

HR and Management Roles In Investigations

The following information has been prepared as a guide to supervisors and managers to assist them in identifying those types of investigations that the supervisor/manager will typically lead and the types of investigations that Human Resources (HR) will typically lead. This is only a guide, and may be varied in particular cases.

In all investigations, the supervisor/manager and the assigned Human Resource Analyst (HRA) will work together. It is imperative that the supervisor/manager advise HR early in the process that an issue has developed that may require an investigation. This will allow the HRA to provide the maximum assistance in the resolution of the issue, and assure that all requirements are followed. HR must be involved in the drafting and issuance of any disciplinary action.

The Program Manager will be notified immediately when HR receives a discrimination or harassment complaint about one of their direct reports. Notification to the specific Manager should occur before the HRA conducts fact-finding meetings to determine if there is merit to the complaint. HR will follow-up with the Manager to update them on the results of fact-finding - merit or not. Once they have followed-up with the Manager, if the complaint is found to have merit, then the HRA will proceed as required.

| Investigations HR Leads | Investigations Supervisor/Mgr Leads |
|---|--|
| Union complaint brought to HR | External customer complaint |
| Complaint Involving a Management Service Employee made to HR | Employee performance issues |
| Management practice | Violation of OMD policies |
| Complaints where a third-party is needed to investigate | Complaint about a manager by an employee when made to the upline manager |
| Complaints of Discrimination*, Workplace Harassment*, BOLI/DOL Complaints, Tort Claim Notices | Complaints from one employee about another that do not involve policy violations, discrimination, harassment, etc. |
| Governor's Office Complaints (other than driving) | Governor's Office Complaints about driving after initial Safety & Risk Manager investigation |
| Governor's Office follow-up (including driving) | |

**All complaints from customers (external complaints) alleging discrimination, workplace harassment, etc. will be referred to the Agency's Affirmative Action Officer.*

**SAMPLE FORMAT
CONDUCTING AN INVESTIGATORY MEETING**

DATE OF MEETING

IDENTIFY TYPE OF MEETING

LIST ATTENDEES WITH TITLES

EXAMPLE:

January 25, 2007

Investigatory Meeting

Attending: xxxxx, Employee – xxxxx, Steward – xxxxx, Manager(s), xxxx, Human Resources Analyst

OPENING

1. State reason for conducting the meeting by briefly reviewing the area(s) of concern and explain that the employee will be asked questions regarding the different specific incident and/or evidence supporting the concern(s).
2. Cover the roles and responsibilities of the meeting participants; HRA – facilitator and/or lead in asking the questions, manager – facilitator and/or lead in asking the questions, note taking, technical support, steward – asking clarifying questions and providing closing comments, suggestions on follow-up actions, employee- responding to questions, providing additional information, suggestions on follow-up steps, etc.
3. Explain that questions have been prepared as a guide to ensure that all concerns are addressed and that notes will be taken. **Note: it is not normal practice to provide copies of the questions and your notes to the employee and steward as they had opportunity to hear the questions and take their own notes. Also, DOJ has recommended that recording investigatory meetings not be allowed. If you are asked to provide notes or have the meeting recorded, contact HR.**

EXAMPLE:

In our meeting today I will serve as the facilitator and take the lead in addressing each of the concerns with you. Your manager is here to provide technical support, ask clarifying questions and ensure that all concerns have been addressed. Your steward is here to represent you. In that capacity the steward may ask clarifying questions and may present a closing statement on your behalf. Please understand that your steward cannot advise you to not answer a question, or on how to answer a question. We have prepared some questions and will be taking notes. The expectation is that you will answer each question to the best of your ability; provide any additional pertinent information and ask clarifying questions as needed to ensure that we have complete information as we determine how best to proceed. Do you have any questions for us at this time?

ASK OPEN ENDED QUESTIONS

Review with the employee each specific incident and evidence supporting the area(s) of concern. Follow up by asking open ended questions to allow the employee to provide a full explanation addressing each specific incident or evidence. If any question(s) require a yes or no answer, follow up with a why, how, etc. question. Be sure to number your questions and allow adequate space to write in notes reflecting the employee's response.

EXAMPLE #1:

Concern – hostile behavior directed at a supervisor: *It is alleged that on January 29, 2007 at about 4 PM you went into your supervisor's office and started yelling and cussing at her. She said that you became argumentative and refused to listen to any information she was trying to provide you when she informed you that you needed to adhere to the Units office guidelines. Your behavior was both witnessed and heard by your co-workers even though the office door was closed.*

- Q1. I have reviewed the alleged incident with you. Please explain from your perspective what happened in your meeting with your supervisor on January 29, 2007.*
- Q2. Interviewed co-workers sitting approximately 15 feet away said that they also heard you use swear words in a very loud voice. What circumstances caused you to behave in this manner? What should we consider when determining how to best remedy this situation?*

EXAMPLE #2:

Concern –violation of agency's equipment use policy: *Review of OMD phone records show that from January 15 to January 29, 2007 you placed 30 personal phone calls from your work phone. Of those calls, 25 appear to be personal long distance.*

- Q.1 We have a copy of OMD's policy on personal use of agency equipment that is signed by you indicating that you understand the policy and received a copy of the policy on October 15, 2006. Please explain to us your understanding of this document?*
- Q.2 We have highlighted the phone calls made from your work phone that appear to be personal and made during your scheduled work period for the month of December 2006. Please review this list and identify any phone calls marked as personal that you believe are business related. For the calls that are personal, please explain for us the circumstances that made you think doing this would be OK?*
- Q3. We have marked those calls that are long distance and appear to be personal. Please review each call and indicate if it was personal and explain the circumstance around the call.*

Continue to ask your pre-developed questions covering the supporting evidence for each specific incident until all concerns have been addressed. Remember that prepared questions are followed as a guide. Based on the employee's response you may need to ask follow-up or clarifying

questions or drop a question that is no longer relevant. If that is the case make a note of both the question and the employee's response. This process is repeated until all areas of concerns have been addressed.

Note: Incidents and/or evidence can not be included in the supporting facts of a disciplinary action unless the employee has been given the opportunity to respond to each one specifically.

CLOSING

Thank the employee and steward for their time and state that you will take all of the information provided under consideration. Ask if there are any final questions or if the steward or employee wants to make any final statements. If applicable, commit to any follow-up investigation steps identified as needed in the meeting. Identify the approximate time that the employee will hear back from you (set depending on what follow-up is needed, extent of actions being considered, etc.). Remind all parties of the importance of confidentiality.

EXAMPLE:

We want to thank both of you for your time today and appreciate you providing us with this important information. We want to remind you that the concerns we have addressed and subsequent discussions and information covered are confidential. Please do not discuss these concerns and investigation with anyone besides your steward, manager or HR. We understand that this is a difficult situation to go through and are committed to getting back to you with how we plan to proceed as quickly as possible. Based on the follow-up steps we need to take, we estimate completing our assessment within the next week. Since there are no additional questions or comments we are closing this investigatory meeting.

IMPORTANT NOTE: Do not make any statements regarding how you plan to proceed to remedy your concern(s) with the employee during your investigatory meeting. Also, avoid making any closing statements that could be construed as a verbal warning by the employee or their steward. Only after all information has been reviewed can an appropriate remedy be identified. Depending on the concerns needing to be resolved, considerations can include information such as the employee's length of service, past performance history, any previous formal or informal disciplinary steps taken, any existing medical issues, best practices for like concerns, interpretation of appropriate contract language, applicable labor laws and past arbitration decisions. Your assigned HRA can assist you in all of these areas and does need to be contacted when formal discipline is being considered.

| Type | What it is | When it should be used | Who issues it | How it is communicated |
|----------------------------|--|--|--|---|
| Written Reprimand | A communication to the employee describing what they did wrong, why it was wrong, specific expectations on future performance, and consequences of not meeting those expectations. | When failed to heed a previous expectation and/or verbal or written warning and the employee's conduct or action is not serious enough to warrant an economic sanction. | Generally written by the immediate supervisor in close consultation with HR. | Given to employee personally by supervisor or manager. |
| Temporary Salary Reduction | A decrease in pay for a specified period of time, imposed in full increments for one or more months. | When failed to heed a written reprimand. Limited occasions when egregious behavior warrants a salary reduction in lieu of a written reprimand. | Must be written and issued by the appointing authority. | Given to employee personally by supervisor or manager. |
| Suspension without Pay | A cease of work mandated for a specified period of time on a without pay basis. | When failed to heed a lesser disciplinary action or behavior is so egregious that a lesser action is not appropriate. Generally not considered for performance related deficiencies. | Must be written and issued by the appointing authority. | Given to employee personally by supervisor or manager OR mailed to employee via certified mail. |

| Type | What it is | When it should be used | Who issues it | How it is communicated |
|----------------------|--|---|---|---|
| Involuntary Demotion | A movement of an employee from a position in one class to a position in another having a lower salary range. | Best used in situations where performance in present class of work is unsatisfactory and management believes employee would function successfully in a lower class. Not to be used for behavioral issues or during trial service (new or promotion) | Must be written and issued by the appointing authority. | Given to employee personally by supervisory or manager. |
| Pre-Dismisal Meeting | A meeting to determine if dismissal is the correct course of action. | When dismissal is being considered. | Must be written and issued by the appointing authority. | Communicated in writing to the employee AND is sent via certified mail. |
| Dismissal | The removal of employee from state service. | When all efforts to correct an employee's conduct or performance through progressive discipline have failed OR when the act or acts of conduct are so egregious the continued presence of the employee would constitute in intolerable liability. | Must be written and issued by the appointing authority. | Communicated in writing via certified mail. |

Progressive Discipline Tips

1. Talk to your employees; monitor their performance; be aware when they are facing trouble keeping up.

2. When there is a problem ask yourself:

- Is it important enough that I am willing to take the steps necessary to make the person do this/these task(s).
- Can they do it? (If their life depended on it, could they do it?)
- Are they willing to do it? (They can do it but just aren't willing to do it).
- If they can't do it, could they do it with training?
If so, work with them to find training that will help them. Once that training is provided, expect them to do the work.
- If they can't do it, even with training, it is time to let that person move on. They will feel better doing something that they can succeed at and it is better to let them go sooner, rather than later.
- If they aren't willing to do it, talk to them; be honest; explain why it is important that this work be completed. Find out what would motivate them to do it. If you can alter the work to make it more interesting or to provide more of a challenge, do so.

3. If that doesn't work you have to decide if it is important enough that you want to take further steps. Talk with Human Resources to let them know what's going on and what you've done to this point (coaching, feedback, training). Together, decide what the next step should be. The next step in the process would be a Letter of Expectation.

- Discuss the expectations with the employee first; make sure they understand them.
- State those expectations (again) in writing so all parties know what is expected.
- Then you give them a reasonable amount of time to succeed, maybe 3 months; monitor and document their performance, and be sure to provide feedback to the employee during this time.

4. At the end of that time, if they have not improved, you can take the next step which is a Letter of Reprimand. This is a first step on the road to discipline so you should arrange a meeting with the employee and their union representative. Have your own manager accompany you to this meeting. Discuss the expectations and the actual performance over the last 3 months (or relevant time period). Ask them what they

understand the expectations, one by one. Ask them what they actually did regarding that task. You can ask them again what they think would help them achieve their goals. If there are no extenuating circumstances and they cannot give a reasonable explanation of why they could not succeed, then you go back to your office and write a Letter of Reprimand.

5. The Letter of Reprimand lists "charges" against the employee, restating expectations and charging them with not meeting those expectations. It lets them know that if they do not meet those expectations it can lead to a salary reduction and/or dismissal.

- Again, you monitor and document their performance.
- If the Letter of Reprimand has not worked, schedule another meeting with the employee and their union representative. Go through the expectations and ask them what their performance was and give them a chance to explain if there was anything that prevented them from meeting the expectations.

6. If the performance did not meet expectations and there were no extenuating circumstances, then you work with your Human Resource Analyst to move to the next step of progressive discipline, which generally is a pay reduction. Again, you're giving the employee another chance to succeed.

7. In the end if their performance does not improve after all these steps, it is best to call it quits and dismiss the employee. To stop at this point would be worse than not taking the steps to discipline the employee in the first place.

This is not easy and it takes a lot of work and time. However, it is not fair to the other employees who work hard to meet the expectations to not expect it of everyone.

This is a difficult process and should only be undertaken if the individual is seriously underperforming and you have tried all other remedies.

So, my tip is: Talk to the employee about their performance; be honest; monitor and document their performance; provide feedback and coaching; do not delay; take progressively firmer steps until they either improve or they leave.