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# When a Third-Party Investigator Is the Smart Move

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Choosing the right investigator for a workplace complaint is one of the most consequential decisions an employer will make once concerns are raised. Whether the investigation is conducted internally by an HR team member or by a neutral third-party investigator can influence how critical evidence is preserved, how credible the findings are, and whether the employer's ultimate decisions are defensible. Making the right choice can help the complainant feel heard, surface key facts quickly, and support informed decision-making. The wrong choice, on the other hand, can turn an otherwise manageable issue into a costly and time-consuming problem if litigation ensues.

Many jurisdictions impose an affirmative obligation on employers to respond to employee concerns with a prompt, thorough, and impartial investigation. In practice, that obligation quickly turns into a judgment call: do you keep the investigation in-house or bring in a neutral third party? Internal HR teams can move quickly and understand context, but some complaints raise independence and credibility concerns — especially when the accused is influential, the facts hinge on competing accounts, or escalation to an agency charge or litigation is likely.

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Many employment cases rise or fall on the quality of early fact-gathering. The first few days after a complaint is raised are often determinative. This is when employers have the best opportunity to capture fresh witness statements, preserve relevant evidence, and make informed judgment calls before memories fade and narratives harden.

The modern digital workplace makes this timing even more critical. Employees increasingly communicate through platforms like Slack, Teams, text messages, and group chats — often on personally owned devices. Evidence in these channels can be deleted easily, automatically overwritten, or lost altogether as devices are replaced or wiped when employees leave. Decisions made early about what to preserve, and how, can have a lasting impact.

Who leads the investigation matters because that person controls the pace and scope of fact-collection: what evidence to pursue, which witnesses to interview first, and how to evaluate credibility. A skilled investigator asks open-ended questions, follows up without leading, and documents statements accurately and defensibly. This is also the individual who makes the initial credibility assessments about key participants. Those early determinations often shape how employers assess risk later, particularly if counsel becomes involved and the matter escalates.

Internal investigations can be the right fit in many circumstances. HR teams can move quickly, understand company policies and reporting structures, and access systems and witnesses without delay. When allegations are straightforward and the workplace is not already polarized, an internal investigation may be both efficient and effective.

That said, internal investigations are vulnerable in several predictable ways:

- **Perceived lack of independence:** Rightly or wrongly, some employees view HR as aligned with management. In certain situations, that perception alone can undermine the credibility of the process. For example, asking an HR team member to investigate allegations against a senior executive can create significant risk — particularly if the executive influences performance evaluations, compensation, or job security. In disputes, optics matter. The process must not only *be* fair; it must also *appear* fair to an outside audience.
- **Inexperience:** Inexperienced investigators may miss key witnesses, overlook relevant communications, or issue findings that are conclusory rather than evidence-based. Internal teams also sometimes focus too narrowly on the initial complaint and miss related issues that expand exposure, including retaliation concerns or overlapping leave, accommodation, or wage-and-hour issues.
- **Accidental Retaliation:** If not handled correctly, the investigation process itself can inadvertently create retaliation risk. For instance, an internal team may respond to a complaint by increasing scrutiny or documenting performance more aggressively. Even when motivated by legitimate operational concerns, these actions may later be characterized as retaliatory.

### When to Bring in a Third-Party Investigator

There is no bright-line rule for when a third-party investigator is needed. However, evaluating the who, what, and when of a complaint can often signal whether an outside investigator is in the employer's best interest.

- **Who:** If the complaint involves an executive, an owner, a high-profile leader, or HR personnel themselves, independence tends to become a central issue. In those cases, a neutral third party

can help protect the credibility of both the process and the outcome.

- **What:** Complaints involving serious or repeat misconduct are more likely to lead to agency charges or litigation. In such matters, employers should assume the investigation will be scrutinized closely. The cost of mishandling the earliest stages can far exceed the cost of bringing in outside assistance.
- **When:** Sometimes the strongest reason to engage a third-party investigator is cultural rather than purely legal. Investing in an independent investigation can send a clear message that leadership takes complaints seriously and values neutrality, which in turn improves employee trust and morale.

## Conclusion

The right investigator, whether internal or a third party, can capture facts while they are fresh, make sound credibility determinations, and create a record that supports informed decision-making. Because investigation decisions made at the outset often shape the outcome of a dispute, employers should consider consulting experienced counsel when navigating high-risk or sensitive complaints.

For assistance navigating whether to engage an outside investigator, please contact Akerman's Labor and Employment Practice Group.

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