Four Key Considerations When Drafting An Investigation Report

Consider this all too familiar scenario:

An employer receives a complaint that an employee is allegedly bullying and harassing a co-worker. As part of the investigation, the employer interviews both the complainant and the subject thoroughly and thoughtfully. To the extent possible, corroborative evidence is gathered. The employer completes a professional investigation and, as a result, achieves a solid understanding of what has taken place and is prepared to make prudent and reasonable decisions based on their findings. Unfortunately, far less time and effort is put into drafting the Investigation Report.

A complaint is then filed against the employer by one or more of the parties. Months (or years) later, a Court or Tribunal reviews the employer's entire investigative and disciplinary process. Based on deficiencies in how the Investigation Report was compiled and written, the process is deemed inadequate. The employer is ordered to pay damages to the complaining party, including their costs of pursuing the complaint, and is required to take further actions, including potentially reinstating a dismissed employee.

Employers can avoid this frustratingly common scenario by taking the time to prepare a complete and well-formatted Investigation Report.

Employers have a duty to protect employees from harmful behaviours and must ensure that they have a solid basis for disciplining an employee when doing so. The Investigation Report is an integral, and often underperformed, part of this process. When drafting an Investigation Report, these are four key considerations:

Format

A report that follows a structured format helps ensure that all the relevant information is included, and a template with clear headings is quite useful. A properly formatted report helps demonstrate that a professional and credible investigative process was undertaken, adding to the reliability of its conclusions.

Attachments

Each step of the investigative process needs to be documented. These documents then

need to be retained and attached to the Investigation Report in a relevant manner.

Emails and investigative notes, particularly notes detailing phone conversations between the investigator and witnesses, are often referred to in an Investigation Report but not attached to the final product. Investigators may consider including key documents and witness statements as part of the Investigation Report to ensure a comprehensive and reliable report.

Ensuring Each Conclusion is Supported by Documented Evidence (Footnoting)

Most employer Investigation Reports provide a detailed summary of what occurred, which usually contain facts and subsequent conclusions drawn by the investigator. While it is useful to have a clear picture of what the investigator concluded happened between the parties, many of these reports fail to demonstrate how the investigator arrived at that particular conclusion.

For example, if the investigator found a witness credible, they need to articulate why they found this witness credible. These reasons should be specific and reference, via footnotes, particular sections of interview notes or written statements.

If a conclusion or finding of fact in an Investigation Report cannot be traced to evidence and supported by a clear line of reasoning, a tribunal or Court reviewing the report may deem the investigation flawed or incomplete.

Demonstrating the Subject’s Evidence was Gathered and Considered

Generally, the investigator will have interviewed the subject of the investigation; however, subjects may refuse to be interviewed or provide a statement on occasion. If an investigator finds the subject’s version of events not credible, they may focus less on their statement when drafting the Investigation Report.

Gathering the subject’s information is not sufficient to ensure procedural fairness in the investigation. The investigator needs to articulate that the subject’s statements were considered and, if these statements were found to be not credible, explain why they were found to be so. Again, the investigator needs to be specific. A blanket dismissal of the subject’s statements in the Investigation Report may cause the tribunal or Court to infer that they were not properly considered, which could lead to a further inference that the investigation lacked procedural fairness.

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