

5 Tips to Improve Employment Discrimination Investigations

By Dave Robinson on April 18, 2014



Despite employers becoming increasingly more sophisticated in recognizing workplace discrimination, many still drop the ball by mishandling employee complaints. Ignoring a complaint of discrimination not only increases an employer's liability to that particular employee, it also demonstrates to other employees that the company's policy is ineffective, which potentially strengthens future claims as well. Accordingly, quickly and effectively resolving complaints of discrimination is the best way to prevent claims and maintain strong employee morale. Here are 5 quick tips to improve employer investigations:

Have a strong employee complaint policy

Good investigations start with a strong complaint policy. Make sure it is clear to employees that they have the right to complain about discrimination and harassment, and identify whom the complaints should be directed. A good policy will also prohibit retaliation and assure employees that they will be protected from any retaliation if they do complain.

Don't pick sides

Objectivity is key to an effective investigation. Avoid drawing conclusions until after all the evidence is gathered. It is the employer's job in an investigation to gather facts, not slant them in favor of one side or the other. Similarly, don't promise confidentiality to employees. Information provided "confidentially" will still be considered an employee complaint, and will prevent an employer from fully investigating all of the issues.

Just the facts

When interviewing the parties and witnesses, it is important to get both sides' version of the events. Use the four w's (who, what, where and when) to begin each question. Avoid leading questions (i.e. questions that only elicit a yes or no answer). Open ended questions will allow the employee to tell their version of events in their own words. Additionally, the more a party talks, the more open and relaxed they will be, which will elicit better answers. Whenever possible, have another person in the interview to take accurate notes and to act as a corroborating witness if a claim later arises.

Document everything

In every discrimination case, the quality of the documentation often determines who prevails. Investigations are no different. Take notes from each interview and use the notes to prepare a statement for witnesses to sign. A statement will memorialize the facts early on, and make it more difficult for an employee to change their statement later. Document your conclusions, the plan of action going forward, and any subsequent follow up.

PROFESSIONALS

David W. Robinson

PRACTICES

Employment Law

Make a decision promptly

It is important that you commence and complete the investigation as quickly as possible. If the investigation does not begin promptly after the complaint, employees (as well as juries) will infer that making complaints to the employer is pointless. Further, while the investigation drags on, morale is lowered and productivity declines. Resolution is important for everyone involved. Communicate the findings and the next steps to both parties. Remind everyone that discrimination and retaliation will not be tolerated. Be sure to follow up with the decided plan of action.

What do you do if the findings are inconclusive? Inform both parties of this, reaffirm the company's anti-discrimination policies and continue to monitor the situation. Separate the parties if possible without punishing either. Ultimately, by promptly and thoroughly investigating the complaint, and through regular follow up, you will likely prevent further incidents from happening, which is generally the main concern of the employee who complained in the first place.

POSTED IN: **EMPLOYMENT LAW**