

Is the Price Right? Internal vs. External Investigations

Speaker Introductions



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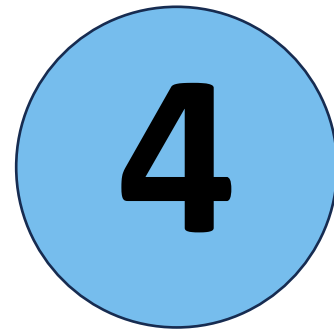
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Initial Questions

- What is a workplace investigation?
- Why investigate?
- What should be investigated?
- When should an investigation begin?
- What is the scope of the investigation?
- Who should investigate?
- What is the investigation procedure?

What Is a Workplace Investigation?

Punch a Bunch

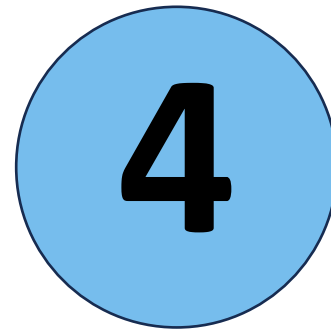


Punch a Bunch



Workplace investigations are fact findings conducted in response to complaints of inappropriate conduct in the workplace, i.e. sexual harassment, discrimination, or retaliation.

Punch a Bunch



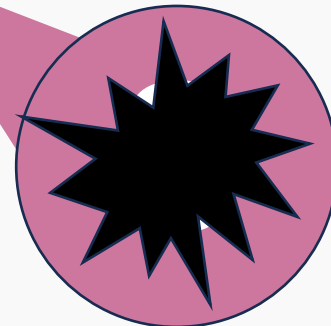
Punch a Bunch

Their purpose is to obtain accurate and truthful information so that a fair decision can be made in response to a complaint of workplace misconduct.

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Why Investigate?

- **Legal Reasons**

- Comply with policy and the law
- Inform appropriate corrective action
- Reduce liability from claims and establish Faragher/ Ellerth affirmative defense
- Prevent further harm/liability

- **Practical Reasons**

- Learn what happened
- Employee relations
- Set culture that encourages others to report

What Should Be Investigated?

	<p>“Complaint” vs. “complaint”</p>	<p>Employer receives tort claim notice, lawsuit, or agency (BOLI/EEOC) complaint</p>	<p>REMINDER: OWFA requires policy to be provided to employee at the time employee discloses information regarding prohibited conduct!</p>
	<p>Employer receives direct notice of potentially illegal activity or policy violation</p>		
			<p>But what about an anonymous tip or complaint?</p>
			<p>But what about a rumor mill?</p>

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What If an Employee Does Not Want an Investigation or to File a Formal Complaint?

General Rule = Investigate

- Duty on employer
- Prudent and objectively reasonable standard
- Other employees may be subjected to same behavior

What Is the Scope of the Investigation?

Query:

- What are the allegations that, *if true*, could lead to a violation of policy?
- Are there generally issues in the workplace that you want more information on?
- Are there allegations that are included that are outside of the scope of what should be done in a workplace personnel investigation?
 - Criminal conduct
 - Involves technical expertise (i.e., financial misappropriation)

Who Should Investigate?

- Who is the right person to investigate?
 - Manager
 - Human Resources
 - Outside Investigator
 - Legal Counsel
- Does the investigation require specific qualifications or skills?
- Is an outside or attorney investigator advised?

Qualities of the Investigator

- Should be disciplined, observant, able to understand subtleties and to distill information
- Should understand the relevant policies and legal principles
- Should have good interpersonal skills
- Perception of being unbiased/impartial is critical
- Some experience and training in conducting investigations is ideal
- Preferably not a decision maker

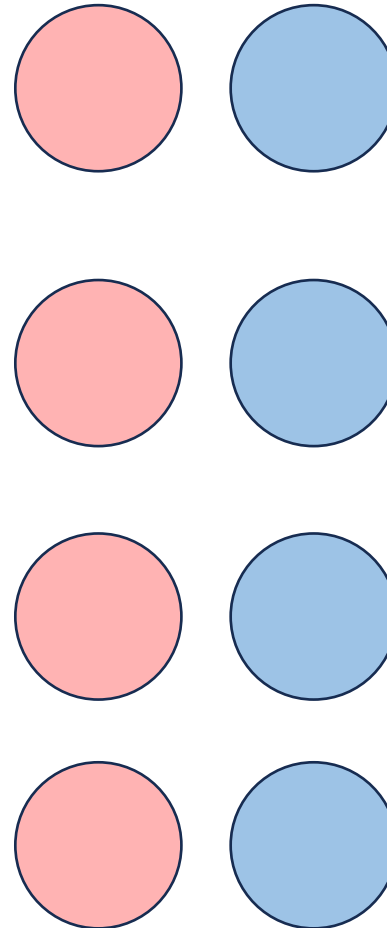
Use of Outside or Attorney Investigator

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Internal

External

- High-level executive is the alleged wrongdoer
- Complicated facts, multiple complainants, cross-complainants, or political considerations
- Alleged wrongdoer is perceived to be violent and/or retaliatory
- Employer wants to conduct a confidential/privileged investigation

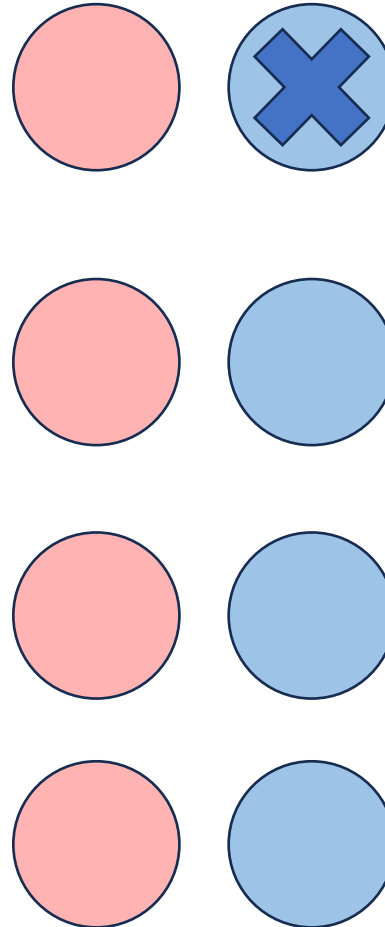


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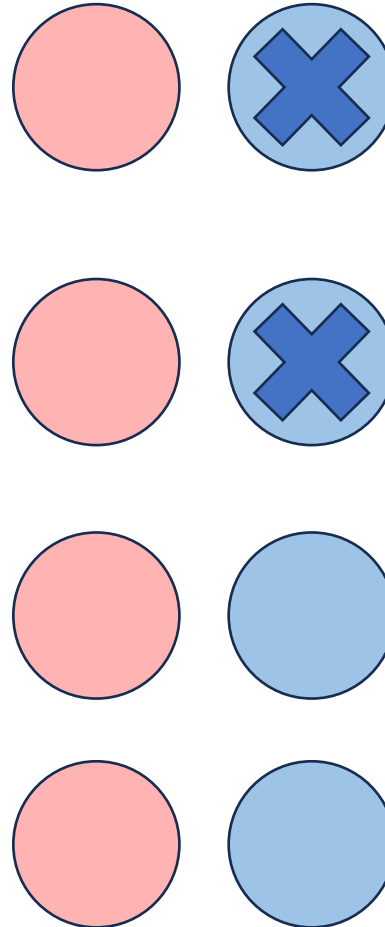


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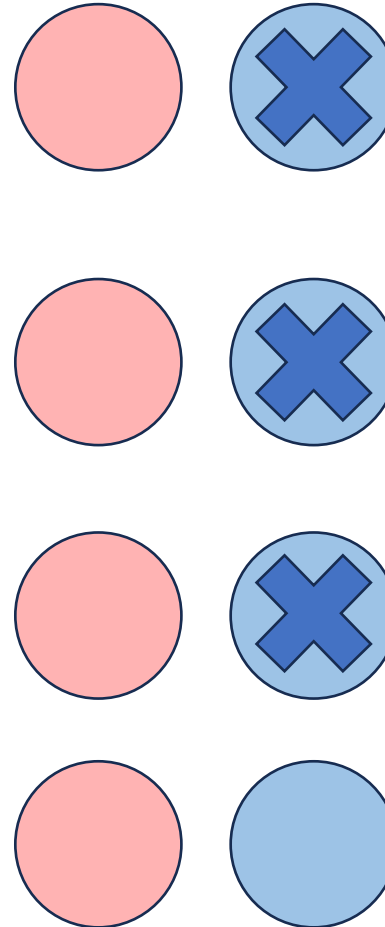


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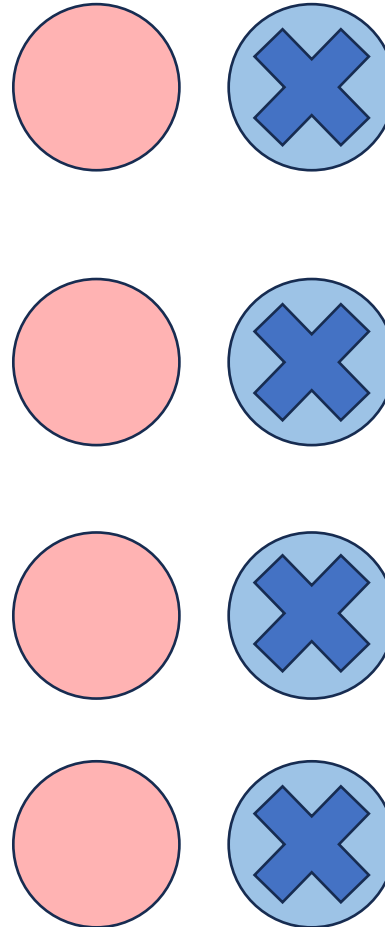


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Thank you!