and the assessment has begun.
Interviewer Keys to Success

Focused
Ensure that time scheduled for investigations is uninterrupted time to ensure proper mindset and focus.

Prepared
Review pertinent policies and confidentiality instructions prior to each interview.

Unbiased
Make sure that any preconceived opinions or agitation is left at the door before the interview begins.

Respectful
Remember that respect is a two-way street. What you provide is what (most often) will be returned.
The Note Taker

Background

Most Interviewers find it very difficult to take clear, concise notes while conducting an investigation interview. And then, when trying to transcribe the conversation later, the interviewer often has to rely on what they think the interviewee meant based on a few words they wrote down. This is why the Note Taker is such an important role. In an interview, the Note Taker sits with the other parties and writes or types each word as it is being said. This leaves no room for misinterpretation. But the Note Taker can be of help in other ways as well. For example, if the interaction begins to get loud or hostile, they can interject and suggest that everyone be quiet for a moment while they catch up.

The Note Taker can be an interpreter in the case of a language barrier. Also, they are a witness to everything that happens in the meeting and can provide input as to the credibility of the interviewee based on what was observed. During the interview, the Note Taker may ask clarifying questions to ensure the information is clearly understood.

It can be effective to have a Manager conduct the interview but difficult to step completely away. Is it possible for you to be the Note Taker?
**Note Taker Qualifications**

**Quick**
Note Takers must be able to write or type quickly in order to appropriately document what is being said, without any personal interjections or an opinionated tone.

**Approachable**
The Note Taker should be someone who is known as friendly, trustworthy, and not known to spread gossip. This is critical to receiving open communication from the interviewee.

**Observant**
It often happens that the Note Taker will notice small signs that the Interviewer will miss while conducting the interview. For example, the Interviewer may look down to read the next question and not see the interviewee rolling their eyes. This could be an important sign that the interviewee is not taking the interview seriously, and should be noted as part of the credibility assessment.
If you find yourself in a position to be the Interviewer and the Note Taker, it is helpful to explain to the interviewee that you are listening intently but may be looking down to keep good notes in order to accurately document their responses. In fact, you may even need to ask them to pause for a moment to ensure that you don’t miss anything. Let them know that you appreciate their understanding.
Note Taker Keys to Success

Welcoming
Help provide a safe and comfortable atmosphere for conducting difficult conversations.

Precise
Accurately transcribe the conversation, word for word, for defensibility in case of litigation.

Clear
Assist the Interviewer in assuring that any vague communications are clarified.

Neutral
Avoid discussing details or opinions with anyone other than the Interviewer or Investigator.
The Decision Maker

The Decision Maker is responsible for the final step in the investigation process and should be of sufficient level to represent the organization in matters of potential liability exposure. Most often, this is a CEO, VP, Director, Sr. Manager, or legal counsel, and there are no laws that preclude the Investigator from also taking on the role of the Decision Maker. However, allowing a separate party to make the disciplinary decisions based on the findings in the investigation provides a second layer of protection against a claim that the investigation was biased.

Once the Investigator completes the interviews and assessment and determines whether the claim has been substantiated, that decision and supporting information is provided to the Decision Maker. The Decision Maker uses the information to determine appropriate corrective and preventative action, if any is required. They must consider severity, past performance, company policy, and all evidence to ensure the actions taken are consistent with those in similar situations.

Guess what? You can use your attorney for this part. This is considered legal advice and will not create a conflict for representation.
Decision Maker Qualifications

**Informed**
Must be aware of current policies and procedures and their application within the organization.

**Fair**
Both the management team and the general staff must respect the Decision Maker’s ability to be fair and unbiased.

**Knowlegeable**
It is helpful if the decision maker is well versed in employment law or has access to someone who is, such as legal counsel.

**Representative**
Must be able to consistently represent the viewpoints of company administrators and executives with regard to compliance and company culture.
If it is necessary for you to be the Decision Maker, this can be acceptable. Especially if the incident being investigated is not of a serious nature.
However, we do suggest that you take some time to separate yourself from the details of the investigation before moving on to the corrective and preventative actions. It can be helpful to review any similar previous incidents, company policy, and past practices in order to ensure a consistent outcome.
**Decision Maker Keys to Success**

- **Accountable**
  Review the provided information and determine corrective and preventive action in a timely manner (usually within 48-72 hours).

- **Consistent**
  Understand the implications of inconsistent corrective actions.

- **Involved**
  Participate in the delivery of the outcome to involved parties if safety is a concern or an executive level employee is involved.

- **Assured**
  Provide testimony on behalf of the organization in case of litigation.
Overview of the Investigation

Although there may be several parties involved in conducting an investigation, most roles will only participate in a specific step. The chart below depicts the steps in the investigation process, and which roles take part in each step.

- **Complaint**: Document complaint based on information provided. Be sure to note date and time received.
- **Plan**: Define participants. Schedule interviews and calculate complete timeline.
- **Interviews**: Ensure interviews are completed as scheduled. Communicate report deadline to investigators.
- **Assessment**: Assess each interview independently, then all information and evidence as a whole.
- **Determination**: Based on assessment and considering laws and policies, determine whether complaint has been substantiated.
- **Corrective Actions**: Review corrective and preventive actions provided by Decision Maker to ensure they are consistent with past outcomes.
About InvestiPro

InvestiPro offers a complete workplace investigation platform for consistent, accurate, and unlimited investigations, including:

- Unlimited Investigations
- Guided Interviews
- Online Training
- Investigator Support

InvestiPro simplifies workplace investigations by using technology to automate and standardize the process. Not only does this save time and money, but using InvestiPro also ensures a consistent, compliant outcome every time.

In fact, our clients like the product so much, they use it for “investigations” into theft, policy violations, and customer complaints. Add in the templates, online harassment and discrimination training, and support from an HR investigator that are included with membership, and InvestiPro is your total employee relations solution.
Resources List
Where to go from here

Investigation Training

- How to Conduct a Workplace Investigation
- Workplace Investigations: Basic Issues for Employers

Suggested Reading

- The Essential Guide to Workplace Investigations

The Law

- U.S. Equal Employment Opportunity Commission
- Current Cases

Sample Policies

- InvestiPro Sample Policies
- InvestiPro HR Investigator’s Blog
Questions or Comments?
*We’d love to hear from you!*

(888) 797.3882