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WORKPLACE INVESTIGATIONS PEOPLE

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Workplace Investigations

When Is a Workplace Investigation Necessary?

A workplace investigation may be legally required when an employee raises a concern about harassment, discrimination, retaliation, or related hostile workplace issue. Similarly, an employee may raise a second-hand concern on behalf of another employee that alleges a violation of the workplace policy (or a labor and employment law violation) requiring investigation. Finally, an employee may raise a concern about a specific employer workplace policy that could legally require an investigation.

Frequent Drivers of Workplace Investigations

A workplace investigation may be legally required or advisable in the following scenarios.

- A complaint has been submitted to the employer or the Equal Employment Opportunity Commission (EEOC) or California Department of Fair Employment and Housing
- Employee claims of workplace discrimination or harassment
- Workplace drug abuse
- Claims of workplace discrimination or harassment
- Threat made to an employee by a manager or another employee
- Workplace vandalism or theft
- Violation of employer workplace policy
- Workplace safety threat
- Claim of employee misconduct
- Theft of trade secret, proprietary data, intellectual property
- Fraud or misconduct under Sarbanes Oxley Act

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Samantha W. Zutler

What are Key Features of Workplace Investigation?

The workplace investigation process should accomplish the following goals:

- Gather the facts about the reported issue
- Determine whether there was a violation of the employer's policy or applicable labor and employment law
- Cause minimal disruption to employees, clients, or the workplace
- Preserve confidentiality
- Encourage internal resolution and reporting of issues
- Support a fair and respectful workplace
- Other personnel disruptions to normal workplace operations

Burke's Approach to Workplace Investigations

There is not a standard approach to conducting an effective workplace investigation. Burke attorneys routinely consider all of the following aspects in planning and executing a specific investigation.

- Does any immediate action need to be taken by the employer to address a reported issue?
- Is there any current risk to an employee, the employer, or a client?
- Who in the organization has knowledge about facts and circumstances about the alleged misconduct?
- What are the employer's applicable internal policies and procedures?
- Are witnesses required? If so, in what order should witnesses be interviewed?
- Who should conduct the interviews and in what environment?
- Should additional relevant discovery be performed (e.g. review of personnel files, performance reviews, documented disciplinary action, employer published policies and procedures, or email records)?

Why Choose Burke for Workplace

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Investigators?

Burke attorneys bring their experience as litigators, negotiators, and counselors to a workplace investigation. Our attorneys have been called upon to defend their own reports, as well as the reports of others, and they use this experience to craft investigation reports in a way that will withstand scrutiny in subsequent litigation. Burke attorneys have conducted a wide variety of workplace investigations in the public and private sector. Our investigations have involved allegations of workplace harassment, discrimination and retaliation, threats of violence, inappropriate or unlawful hiring practices, bullying, insubordination and conduct unbecoming, whistleblower retaliation, general workplace misconduct, and conflict of interest, among other issues. We have conducted investigations in response to internal grievances and complaints, inquiries by state and federal agencies, and complaints of misconduct filed by members of the public. Because of our public law expertise, we are familiar with the unique procedural rights that apply to investigations involving public employees. We have conducted investigations for public agencies that involved high-level employees or elected officials and sensitive personnel or political issues. We have also been involved in multi-party investigations and are well-equipped to handle the complications involved when there are cross-allegations made during investigations. We are also well-versed in the Public Safety Officers' Procedural Bill of Rights (POBOR) and the Firefighters Procedural Bill of Rights (FBOR).

Burke's Trusted Factfinders

Fundamental to the workplace investigation process is *credibility*. Burke workplace investigation attorneys are highly skilled in evaluating fair, reasonable, and legally defensible assessments and recommendations, especially where there may be circumstantial or conflicting testimony provided by witnesses. We are highly experienced labor and employment litigators and advisors, as well as credentialed workplace investigators. Several Burke attorneys have earned the Association of Workplace Investigators (AWI) Certificate. In addition to having successfully conducted hundreds of workplace investigations for public and private sector clients, we routinely present a wide range of workplace training on discrimination and harassment prevention and investigation of alleged violations to human resources professionals and managers regarding proper investigation techniques. This training includes preventative measures that can ensure compliance with statutory mandates.

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Burke Workplace Investigation Outcomes

Burke attorneys manage the workplace investigation process to carefully assess the employer's past practices in similar situations so as to arrive at recommendations that are consistent with the organization's policies and practices, as well as being fair. We distill the facts Burke has discovered and combine this information with our credibility assessments of interviewed witnesses. Any recommended remedial measures put forward to the employer by Burke investigators are matched to the degree of supportable employee misconduct and which can be practically implemented. The range of Burke-recommended resolution outcomes for a given workplace investigation may include one or more of the following: no action be taken, employee disciplinary warning, employee termination, employee additional training, changes in employer policies or manuals, restructuring employee reporting relationship, employee demotion, or changes in employee duties.

Learn More About Burke's California Workplace Investigations Team

For more information or inquiries about Burke's Workplace Investigations services, please contact Timothy L. Davis, Partner, and Chair of Burke's Labor & Employment practice group at +1 408.606.6317 or tdavis@bwslaw.com.

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