


 ASSOCIATION OF
 WORKPLACE INVESTIGATORS

Promoting and enhancing the quality
 of workplace investigations

Investigative Pitfalls

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Learning Objectives

- Today we will examine 4 issues that may challenge you when you are conducting an investigation as an internal or external investigator.
 - Losing control of the scope of the investigation
 - Your contact overshares information and opinions
 - Managing time and client demands
 - Managing multiple issues and reports

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Some Key Differences

<ul style="list-style-type: none"> • Internal investigator <ul style="list-style-type: none"> – Knows the employer and culture very well – Likely knows many of the witnesses – Likely communicates with legal, HR, operations, compliance 	<ul style="list-style-type: none"> • External investigator <ul style="list-style-type: none"> – Usually does not know the employer or witnesses. – Is hired by an attorney for the employer and communicates primarily with that attorney.
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HELP! I'M LOSING CONTROL OF THE SCOPE OF
INVESTIGATION THE



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Hypothetical Taylor's Troubles

- You interview a total of 7 witnesses identified by Taylor, Violet, the CEO and the CFO.
 - Each of the 7 witnesses tell you everything they feel is wrong with the workplace, and everything they don't like about Taylor, Violet, the CEO, and the CFO.
 - Information provided by the witnesses include allegations of substance abuse, missed meal and rest periods, unpaid overtime, being forced to work off the clock, disparate treatment based on age, and a sexual affair between 2 other employees



Hypothetical Taylor's Troubles

- Does this additional information affect the scE



Internal Perspective

- Triage the case? Can it be handled at the same time?
- Divide it up into separate cases and investigate based on priority?
- Enlist support from others to handle matters.
- Don't lose your focus on the question you are charged with answering.
- However you decided to handle it, best to write separate reports.



Hypothetical – Laurie’s Loose Lips

- Laurie tells you:
 - Eli is “always complaining,” is “weak” and a “crybaby.”
 - The company has provided Eli 6 medical leaves in his 14 years with the company, so “what is he complaining about?”
 - “Nobody likes Eli” because they have to do his work when he is absent and they think he’s “faking it.” Plus, Eli makes more money than his co workers and he thinks he is better than everyone else.



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Hypothetical – Laurie’s Loose Lips

- ❖ External perspective:
 - Communicate role of investigator at the outset.
 - AWI guiding principle 5 You should avoid communicating outside the interview process with anyone who is or may be directly involved in the matters being investigated, or with anyone who is or may be interviewed on substantive matters.
 - Consider privilege issues: is Laurie your client?
 - Litigation potential.



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Hypothetical – Laurie’s Loose Lips

- ❖ Internal perspective:
 - Do you have your own preconceived notions about the complainant?
 - Constant complainer?
 - Personal experience?
 - Are you a witness to behavior?
 - If yes, what do you do?



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Hypothetical – Laurie’s Loose Lips

- ❖ Internal Perspective continued:
- Can someone else handle the investigation?
- If not:
 - Be aware of your biases
 - Do a reality check
 - Illicit other opinions (without revealing confidential information)
 - Sometimes personal knowledge can inform credibility



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Reality Check- There are Only 24 Hours in a Day



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External Perspective

- Deciding to take the investigation be realistic.
- Managing expectations:
 - Estimating completion dates adjust if scope or complexity of investigation occurs
- Strategies for efficiency in investigating:
 - Keep a timeline.
 - Prepare interview summaries promptly.
 - Keep running list of issues raised/facts to be pinned down as investigation continues



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There is No One Size Fits All



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Internal Perspective

- Always write a report or at minimum document the interviews.
- Accessibility of documents:
 - If you win the lottery and retire will anyone else be able to find the documentation? Shared drive, database?

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Internal Perspective

- Are all reports created equal?
 - Perfect is the enemy of good.
 - Take care with matters that are a potential legal violation and could lead to litigation.
 - Run of the mill case, maybe summarize in a couple of paragraphs.

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