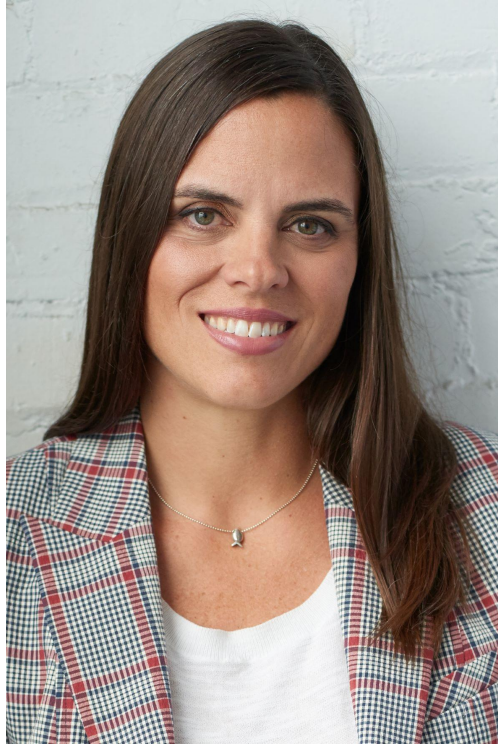


When Workplace Investigations Are Necessary

And How To
Manage Them
When They Are

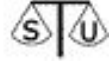




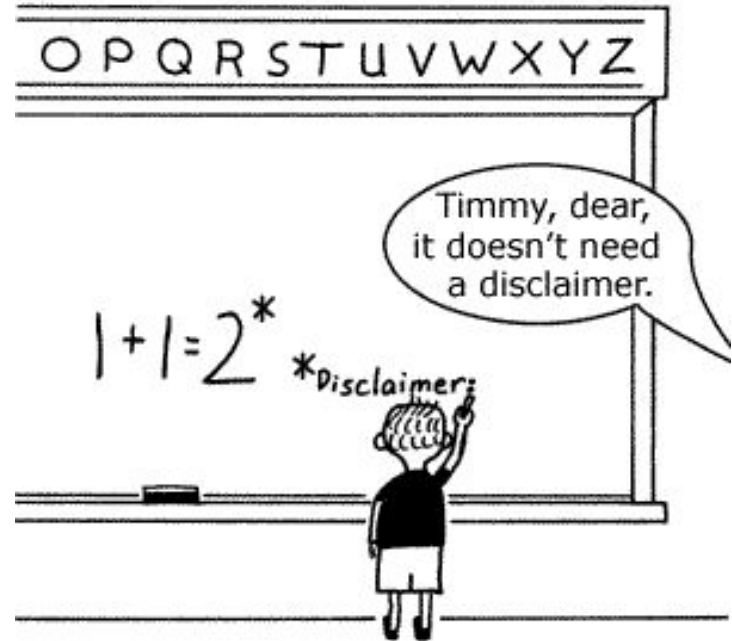
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Presentation Roadmap

- When are investigations necessary?
- Initial steps, principles and considerations
- Alternatives to investigations
- Best practices for an effective (and defensible) employer response to allegations/incidences of workplace misconduct
- Mistakes to avoid

A young woman with long brown hair, wearing a white blouse, is seated at a wooden table and talking to another person whose back is to the camera. The background shows a large window with a grid pattern, letting in bright light. A white text box is overlaid on the bottom half of the image.

When Are Workplace Investigations Necessary?

When Are Workplace Investigations Necessary?

- Are you aware of allegations or incidents of workplace harassment, violence or discrimination?
- If yes → legal obligation to investigate
- Planning the investigation: what is “appropriate in the circumstances”
- The standard is reasonableness, not perfection

You Are Legally Obligated to Investigate!

OHSA

- Section 32.0.7(a): an employer shall ensure that an investigation is conducted into incidents and complaints of workplace harassment

Human Rights Code

- The rationale underlying the duty to investigate a complaint of discrimination is to ensure that the rights under the *Code* are meaningful...*The Tribunal's jurisprudence has established that the employer's duty to investigate is held to a standard of reasonableness, not correctness or perfection.*



**Initial Steps, Principles
& Considerations**

Initial Steps When Allegations / Incidences Arise

- Duty to investigate is easily triggered under OHSA: complaints and incidents (s.32.07.7(1)(a))
- How serious are the allegations / incidences?
- Assess the complexity
- Who / how many at the organization will need to be involved?
- Consider each party's perspective when planning the employer's response
- What is "appropriate in the circumstances"?
- Consider strategic legal consultation with employment law counsel

Pre-Investigation Considerations

- Once you decide a matter requires a formal investigation
- If so should the investigation be internal or external?
- If Internal - who will lead?
- If External - who will the organization select and work with?
 - Who will be responsible for providing the External Investigator with instructions?

General Principles of Investigations

- Act expeditiously, fairly and decisively
- Fairness as the overriding requirement throughout
- Objective/neutral investigation
- Real-life workplace scenarios

Alternatives to Investigations

- Cultural assessment
- Performance management
- Coaching
- Mediation
- Early termination with or without cause is sometimes a cost-effective & appropriate solution



Best Practices & Mistakes to Avoid

Best Practices

- Even if you are not the investigator:
 - Ensure parties and potential witnesses maintain **confidentiality**
 - Take steps to **prevent reprisals** / allegations of reprisal
 - Be mindful of all internal communications - no evidence of predetermination!
 - usually not privileged and are producible in litigation (assume they are!)
 - **Procedural fairness throughout** will lead to a more defensible employer response, and often a better outcome

Mistakes to Avoid

- Do's and Don'ts of (internal) investigations
 - no particulars of allegations provided in advance
 - investigator is not impartial or perceived to be impartial
 - evidence of pre-judgment / pre-determination
 - balance efficiency with thoroughness (e.g. inadequate follow up with witnesses / gaps - can lead to claims of procedural unfairness)
 - same with unreasonable delays

Key Takeaways



Takeaways

- Assess seriousness and complexity of allegations / incidents
- If an investigation is required, what is 'appropriate in the circumstances'?
- What alternatives methods could address the workplace discord?
- Procedural fairness:
 - Treat the parties the way you would want to be treated if in their shoes
 - Leads to a better outcome and more defensible employer response

Questions?

To learn more about our team: <https://springlaw.ca/team/>

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