



FP Snapshot for Manufacturers: 7 Essential Elements Of A Workplace Investigation

Insights

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Welcome to this edition of the FP Snapshot on Manufacturing, where we take a quick look at a significant workplace law issues that can impact manufacturers. This edition will focus on workplace investigations and how manufacturers in particular can conduct effective investigations that do not expose you to legal liability.

Snapshot Look at Workplace Investigations

Many issues that arise in the workplace require employers to conduct a prompt and thorough investigation. Among other things, employers may investigate allegations of theft, fraud, harassment, discrimination, retaliation, damage to property, workplace violence or threats, substance abuse, security breaches, inappropriate use of the employer's computers or other property, or other types of employee misconduct.

Manufacturer Focus: Manufacturers have some specific issues that tend to arise more frequently: conflicts between employees on the production floor, reports of bullying that could border on unlawful harassment, workplace accidents, and – especially in the hotter months – physical threats between staff.

Why Should You Care?

At a minimum, if you botch the investigation, you will not be able to defend a termination. Depending on the circumstances, it may get even worse. One employer in Georgia botched an investigation and ended up being hit with a verdict of \$2.2 Million in damages to two employees in a discrimination case. More recently, another employer was hit with a judgment for \$325,000 in compensatory damages after a terminated employee sued for malicious prosecution.

Manufacturer Focus: As manufacturers, there is a heightened need for proper investigations given the recent increased scrutiny by governmental agencies (like EEOC and OSHA) when they receive complaints or reports from manufacturing employees of noncompliance

(such as failure to remedy alleged harassment on the floor or alleged safety hazards).

How Do You Make Sure Your Investigation is Defensible?

Below are seven essential elements of an investigation that can help to ensure that the investigation will be effective and not expose you to liability.

1. Policies and Procedures

Written policies are necessary to maintain order in the workplace and to protect people and property. Ideally, you can avoid or minimize employee misconduct, and any related investigations, by clearly communicating expectations to employees. But, when there are allegations of misconduct, your policies also set the standard to which employee misconduct can be compared when an investigation is warranted. Having adequate written policies and procedures is an essential foundation for any downstream investigations.

Manufacturer Focus: Your policies and procedures need to address industry-specific risks such as machine safety, lockout/tagout procedures, and hazardous materials handling. Additionally, clear protocols for addressing workplace injuries, equipment malfunctions, and production floor conflicts are crucial. Tailor your policies to reflect the unique safety and operational standards of your facility.

2. Hotlines Or Complaint Procedures

Some employers maintain “hotlines” for reporting of suspected misconduct. These channels of communication give early warning to employers of a problem and can be very helpful. You should at least maintain robust and well-communicated problem-solving or grievance procedures. Typically, employers should have one problem-solving procedure that follows the chain of command for operational issues or complaints and another more direct procedure for dealing with issues that may lead to employer liability, such as harassment or discrimination. Once issues or concerns are reported through these channels, you should spring into action with an investigation that is appropriate for the nature of the issue or concern.

Manufacturer Focus: Consider implementing specialized reporting mechanisms for workplace safety concerns, such as anonymous safety hotlines or digital platforms for reporting hazards. Given the physical risks in a manufacturing setting, your complaint procedures should ensure that safety issues are immediately escalated to prevent

accidents. Frequent reminders of these resources, especially to line workers, can reduce the risk of unreported hazards.

3. Credible Fact-Finders

Upon receiving information that misconduct may have occurred, you must identify a person or team of people to lead the investigation and to make any decisions that may result from the investigation. These people will interview witnesses, gather evidence, and ultimately make decisions. They must be unbiased, impartial, rational, and objective. Since these people may be called as witnesses in any resulting legal proceedings, they should be beyond reproach.

Manufacturer Focus: Depending on the situation, it might be beneficial to appoint fact-finders with experience in industrial environments or knowledge of production processes. They would be in a better position to assess any technical aspects that arise, such as whether safety protocols were followed or if a machine malfunction was involved. A fact-finder who understands the industry could also have more credibility when defending the investigation's outcome.

4. Witness Interviews

The next step in the investigation will usually be to interview any people that may have first-hand information relevant to the issue. You must be careful to avoid relying on hearsay. If there is a complaint, usually the complaining party will be among the first to be interviewed. This initial interview helps to define the scope of the allegations and will help to shape the investigation. In addition to the complaining party, you will need to interview managers, witnesses, human resource professionals and others with information relevant to the investigation. You should be careful not to bog down the investigation by taking copious notes or even affidavits at the beginning of an investigation. Your early focus should be on understanding the issues and facts, identifying next steps, and considering the big picture of what possible remedial steps will need to be taken as a result of the investigation.

Manufacturer Focus: It is especially critical not to rely on hearsay when investigating production floor incidents. Production employees have a tendency to gossip with each other, likely because they work in close proximity with each other in clusters and have frequent short spurts of downtime to fill.

5. Relevant Documents and Evidence

Other than interviewing eyewitnesses, most investigations will require you to gather evidence. This can take many forms, such as an incriminating letter, email, or other communication, damaged property, a positive drug or alcohol test result, an electronic file, photos, audio or video files or other documentary, physical, or electronic matter that is relevant to the allegations and investigation. Collection and preservation of such evidence in an unadulterated state is critical to the investigation. You will also need to document and maintain chain of custody.

Manufacturer Focus: You'll face unique obstacles in obtaining documentary evidence in performing investigations of your manufacturing facilities. For example, although most facilities contain numerous surveillance cameras, the presence of heavy machinery and the sprawling footprint of a facility often make it difficult for manufacturers to obtain corroborating visual evidence. Plan ahead of time to minimize such concerns.

6. Documents To Memorialize the Investigation

You should give serious consideration to how the investigation will be memorialized. Any documents created should explain the process, the facts discovered, and the conclusions reached. Witness statements or affidavits should be accurate and limited to only relevant information. When preparing these documents, always consider that documents may be subject to review by a government agency, plaintiff's counsel as part of the discovery process in litigation, or even by a jury.

Manufacturer Focus: Documentation in a manufacturing setting should include specific reference to any operational procedures or safety protocols under review. For example, if an investigation involves a machinery-related incident, the investigation documentation should include maintenance logs, machine operating procedures, and relevant safety audits. Properly memorializing these technical details can strengthen your defense in case of legal scrutiny.

7. Timeliness

Once you are aware of possible misconduct or violations of company policy, your investigation should be commenced without delay. The investigation should then proceed as swiftly as possible under the circumstances – but not be rushed. You need to take enough time so that all the facts can be gathered and analyzed completely. [The EEOC recently provided guidance on this topic that you can read about here.](#)

It is also imperative to determine whether any type of interim action is needed to prevent ongoing violations. For example, you may need to consider placing the accused on leave if there are threats of violence or intimidation. Such decisions should be made on a case-by-case basis with the advice of counsel.

Manufacturer Focus: In manufacturing, timeliness is critical – not just for legal reasons but also to ensure operational continuity. Delays in addressing misconduct or safety concerns can lead to production downtime or even additional workplace injuries. Immediate responses to complaints about faulty equipment or unsafe conditions are particularly essential in preventing further issues and maintaining smooth production processes.

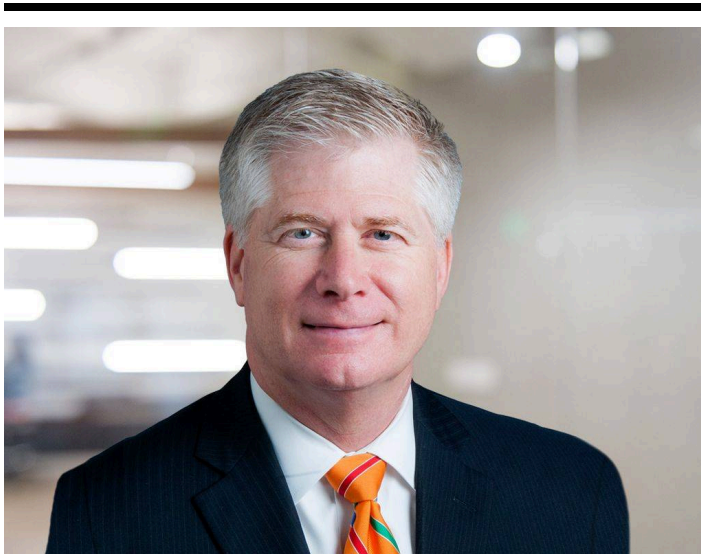
Do I Need to Involve Legal Counsel?

If you have to ask that question, the answer is probably “yes!” It is best to involve counsel even before the investigation begins. Among other things, counsel can help you determine if the investigation should be conducted under the attorney-client privilege and otherwise assist you in making the various judgments that are required during an internal workplace investigation.

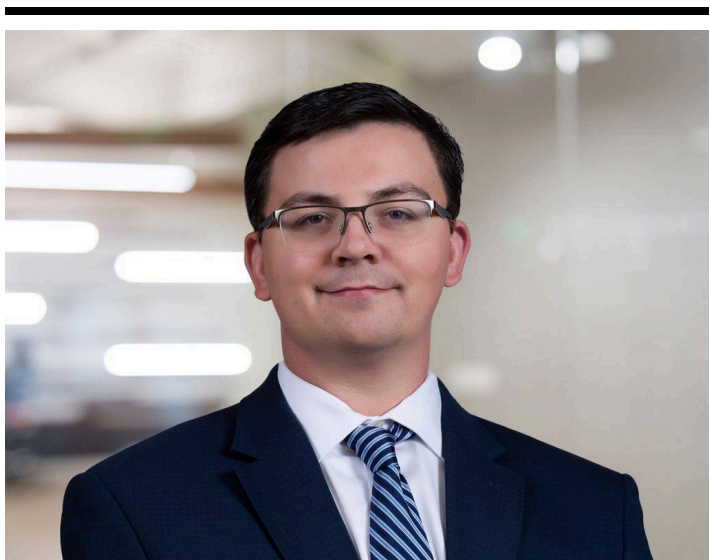
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