

A photograph of a modern office interior with glass partitions and wooden desks, serving as a background for the top section of the slide.

**Palmer Kazanjian**  
Palmer Kazanjian Wohl Hodson LLP **Attorneys**

# Workplace Investigations

PALMER KAZANJIAN WOHL HODSON LLP

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# Palmer Kazanjian

Palmer Kazanjian Wohl Hodson LLP **Attorneys**

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# Palmer Kazanjian

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School of Law, 2012



# Agenda

1. Workplace Investigations Overview
2. Triggering Factors
3. Investigation Process
4. Minimizing Liability Risks
5. Q & A



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# Workplace Investigations

# What is a Workplace Investigation

- An objective and systematic process of discovering facts about a specific incident that occurred at work to assess whether organizational policies, laws, and/or regulations have been violated to determine the appropriate course of action.

# Why Conduct Investigations

- Every complaint has the potential to become a lawsuit.
- Employers have a legal responsibility to address and resolve any allegations of misconduct, harassment, or discrimination that may arise within their organization.
- Investigations promote the enforcement of company policies and help identify and resolve internal problems before they become widespread within the organization.

# Fair Employment and Housing Act (FEHA)

- FEHA prohibits unlawful discrimination, harassment, and retaliation in the workplace based on statutorily protected characteristics:
  - Race; color; national origin; religion; sex; familial status; handicap (disability); age; ancestry; citizenship; gender identity and gender expression; genetic information; immigration status; marital status; primary language; sexual orientation; source of income; or other arbitrary basis.
- FEHA's anti-discrimination provisions apply to employers with 5+ employees.
- FEHA's anti-harassment provisions apply to employers with 1+ employees.



# When to Conduct Investigations

- When a company receives a complaint or allegation regarding:
  - Discrimination
  - Harassment
  - Retaliation
  - Safety concerns
  - Ethical concerns
  - Policy violations
  - Other workplace misconduct

# Types of Complaints – Formal/Informal

- **Formal / Written:** A complaint made by an employee, representative of employees, or relative of an employee who has provided their written signature for the complaint.
- **Informal / Verbal:** Complaints made anonymously, by former employees, or by individuals who did not provide their written signature for the complaint.

# Types of Investigations – Internal/External

- **Internal:** A formal inquiry conducted by the company itself to determine whether organizational policies, laws and/or regulations have been violated. If handled properly, internal investigations can prevent additional harm to the company.
- **External / Referral to Third Party:** When an independent individual is hired solely for the purpose of conducting the investigation. External investigations are perceived as more objective since there are fewer chances of conflict of interest. For more serious allegations, the employer should consider hiring an outside investigator.



# Investigation Process

# Key Factors

- **Prompt**
  - An employer must begin an investigation when it receives a complaint or otherwise becomes aware of alleged misconduct.
- **Impartial and Objective**
  - The employer and investigator cannot favor one side over the other because of bias.
- **Thorough**
  - A minor issue may turn out to be a widespread problem upon investigation.
  - The failure to be thorough could result in liability for the employer.
- **Confidential (to the extent possible)**
  - Never promise absolute confidentiality but be as confidential as possible.

# Characteristics of an Investigator

- Able to make an impartial determination.
- Perceived as fair, reasonable, and without bias.
- Effective communication skills.
- Able to accurately document evidence and findings.
- Able to maintain confidences.
- Thorough.

# Four Steps to an Effective Investigation

1. Compile the appropriate facts (documents and testimony).
2. Evaluate the compiled facts and make determinations.
3. Decide the appropriate action to take based on an evaluation of the facts.
4. Inform the participants of the action taken.

# 1. Compiling the Facts

- Commence the investigation immediately.
- Obtain a complete account of the complaint.
- Interview all the witnesses.
- Provide the alleged wrongdoer an opportunity to respond.
- Compile and review documentation.
- Respect confidences, but do not guarantee absolute confidentiality.



## 2. Evaluating the Facts

- Maintain neutrality during the investigation.
- Weigh the evidence and determine its credibility.
- Document your findings, including the basis for your decision.

# 3. Deciding the Appropriate Action

- Review personnel policies, procedures, and practices.
- Choose the action most appropriate for severity of offense
- Maintain consistency with prior decisions.
- Deliberate carefully, but act with reasonable speed.

## 4. Informing the Participants

- Inform the alleged wrongdoer of the results and the action to be taken.
- Inform the complaining party of the results and the action taken.
- Inform supervisors and others as needed.



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# Best Practices for Employers

# Minimizing Liability Risks

- Written policy prohibiting harassment
- Written complaint procedure
- Training of supervisors and employees
- Act promptly on all complaints, and keep complainant informed
- Take appropriate action to stop the conduct and prevent it in the future



Q & A

# Thank you for joining us!

We'll see you next time.  
Have a great day!

**Palmer Kazanjian**  
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