WHEN DO I NEED TO INVESTIGATE?

DO YOU HAVE NOTICE OF:

• Policy violation [harassment, discrimination, code of conduct (toxic workplace)]
• Violation of law
• Concerns about conduct
  • From co-workers
  • From customers
WHAT DO I HAVE TO INVESTIGATE?

• When you learn of conduct that might violate a Policy
  • What do your employees know? What are they required to report?

• Complaints submitted by community members/other stakeholders/outsiders
  • Document your response!

• Off-site conduct?
• Websites, social media?
PRE-INVESTIGATION

FOR THE PEOPLE INVOLVED

• What are supports/interim measures available?
• Are there immediate safety concerns?
  • Police involvement
  • Emergency removal

FOR THE COMMUNITY

• Messaging about your response
• Who will be updated informed
COMMUNICATE EARLY AND OFTEN ABOUT:

- Your role
- Retaliation
- Confidentiality expectations
STEPS TO AN INVESTIGATION
INTAKE

WHAT IS BEING ALLEGED?
• May have to do some initial information gathering

WHAT POLICIES APPLY?
• If organization has a policy regarding investigations, should be followed!

WHO NEEDS TO BE INVOLVED IN THE INVESTIGATION?
INTAKE (CONT’D)

INITIAL ASSESSMENT – WHICH POLICY APPLIES
• If initially filed under incorrect policy, may refer out

BEST PRACTICE: DOCUMENT AND COMMUNICATE INITIAL ASSESSMENT PROCESS
• Reasons for determination
• Communicate to stakeholder parties

NOTIFY THE RESPONDENT
• What is being investigated (scope)
• Process/rights
PLAN YOUR INVESTIGATION

- Identify reporter, subject, relevant witnesses
- Identify/request relevant documents and policies
- Plan interviews (questions, format, location, attendees)
CONDUCT INTERVIEWS

- Disclose your role, expectations with witnesses
- Be prepared to handle emotional interviewees, reluctant witnesses
- Take notes
- Ask open-ended questions, listen, and follow-up
  - Request documents, info about other witnesses
ASSESS THE INFORMATION GATHERED

LOOK AT INTERVIEWS AND DOCUMENTS TOGETHER

• What is corroborated? Corroboration by extrinsic documents is best
  • Is something not corroborated that you would normally expect to be corroborated?
• Contemporaneous accounts to others
• Ask – “does this make sense” given other information
• Assessing credibility
MAKE A DETERMINATION; DOCUMENT FINDINGS/RECOMMENDATIONS

• What are your conclusions?
  • Alleged conduct occurred
  • Alleged conduct did not occur
  • Inconclusive

• If you conclude that conduct occurred, did it violate policy?
• Review past practice with same/similar violations for consistency
WRITTEN REPORT

• Considerations – will this be shared with the parties?
  • Does it need to be anonymized/redacted?

• Document your process
  • What information was reviewed
  • What information was not available

• Explain reasons for factual findings
  • Reference standard (usually preponderance of the evidence)

• Identify specific policy/code of conduct violations, not legal conclusions

• Recommend discipline

• Right to appeal?
A WORD ABOUT TITLE IX HEARINGS

SOME COMMON CONCERNS:

• How to determine who should appear at the hearing?
  • Investigator?
  • Can witnesses/parties decline?

• Issues with employees serving as hearing panelists

• Concerns for employee hearings
  • Union reps, discipline determination

• How does Title IX compare to other processes?
STEP 6 – FOLLOW-UP

• Implement recommendations (i.e., discipline)
• Communicate findings, as appropriate
• Give all parties retaliation warnings/reminders
• Post-mortem (assess need for updated policies/procedures)
TOP 10 COMMON MISTAKES!

1. Ignoring complaints
2. Delaying investigations even if “unavoidable”
3. Failing to plan
4. Losing objectivity
5. Using overly aggressive interview tactics/not establishing rapport
6. Letting witnesses drive the bus
7. Not conducting a thorough investigation, giving it short shrift
8. Failing to reach a conclusion
9. Failing to document interviews and failing to create a written report
10. Failing to follow up with those involved
QUESTIONS?