



## Good Investigations Pay Great Dividends, Part 2

Insights

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In the last issue of Healthcare Update, we discussed the recent decision of *Furline v. Morrison*. In that case the U.S. Court of Appeals for the District of Columbia Circuit overturned a jury award against Howard University Hospital. The fact that the hospital had conducted a thorough independent investigation into allegations of age bias weighed heavily in the Court's decision.

In the conclusion to that article, we'll set out some guidelines that can help protect your own healthcare institutions.

### Conducting a Proper Investigation

The first step in conducting an investigation is to determine its scope. An investigation into suspected abuse of FMLA leave will be very different than an investigation of allegations of racial harassment. Therefore, it is important to outline the steps that you should take before beginning an investigation. Next, select an individual to conduct the investigation. The investigator should be impartial and uninvolved in the matter being investigated. Additionally, the investigator should not be closely associated with any of the key actors, but should be personable. Moreover, any investigator selected should have a working knowledge of the relevant company policies or practices, and an ability to maintain confidentiality.

Prior to conducting any interviews, the investigator should protect the complainant and the integrity of the investigation. For example, if an employee has alleged sexual harassment by a supervisor, consider separating the two employees during the investigation by placing one or both on paid leave or temporarily reassigning one employee to another department or area. The investigator should also begin to gather documents that will assist in the investigation, including copies of personnel files, records of prior complaints, relevant company policies, business records such as time cards, and any other documentation needed to conduct an investigation.

After the investigator has completed these preliminary steps, the first person that should be interviewed is the complainant. The interview should be held in a private, secure location. Confidentiality should never be promised. Rather, the complainant should understand that information will be maintained on a "need to know" basis, but conducting a thorough investigation often requires an investigator to reveal information shared by the complaint with other company officials.

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When conducting the interview, give the complaint an opportunity to tell his or her story by beginning the interview with open-ended questions, followed by specific questions aimed at understanding the details of the allegations. At the conclusion of the interview, obtain a detailed written statement from the complaint and explain the investigative process.

The next step is to interview the accused and any witnesses that have been identified during the course of the investigation. Thereafter, you should follow-up with the complainant and the accused before concluding the investigation to determine if there are any additional facts or witnesses that should be considered. Upon completion of the investigation, prepare a report summarizing the findings and to the extent necessary, consider appropriate corrective actions. To ensure consistency, always check your own disciplinary policies and procedures, in addition to past practice, to determine the appropriate level of discipline. If you're unsure, consult legal counsel.

### **Write it Down!**

Remember, proper documentation of the investigative process and outcome are essential to avoiding or successfully defending against a future claim. But be mindful that the documentation will be carefully scrutinized by attorneys and could be Exhibit A in a trial should either the accused or the complainant opt to take legal action.

Day-to-day pressures often impede on an employer's ability conduct effective and appropriate investigations. However, employers should train officers and managers about the value of a properly conducted investigation. Addressing and investigating complaints improves employee relations and can help insulate an employer, such as Howard University Hospital, from costly judgments. For assistance in developing policies and procedures for investigations, give us a call.