How to Assess Credibility When Conducting Workplace Investigations

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Introduction

The modern manager must be more prepared than ever to deal with dramatic changes and events in the workplace. Today’s diverse workforce places complex demands on the manager and, caught without a complete “repair kit”, he or she may suffer the demeaning experience of litigation.

Every manager’s kit should contain such tools as: complete and updated policy manuals, frequent performance evaluations, performance improvement plans, an internal complaint and disciplinary process, and an in-house investigation process.

This is a short but essential list of tools used to maintain stability in the workforce. Problems will arise but the proper use of any of these quality management tools should fix the trouble before the damage becomes too great and sends costs sky-rocketing.

Out of the group mentioned, the one not often practiced or so easily implemented is the in-house investigative process. The thought of such an exercise, leading to an investigation of a co-worker, is a bitter pill indeed, but knowing the best way to conduct oneself, and the effort, will greatly speed up the process and minimise the associated pain.

Litigation costs are rising each year and managers are expected to handle workplace problems masterfully enough to avoid the courtroom experience. Problems such as sexual harassment, workplace violence or accidents, as well as loss prevention are growing in reported cases yearly and always require an investigation of some depth.

Purpose

Without exception, when complaints have been made, it is the employer’s responsibility to exercise all due diligence, that is, to take whatever steps necessary to lessen or avoid the effects of the act. Preparation, response, and documentation validate the effect of the employer’s action to alleviate any emotional distress arising from the event. Interests are best served by the employer who tries to reassure everybody of the commitment to maintaining a workplace free of violence and harassment.

In the United States we place a high value on human rights, the employer should be able to guarantee that:
1. Complaints are taken seriously
2. Complainants can validate the sincerity of the employer
3. All participants in the investigation receive fair treatment
4. The investigation proceeds and findings reported with due regard
5. The report is useful and thorough.

Above all, the effort should take a consistent approach and yield responses designed to prevent similar events in the future.

**Investigator Characteristics**

The designated investigator has a sizeable burden to bear. As managers, we look to them for decisions; as investigators their role is “information gatherers” and to help the person in charge of dispensing the remedies make informed decisions. This role requires that the source and the methods of gathering the information be completely transparent where nothing is hidden from view.

Sometimes, peer pressure can influence and jeopardise the integrity of the process; fairness and impartiality is expected from the investigator. The ability to maintain the intent of the investigation such that, confidentiality deadlines, and proper levels of conduct are routinely met is important and expected from the trained and dedicated investigator.

The investigator is usually given a reasonable amount of authority so that he or she can conduct the process with few obstacles and/or distractions while doing his or her best to adhere to human rights principles and practices governing behaviour.

The investigator is expected to assume the position of neutrality and objectivity during the course of the investigation in this way, promoting confidence and the feeling that all actions are in the best interests of the organisation. Investigators with conflicting interests such as personal relationships, bias, or anything to gain should voluntarily remove themselves from the position.

**Fairness**

Fairness and respect must be given and displayed to all of the parties involved in the complaint. To ensure fairness it is best to follow some guidelines that include both the complainant and the respondent.

Some common sense guidelines refer to the complainant/respondent interaction and the neutrality of the investigator; others refer to confidentiality and the unbiased treatment of the allegations.
Credibility is the watchword of any investigation and it is the ultimate source of strength when litigation is inevitable; it helps to support any association between your institution's findings and the representative counsel.

**Interviewing**

The depth of the investigator's neutrality and objectivity will be tested during the interview process, the most critical stage in the investigation. He or she must be able to establish rapport with the respondents, complainants and other interviewees, diffuse anger and tension whenever possible, and listen attentively gathering information in note form.

The expert interviewer quickly creates a comfortable environment by showing cordiality and respect to the interviewee. He or she should be willing to explain the process and purpose of the interview, seeking the interviewee's commitment to full disclosure. Interview questions should be prepared in advance reflecting the investigator's own knowledge of the facts, beginning with general questions, advancing to more specific and difficult ones.

The role of the interviewer is that of information gatherer not judge, and one should seek to understand the experiences and perceptions of the witness. Employing "open-ended" questions gives the interviewer the opportunity to probe, explore, and clarify feelings and situations.

The need for well honed "listening skills" plays an important role because in this context, we are trying to communicate without contributing feelings, opinions, or judgements of any kind. Attributes of the skilled listener help the conversation stay focused while challenging the interviewee with confrontational exchange. Allowing enough silence to enter the conversation offers the witness time to think and the investigator time to observe any non-verbal messages being sent.

Near the end of the interview, the investigator can offer a summary of the data, restated for clarity, and review the notes with the interviewee for accuracy.

There are several important distinctions between interviewing the respondent and the complainant and they have to deal with managing the emotion that both may be feeling. The interviewer should be aware of the possible feelings and deal with them by bringing professionalism to the forefront and instilling confidence in the investigation. The use of a checklist to gather or verify information provides a meaningful way to relax the people and begin in a calm fashion.

**Assessing Credibility**

Once the interviews are completed, the investigator must proceed to the step most crucial to the parties involved, assessing the credibility of complain-
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ant, respondent, and witnesses. Some cases, such as sexual harassment, establishing the validity of the allegations may hinge on a single person's testimony so the ability of the investigator to assess the reasonableness of the facts is vitally important.

When assessing credibility, the investigator considers many possible truth indicators expressed by the involved parties in conjunction with their direct knowledge of and relationship to the alleged incident. During the interview, the integrity of the information received plays a big role in the assessment. Facts that are vague, contradictory, or sketchy can be invalidated while other information, given in an honest and straightforward manner, without any attempt to hide or exaggerate, prove credible.

Other indicators that should cause concern reflect implausibility considering the environment, the context of the relationships, and the existing circumstances. The person's lack of cooperation, corroboration, or inability to recall some important details may indicate bias, motives, or some alternative agenda lowering his or her credibility rating.

Whenever possible, face to face rather than telephone interviews should be conducted so that the interviewer can assess the non-verbal messages being sent.

Assessing the Non-verbal Messages

There are two accepted forms of interviewing techniques, one requires the direct use of specific questions, the other allows the interviewee to recount and describe the event in his or her own words. Experts agree that the latter format is very effective because non-verbal communication can carry much more weight in a conversation than the verbal portion. Body language, for example, is sometimes 50% to 60% of the conversation if one considers the attitude, actions facial expressions, and body movements.

When placed in the position of truth assessment, measuring the difference between what someone says and what someone does can greatly influence the credibility rating of that person's testimony. This is especially important when interviewing the respondent since the fear of detection is usually greater. Attempting to hide or otherwise disguise the truth is a natural reaction to the threat of lawsuits and discipline, and the practiced liar might be able to convince an investigator of his or her innocence.

Body language can be used to detect inconsistencies, contradictions, and other signs of deception in sworn statements because you no longer focus on the stated facts but are trying to determine truthfulness. Most body language is subconscious by nature and when it is clear from the start that the interviewee is reluctant or hostile or if things change suddenly during the account, you can rely on your "gut feeling" and raise the "red flag".
Non-verbal Basics

Non-verbal communication includes:

1. Body language
2. Hand movements
3. Behaviour
4. Voice pitch and tone
5. Fast answers
6. Facial expression
7. Posture
8. Appearance
9. Silence
10. Long pauses

Each of these forms of non-verbal communication is a subject unto themselves and for the sake of brevity we will describe some of the less understood variety.

Body Language

There are two basic groups of body postures OPEN/CLOSED and BACK/FORWARD. The combinations possible using these two groups indicate whether the person is willing to communicate freely or is unwilling to co-operate to the point of fighting or fleeing (See figure 1).
Hand Movements

Usually used in a non-threatening nature, the experts agree that if, when asked a question the hands gesture away from the body, the answer is probably truthful; hands that remain at or touch the body, such as wiping the forehead or nose, indicate the answer given is most likely untruthful.

Posture

This form of non-verbal communication might be considered the foundation of all the other forms. How one sits in a chair often dictates arm and leg movements and sometimes, eye contact. The interviewer can infer three things from the subject’s posture: the level of interest and confidence, and their emotional involvement.

More Analysis

Written transcripts, produced in the subject’s own handwriting, and tape recorded statements can provide additional sources of information concerning credibility. The investigator can draw conclusions from the use of pronouns, nouns, and verbs. In all cases, subjects will try to draw attention away from themselves by using forms other than the first person, “we, they, or them” rather than “I”.
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<thead>
<tr>
<th>EXHIBIT 1</th>
<th>DECODING BODY LANGUAGE</th>
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<tbody>
<tr>
<td></td>
<td>The four basic modes of body language in business</td>
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<tr>
<td>RESPONSIVE</td>
<td>REFLECTIVE</td>
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<tr>
<td>ENGAGED</td>
<td>LISTENING</td>
</tr>
<tr>
<td>leaning forward</td>
<td>head tilted</td>
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<tr>
<td>open body</td>
<td>lots of eye contact</td>
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<tr>
<td>open arms</td>
<td>nodding</td>
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<td>open hands</td>
<td>high blink rate</td>
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<tr>
<td>EAGER</td>
<td>EVALUATING</td>
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<tr>
<td>(sprint position)</td>
<td>sucks glasses/pencil</td>
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<td>open legs</td>
<td>strokes chin</td>
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<tr>
<td>feet under chair</td>
<td>looks up and right</td>
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<tr>
<td>on toes</td>
<td>legs crossed in 4 pos.</td>
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<tr>
<td>leaning forward</td>
<td>(ankle on knee)</td>
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<tr>
<td>READY TO AGREE</td>
<td>ATTENTIVE</td>
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<tr>
<td>closes papers</td>
<td>(standing)</td>
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<tr>
<td>pen down</td>
<td>arms behind back</td>
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<td>hands flat on table</td>
<td>smile</td>
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<td></td>
<td>open feet</td>
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