

Investigation Intake

How to open a workplace investigation so it is prompt, impartial, and documented, the three things that make it defensible.

WORKPLACE INVESTIGATIONS

INTAKE

AFFIRMATIVE DEFENSE

Checklist Companion

Investigation Intake

The intake is where an investigation is won or lost. The first hours set the evidentiary record and lock in the impartiality that makes the findings credible later.

A prompt, impartial, well-documented investigation is the operational proof of the 'reasonable care to promptly correct' element of the Faragher/Ellerth affirmative defense. A botched or absent investigation undermines that proof, so the goal at intake is to capture the complaint, protect the people and the evidence, and set up a neutral process before anything else happens.

Take every complaint seriously, in any form

Complaints arrive as formal reports, offhand comments to a manager, anonymous tips, or observed conduct. Do not require a written complaint to trigger review; the duty attaches once management is on notice. Record what was reported, when, and who received it, and decide, erring toward yes, whether a formal investigation is warranted.

Protect the parties and the evidence

Put interim measures in place to limit contact and prevent retaliation. If separation is needed, default to relocating the accused rather than the person who complained, unless the complainant prefers otherwise. Interim measures should be individualized, non-retaliatory, and proportionate, and reassignment or leave decisions should be routed through counsel. Give a clear no-retaliation instruction to everyone involved, and issue an evidence hold immediately so texts, emails, video, and digital records are preserved. Deleted evidence can be far more damaging than the underlying complaint.

Lock in a neutral process

Impartiality has to be real and perceived. Confirm the investigator is not under the respondent's control, and choose a third-party neutral when the respondent is senior, the risk is high, or the credibility of the outcome itself is at stake. Define the scope in writing and build an investigation plan covering the evidence to gather, the witnesses, the order, and the admonitions.

Prepare the interviews

Plan a sensible order, usually complainant, then respondent, then witnesses, and prepare the opening admonitions: confidentiality, no retaliation, the duty to cooperate, and the duty to tell the truth. Note any union representation (Weingarten) or counsel-led (Upjohn) rights that apply, safeguard confidentiality without promising anonymity, and move promptly, documenting the reason for any unavoidable delay.

THE INTAKE TESTS

Before interviews begin, confirm three things: an evidence hold is in place, any interim measure does not disadvantage the complainant, and the no-retaliation instruction is documented. If you cannot check all three, you are not ready to start.

At a Glance

The checklist at a glance

The companion checkbox sheet walks through these 16 steps. Use the sheet in the moment; use this guide to understand the why behind each move.

RECEIVE & RECORD

- ☐ 1 Record the complaint in whatever form it arrived.
- ☐ 2 Decide whether a formal investigation is warranted.
- ☐ 3 Note the date and time received and who took the intake.

PROTECT THE PARTIES & THE EVIDENCE

- ☐ 4 Put interim measures in place to separate the parties if needed.
- ☐ 5 Default to relocating the accused, not the complainant.
- ☐ 6 Give a no-retaliation instruction to everyone involved.
- ☐ 7 Issue an evidence hold; preserve texts, emails, video, and digital records.

SET UP A NEUTRAL, IMPARTIAL PROCESS

- ☐ 8 Confirm the investigator is neutral and not under the respondent's control.
- ☐ 9 Decide internal vs. third-party neutral investigator.
- ☐ 10 Define the scope in writing.
- ☐ 11 Build the investigation plan.

PREPARE TO INTERVIEW

- ☐ 12 Set a sensible interview order.
- ☐ 13 Prepare the opening admonitions.
- ☐ 14 Note any Weingarten or Upjohn rights that apply.
- ☐ 15 Safeguard confidentiality without promising anonymity.
- ☐ 16 Set a prompt timeline and document any unavoidable delay.

Important

About this guide

Educational information, not legal advice. This guide is provided by empathiHR for general educational purposes. It is not legal advice and does not create an attorney–client or consultant–client relationship. Employment law changes frequently and varies by jurisdiction, industry, and the specific facts of each situation.

Investigation and interim–measure requirements vary by jurisdiction, by collective–bargaining agreement, and by the facts of each matter, and rules on witness confidentiality instructions continue to evolve at the NLRB. Before acting on anything in this guide, review your policies, programs, and specific circumstances with qualified employment counsel. empathiHR works alongside your legal counsel to build and maintain the operational program described here.

Case citations, statutes, and figures were current as of the update date on the cover and should be re–verified against primary sources before you rely on them. Where the law is unsettled or a figure is not fixed by statute, this guide says so.



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