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Conducting Investigations Tips & Traps

An increasingly evolving area in workplace law is an employer's obligation to conduct a proper and fair workplace investigation in instances of: misconduct, company policy violations, harassment, bullying, discrimination, threats of violence, workplace accidents, to name a few. This obligation has been scrutinized in recent years as various administrative tribunals as well as employees' lawyers seek to challenge the procedural fairness of investigations conducted internally.

Although it may appear straightforward, there are a number of important factors for a company to consider when conducting a workplace investigation. Here is a list of Tips and Traps that will guide employers through the considerations necessary to conduct an internal investigation:

- TIP:** Take every complaint made to management seriously and determine its proper scope for investigation.
- TRAP:** Avoid being overly dismissive of an employee's "hurt feelings" as the Human Rights Tribunal and other administrative bodies place great emphasis on the subjective feelings of the victim.
- TIP:** Ensure to interview all relevant witnesses as independent corroboration of events is critical to the investigative findings.
- TRAP:** Do not forget to provide the respondent with a full opportunity to respond to the allegations and provide his or her version of events.
- TIP:** Keep focused and narrow in the pertinent questions relevant to the nature/scope of the complaint.
- TRAP:** Avoid engaging in a fishing expedition with employees relating to all of their concerns in the workplace.
- TIP:** Take detailed notes during all interviews as the notes will later be used to prepare witness statements for the investigation report.
- TRAP:** Avoid BIAS and/or the perception of bias; refrain from making any conclusions or findings prior to the completion of the investigation fact-finding (e.g. document review, witness interviews).
- TIP:** Maintain strict confidentiality throughout the investigative process to not taint witness evidence.
- TRAP:** Avoid conducting an investigation internally where the issues are complex and the potential exposure to liability may be significant (ie. senior employee, isolated incident of misconduct).

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