

Maddin Hauser's
Employment Law
Symposium

**THE INVESTIGATOR'S ROADMAP:
CONDUCTING FAIR AND EFFECTIVE
WORKPLACE INVESTIGATIONS**

Breanne N. Gilliam, Esq.



Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com





Breanne N. Gilliam, Esq.

Associate

(248) 359-6326

(248) 359-6126 Fax

bgilliam@maddinhauser.com



Maddin Hauser
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com



Overview

- When is an investigation required?
- How to conduct a proper investigation
- Concluding the investigation and taking action



THE FOUNDATION

WHY INVESTIGATE WORKPLACE ISSUES?

- Avoid or minimize legal liability
- Improve factual basis for decisions
- Improve morale
- Demonstrate the company's commitment to enforcing policies

WHEN SHOULD YOU INVESTIGATE?

- Harassment complaints
- Discrimination allegations
- Retaliation claims
- Workplace violence/threats
- OSHA violations
- Whistleblower reports
- Suspected theft/fraud
- Serious policy violations

WHEN SHOULD YOU INVESTIGATE?

An investigation is required once you have knowledge of a complaint **including informal complaints**



INVESTIGATION STEPS

STEP 1: PLAN THE INVESTIGATION

STEP 1: PLANNING

Who will investigate?

- When selecting an investigator, consider:
 - Potential biases
 - Any actual or perceived conflicts of interest
 - The investigator's experience
 - Whether s/he has the following qualities:
 - Detail oriented
 - The right temperament to conduct interviews
 - Trustworthy



STEP 1: PLANNING

Consider using an outside investigator in these cases:

- Complaints involving executive level or senior management
- Allegations directed towards a human resources professional
- High-stakes legal risks
- When internal staff lacks the time, training, or neutrality to conduct a thorough, unbiased investigation

STEP 1: PLANNING

- What are the specific allegations?
- Who needs to be interviewed?
- What evidence needs to be collected?
- Does immediate action need to be taken?



STEP 2: INTERVIEW THE COMPLAINANT

STEP 2: INTERVIEW THE COMPLAINANT

- At the beginning of the interview:
 - Thank the accused for coming forward
 - Explain confidentiality
 - Never promise absolute confidentiality!
 - Explain rights against retaliation



STEP 2: INTERVIEW THE COMPLAINANT

- Gather as many details as possible
- Ask open-ended questions
- Don't assume anything



STEP 2: SAMPLE QUESTIONS

- What happened? Please be as specific as possible.
- What date and time did this occur?
- Where did this occur?
- Did anyone else see it happen?
 - Who?
 - What did they say and/or do?
- Do you have any physical evidence you can share with us?
- Who else should we talk to?
- Is there anything else you want to share?

STEP 3: INTERVIEW WITNESSES

STEP 3: CORROBORATING OR REFUTING ACCOUNTS

Witnesses can help to corroborate or refute the complainant's account of what happened and shed light on some of the details the complainant may not have been able to furnish



STEP 3: POTENTIAL WITNESSES

- Someone who saw or heard the incident*
- Someone who the complainant discussed the incident with after the fact
- Someone who heard about the incident from other witnesses
- Anyone else the complainant mentions might have extra information about the issue

*most compelling

STEP 3: SAMPLE QUESTIONS

- What did you witness? Please provide as many details as you can.
- Who was involved?
- What did each person do and say?
- Did anyone else see it happen? Who?
- Did you report this to anyone in management? To whom? When? What did they say and/or do?
- Do you have any physical evidence you can share with us?

STEP 3: WITNESS STATEMENTS

- Not required but recommended especially when:
 - There is potential legal risk (e.g., one or more of the parties involved are members of a protected class)
 - The allegations are serious (e.g., sexual harassment, criminal conduct, theft)
 - The potential consequences are serious (e.g., discharge or criminal charges)
 - There is significant disparity between the witnesses' versions of events

STEP 3: WITNESS STATEMENTS

- Drafted by the interviewer
- Rely on your interview notes and keep it factual—don't overstate/understate facts
- Send to the witness for review and signature



STEP 4: INTERVIEW THE ACCUSED

STEP 4: INTERVIEW THE ACCUSED

- Objective: Provide a fair opportunity to respond while gathering facts
- The investigator should assure the accused of the following:
 - The investigation will be conducted fairly
 - No conclusions have been reached yet
 - The investigation will be kept as confidential as possible, on a need-to-know basis
- Don't be adversarial or judgmental. Make it easy for the accused to give you relevant information.

STEP 4: INTERVIEW THE ACCUSED

- Start with open-ended questions, but be sure to get a response to each specific allegation
- Always conclude with:
 - Is there anyone else I should talk to?
 - Is there anything else you want to add?
- Avoid leading/accusatory questions
 - Instead of asking “Did you yell at him?”, ask “What was the volume of the conversation?”



**STEP 5: COLLECT
EVIDENCE/DOCUMENTATION**

STEP 5: BUILD THE RECORD

- Emails, text messages, phone logs, attendance records, audio/video recordings, workplace policies
- Document the chain of custody:
 - How was the information obtained?
 - When was it collected?
 - Who has handled it?
 - Where is it being stored and maintained?

STEP 6: INVESTIGATION REPORT

STEP 6: WEIGH THE EVIDENCE

- Preponderance of the evidence = more likely than not

Common mistake

Employers seek proof beyond a reasonable doubt.

This is NOT a criminal trial!

STEP 6: ASSESSING CREDIBILITY

- **Plausibility:** Is the witness's version of the facts believable? Does it make sense?
- **Demeanor:** Does the witness seem to be telling the truth?
- **Motive:** Does the person have a reason to lie?
- **Corroboration:** Are there documents or other witnesses that support the witness's version of events?
- **Past Record:** Does the accused have a past record of inappropriate conduct?

STEP 6: WHAT TO INCLUDE IN THE REPORT

- The scope of the investigation
- A description of the allegation(s)
- Applicable policies
- Summaries of witness interviews, including the complainant and the accused
- Documents/evidence reviewed
- Key factual findings and credibility determinations
- Specific conclusions
- Recommendation of next steps, if requested



STEP 7: REMEDIAL ACTION

STEP 7: TAKE PROMPT REMEDIAL ACTION

- Remedial action refers to appropriate measures taken by the employer to stop and prevent further harassment or misconduct
- Consider how people in similar situations have been treated



STEP 7: REMEDIAL ACTION EXAMPLES

- Disciplinary action: verbal/written warnings, suspension, termination of employment
- Policy and training: conduct anti-harassment training, re-send the policy as a reminder, implement new policies
- Administrative changes: reassignment, restructuring job duties, modifying work schedules



STEP 8: INFORM THE PARTIES OF FINDINGS

STEP 8: INFORM THE PARTIES

- Do not share the investigation report
- Were the allegations substantiated or unsubstantiated?
- If substantiated, tell the complainant that the company is taking appropriate remedial action...

BUT do not reveal the specifics!



STEP 9: FILE THE INVESTIGATION RECORDS

STEP 9: FILE THE RECORDS

- Do not file investigation records in the personnel file
- Maintain a separate investigation file that includes
 - Interview notes
 - Documentation/evidence
 - Investigation report
 - Relevant policies
 - Notice of investigation closure to the parties



STEP 10: FOLLOW UP

STEP 10: FOLLOW UP

- Follow up with the complainant in 2-3 weeks to ensure conduct is no longer occurring
- Reflect on investigation to determine if more training is needed to avoid similar problems in the future

COMMON PITFALLS

COMMON PITFALLS TO AVOID

- Failing to Plan
- Ignoring Complaints
- Delaying Investigations
- Losing Objectivity
- Failing to Listen and Ask Follow-Up Questions
- Using Overly Aggressive Interview Tactics
- Not Conducting a Thorough Investigation
- Promising Confidentiality



BEST PRACTICES

BEST PRACTICES

- Act Promptly
- Be Thorough
- Maintain Objectivity
- Document Everything
- Use Open-Ended Questions
- Always Communicate “No Retaliation”



Maddin Hauser's
Employment Law
Symposium

QUESTIONS



Submit questions
for presenters



Maddin Hauser
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com



Maddin Hauser's
Employment Law
Symposium

THANK YOU



Breanne N. Gilliam, Esq.

Associate

(248) 359-6326

(248) 359-6126 Fax

bgilliam@maddinhauser.com

MH Maddin Hauser
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com

