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2019 Texas Public Employer Labor Relations Association (TxPELRA) Annual Workshop & 33rd Annual Civil Service Workshop

Interviews, Trials and Tribulations: The Do's and Don'ts in HR Investigations

A 60 minute exploration
into the **human** corporate psyche

Presenter: George E. Hyde, Attorney & Counselor at Law

Workplace Investigations

- Benefits of a ***properly*** conducted investigation:
 - Heightened reputation as an employer
 - Better employer and employee relations
 - Reduction of legal risk
 - *EEOC policy imposed duty on employer to investigate*
 - *Non-Illegality complaints may blossom into illegal workplace conduct if not defused as policy violations*

Do #1
Investigate Workplace Complaints



Workplace Investigations

- Selection of Investigator
 - Internal v. Outsourced Considerations:
 - Objectivity is **KEY**
 - Technical proficiency is **FOUNDATION**
 - Background in subject matter
 - Interviewing skills
 - Witness credentials
- Cost benefit analysis weighs heavily in favor of outsourcing investigations.

Don't #1
Do not even consider shortcuts



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Workplace Investigations

- Work with investigator to properly scope your investigation
 - Scope must be carefully established not to artificially limit investigation, but be designed to be efficient and effective and adequately cover the subject matter involved
 - Variables should be explored and expectations established

Do #2

Collaboratively establish the scope of the investigation with investigator



Workplace Investigations

- Control of the investigation
 - Employer v. Investigator Considerations:
 - Collaborative Flexibility
 - Employer's role should be to **Manage**
 - Investigator's role is to **Direct**
 - Communication is essential
- Factual development crucial and determinative

Don't #2
Employer should not control the investigation



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Workplace Investigations

- Rules of Engagement
 - What do your policies state regarding this issue?
 - Test your policy regularly
 - Update policy regularly
 - Provide policy to investigator
 - Allow for flexibility in policy for the unknown
 - Uniform application of policies avoid risk

Do #3
Establish, maintain and practice clear rules of engagement



Workplace Investigations

- Expectations & Decision-making
 - Management
 - Supervisors
 - Participants
 - HR
 - Elected Officials

Don't #3

Do not assume expectations are clear – explore and exhaust needed topics



Workplace Investigations

- Situational Considerations
 - Availability of information/documentation to investigator
 - Confidentiality of final report to the public, media and/or employees impacted
 - Technological aspects of data collection
 - Chain of Custody/Rules of Evidence/Preservation Obligations

Do #4
Employ Situational
Awareness at all times



Workplace Investigations

- Management Response
 - Timing Considerations
 - Systemic Conditions
 - Workplace Environment “Resets”
 - Attention to applicable policy and legal deadlines
 - Consideration of pre-claim/pre-litigation notice requirements

Don't #4
***Do not delay a strategic and
timely response after investigation is complete***



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Workplace Investigations

- Investigation Content
 - Collaborate on the content of the investigator's work product early on
 - Consider obligation to defend content in later proceedings
 - Do not condition findings in report on anything
 - Manage access, scope, content and use of report

Don't #5
Employer should not dictate investigator's work product, but should collaborate on it early and define expectations



Workplace Investigations

- What occurs to people is in the eye of the beholder:
 - Workplace Investigations peer into the corporate psyche
 - Misunderstanding and miscommunication is rampant in today's workplace
 - Revealing how a person occurs to another is challenging on an emotional maturity level impacting all areas of one's life

Do #5

Keep "Integrity" in the Investigation



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Final Questions?

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