

Best Practices for Conducting an Investigation
Association of Chief Human Resource Officers
October 10, 2018



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And

Dr. Cindy Vyskocil
Vice Chancellor of Human Resources
South Orange County Community College District

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Purpose of the Workshop



- ☞ Overview of Basic Investigation Techniques and Procedures
- ☞ Events that Trigger an Investigation
- ☞ Best Practices for Conducting a Thorough Investigation
- ☞ Effective Interviewing and Questioning Techniques
- ☞ How To Avoid Common Pitfalls, Including Violations of Privacy, Discrimination and Retaliation Laws



Preliminary Considerations

Governing Authority



- ❧ Title VII of the 1964 Civil Rights Act
- ❧ California Fair Employment and Housing Act
- ❧ California Labor Code
- ❧ Privacy Laws
- ❧ Collective Bargaining Agreements
- ❧ Institution / Department Policies

Purpose of an Investigation



- ❧ Reveal or exonerate employee misconduct
- ❧ Provide factual basis to support future employer action (suspension, termination, etc.)
- ❧ Prevent further wrongdoing
- ❧ Prevent potential lawsuit by demonstrating that the employer exercised reasonable care to prevent and correct any harassing behavior (e.g. sexual harassment; discrimination)
 - ❧ *Steiner v. Showboat Operating Co., 25 F.3d 1459, 1464 (9th Cir. 1994)*

Typical Kinds of Investigations



Events That May Trigger an Investigation

- ❧ Complaints of Discrimination / Harassment / Retaliation / Employee Theft / Misconduct / Substance Abuse
- ❧ Threats of Workplace Violence
- ❧ Student/Vendor Complaints
- ❧ Internal Complaints (formal or informal)



Legal Considerations

Legal Considerations



Duty to Investigate - Discrimination and Harassment

- ☞ Employers have an affirmative duty to “take all reasonable steps” to prevent discrimination, harassment, and other unlawful practices
 - ☞ *Govt. Code § 12940 (k); 29 CFR § 1604.11(d)*
- ☞ Investigation may be used by the Employer to limit or avoid liability for harassment when the complainant has suffered no adverse employment action
 - ☞ *Burlington Industries v. Ellerth (1998) 524 U.S. 742*
 - ☞ *Faragher v. City of Boca Raton (1998) 524 U.S. 775*

Legal Considerations



Duty to Investigate - Discrimination and Harassment, (cont.)

- ☞ Under FEHA, Employer may rely on a valid investigation to limit the damages that can be recovered
 - ☞ *State Dept. Health Services v. Sup. Ct. (McGinnis)* (2003) 31 Cal. 4th 1026
- ☞ Failure to investigate may create an independent cause of action or an inference of malice
 - ☞ *Trujillo v. N. County Transit Dist.* (1998) 63 Cal. App. 4th 280

Legal Considerations



Duty to Investigate

- ☞ "Good cause" written into employment contracts
- ☞ Workplace accidents and safety violations
- ☞ Whistleblower laws

Legal Considerations



Interviews of Union Employees

- ☞ Employees have the right to have a union representative present during disciplinary interviews
 - ☞ *NLRB v. Weingarten (1975) 420 U.S. 251*
- ☞ The union also has the right to represent its members in disciplinary matters

Legal Considerations



Interviews of Union Employees

- ☞ The employer does not have to inform the employee of his right to a representative
- ☞ The employee has a right to a representative, but the employee does not have the right to a representative of his or her choosing
- ☞ The employee cannot refuse to answer questions when a union representative is present or to wait for a chosen representative such as a private attorney

Legal Considerations



☞ Interviews of Employees - Sworn Officers

- ☞ Under the Police Officer's Bill of Rights, during investigations that potentially involve **criminal behavior** an employer must inform a public safety employee of rights prior to the interview. (*Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822.)

Legal Considerations



☞ Interviews of Employees - Sworn Officers

- ☞ Specifically, the "Lybarger Warning" requires notice that:
 - ☞ 1) The employee's silence could be deemed insubordination, leading to administrative discipline
 - ☞ 2) Any statement made under threat of discipline could not be used against the employee in any subsequent criminal proceeding

Legal Considerations



Interview of Employees (Lybarger - Non-Police)

☞ While it is uncertain whether the “Lybarger Warning” applies for employees besides public safety employees, the California Supreme Court has hinted that it may for other government employees when the misconduct is criminal in nature

(See *Speilbauer v. County of Santa Clara* (2009) 45 Cal. 4th 704.)

Legal Considerations



Interview of Employees (Lybarger - Non-Police)

☞ Best practices: we recommend that you provide this warning to any employee suspected of misconduct that is potentially criminal in nature

☞ See handout

Legal Considerations



Investigatory Interviews - Recording the Interview

- ☞ Generally, it is illegal to record a confidential conversation without the other party's consent
 - ☞ Penal Code § 632(a)
 - ☞ *Forest E. Olson, Inc. v. Superior Court* (1976) 63 Cal.App.3d 188
- ☞ However, it is legal to record communications made in any circumstance in which the parties may reasonably expect that the communication may be overheard or recorded
 - ☞ Penal Code § 632(a)

Legal Considerations



Investigatory Interviews - Recording the Interview

- ☞ To comply with the law, the investigator should announce at the start of the interview in the recording that:
 - ☞ The interview is being recorded
 - ☞ The conversation is not intended to be a private conversation between the investigator and the interviewee
 - ☞ While neither the recording nor the transcript will be made available to the general public, it will be used in the investigation

Investigation Plan



PLAN FIRST!

Important Considerations Before You Begin an Investigation



Elements of an Appropriate Investigation

- ☞ All appropriate witnesses are interviewed and all relevant facts are uncovered
- ☞ Conducted by impartial investigator
- ☞ Prompt and thorough
- ☞ Well-Documented
- ☞ The results enable the District to draw reasonable conclusions
- ☞ Confidentiality is properly protected to extent possible
- ☞ The action taken is effective to end inappropriate conduct and deter future similar conduct
- ☞ No retaliation for participation in the investigation

Important Considerations Before You Begin an Investigation



Selecting an Investigator

- ❧ Human Resources Staff
 - ❧ Organization and communication skills
 - ❧ Knowledge of personnel issues
 - ❧ Awareness of potential legal issues

- ❧ Independent Department Manager
 - ❧ Technical knowledge
 - ❧ Level of independence

Important Considerations Before You Begin an Investigation



Selecting an Investigator (cont.)

- ❧ Outside investigator
 - ❧ Independent
 - ❧ Knowledge of personnel, technical, and legal issues
 - ❧ Trained in interviewing witnesses and assessing credibility
 - ❧ If an attorney, the communications may have some attorney-client privilege
- ❧ Appropriate for complicated investigations, high level employees, or when there is a risk of legal liability

Status of Employee During Investigation



- ☞ Determine whether complainant or accused should be removed from work pending the outcome of the investigation
 - ☞ Will the employee's presence cause a disruption in the workplace or operation?
 - ☞ Is the employee in a position to intimidate or coerce witnesses or accusers?
 - ☞ Is the employee in a position to destroy evidence?

Investigation Plan



- ☞ Determine the type of investigation (harassment, employee dispute, misconduct, etc.)
- ☞ Determine the scope of the investigation
 - ☞ Identify laws, regulations, and District policies and procedures that must be followed
 - ☞ Determine applicable time limits

Investigation Plan (cont.)



- ❧ Prepare a detailed, written investigation plan
- ❧ Summarize each allegation in the complaint
 - ❧ Identify witnesses and documents from the complaint itself
 - ❧ Identify other potential witnesses, including supervisors and co-workers not named in the complaint
 - ❧ Pull personnel files for all employee witnesses

Investigation Plan (cont.)



- ❧ Schedule interviews
- ❧ Draft interview questions
- ❧ Remind all witnesses of the applicable non-retaliation policy
- ❧ Review documents
 - ❧ Complaint/Allegations
 - ❧ Personnel Files
 - ❧ Memos of Prior Counseling
 - ❧ Consult with IT to view deleted emails and computer files



Interviewing Techniques

- ## Interviews
- 
-
- ❧ Speak with the complainant first
 - ❧ Even when there is a written complaint, begin with the primary parties to form a framework of the allegations
 - ❧ Interview all other potential witnesses before the alleged wrong-doer
 - ❧ Eye-witnesses and those with first-hand knowledge
 - ❧ Witnesses with knowledge of subsequent reaction
 - ❧ Current and former coworkers, supervisors, third parties such as students, customers, or clients

Interviews



- ❧ Avoid “advocacy”
 - ❧ Do not use contentious or aggressive questioning
 - ❧ Remind the witnesses that they are free to leave or to take a break during the interview.
- ❧ Keep accuser and accused separate: Investigate first, mediate later
- ❧ Interview alleged wrongdoer last
 - ❧ Investigator will have knowledge of all allegations and witness statements
 - ❧ Provide alleged wrongdoer a chance to respond to all allegations and witness statements

Interviewing Techniques



- ❧ Asking the right questions is at the heart of an effective investigation
- ❧ “Garbage In, Garbage Out” – Poorly phrased questions lead to confusing answers
- ❧ By asking the right questions, you can:
 - ❧ Gather better information
 - ❧ Build a rapport with the interviewee

Interviewing Techniques



Opening Explanation

- ❧ Begin an interview by introducing yourself and putting the interviewee at ease
- ❧ Inform the interviewee if s/he is being interviewed as a witness or is being accused of wrongdoing
- ❧ Tell the witness that if s/he does not understand your question to ask for a clarification
- ❧ Remind the witness that just because an accusation has been made does not make it true
 - ❧ Also remind the witness that just because the investigator says something does not make it true

Interviewing Techniques



Opening Explanation (cont.)

- ❧ Tell the witness to be truthful and to indicate if she does not know or cannot remember the answer to the investigator's question
- ❧ NO GUESSING!
 - ❧ Differentiate between estimates and guessing
 - ❧ Estimate: an approximate calculation or judgment of a fact from your recollection
 - ❧ Guess: pure conjecture or speculation

Interviewing Techniques



Opening Explanation (cont.)

- ☞ Remind the interviewee to give verbal answers if the interview is being recorded or transcribed
- ☞ Assure the interviewee that she will be protected from retaliation
- ☞ Direct the witness, especially the alleged wrongdoer, to not speak with or attempt to influence other witnesses (except as permitted under the NLRB)

Interviewing Techniques



Types of Questions

- ☞ Generally ask Open Questions - questions that allow for more response and potentially more information
 - ☞ ex. How did you get to work?
 - ☞ ex. What did you do before work?
 - ☞ ex. What happened?
- ☞ Closed Questions (one word answers) and Leading Questions (suggesting an answer) are less effective

Interviewing Techniques (cont.)



Types of Responses

- ❧ A direct and honest response – this is what the questioner would usually want to achieve from asking their question.
- ❧ A lie – the respondent may lie in response to a question.
 - ❧ Implausible answer
 - ❧ Non-verbal cues
- ❧ Refusing to answer

Interviewing Techniques (cont.)



Types of Responses (cont.)

- ❧ Out of context – The respondent may say something that is totally unconnected or irrelevant to the question or attempt to change the topic.
- ❧ Partially Answer – Selecting about which questions or parts of questions they wish to answer.
- ❧ Avoiding the answer
- ❧ Stalling
- ❧ Distortion - Exaggerations or answers influenced by bias

Interviewing Techniques (cont.)



Types of Responses (cont.)

- ☞ If the witness “hedges,” ask for an estimate or range
- ☞ Rely on the T-Funneling technique to:
 - ☞ Rephrase or reword the question to elicit a proper response
 - ☞ Change question from closed to open or open to closed
 - ☞ Pin down answers if the interviewee is being evasive

Interviewing Techniques (cont.)



T-Funnel Method - General

- ☞ This technique involves asking general questions and then honing in on a point in each answer
- ☞ The questions go from more open to more closed at each step
- ☞ Effective for:
 - ☞ Finding out more detail about a specific point
 - ☞ Increasing the confidence of the person you are speaking with

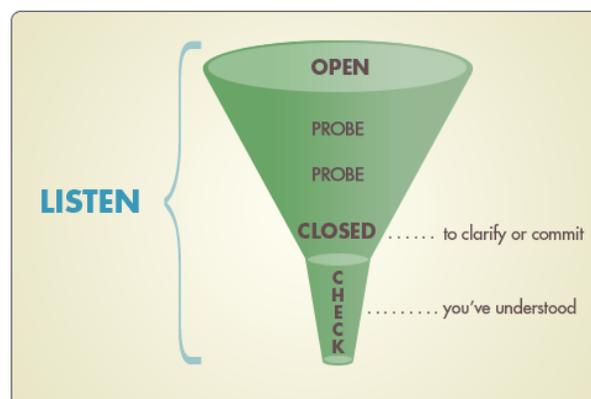
Interviewing Techniques (cont.)



Funnel Method - General

- ❧ Probing is the key to skillful questions
- ❧ Begin with establishing the event timeline
- ❧ For each event, ask open question intended to give the interviewee the widest possible scope for responding
- ❧ Ask the who, what, where, when and how questions
- ❧ From there, use probing questions to draw out specific information
- ❧ Ask for supporting documentation
- ❧ Finally, check if there are intervening events

Interviewing Techniques



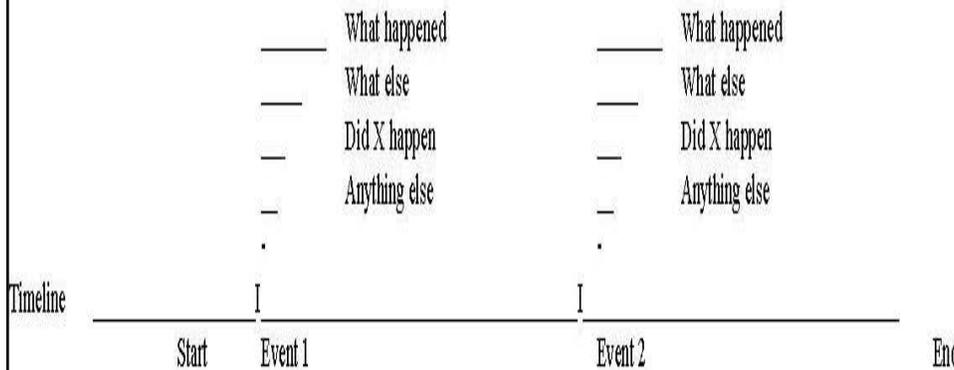
Interviewing Techniques



T-Funnel Method - Determining the Event Timeline:

- ☞ What is the first thing that happened?
- ☞ What is the next thing that happened?
- ☞ Did anything happened between the first and second thing?
 - ☞ If yes - What Happened? (Repeat above)
 - ☞ If no - "What is the next thing that happened?"
- ☞ Always ask "Anything Else?" at least twice more

Interviewing Techniques



Interviewing Techniques



☞ **T-Funnel Method - Technique:**

☞ For Every Event in the Timeline, Ask:

- ☞ Date and Time (When)?
- ☞ What happened (What was the event)?
- ☞ Where was it (Where)?
- ☞ Who was there (Are there witnesses?)
- ☞ What was said?
- ☞ Who said it? What was the response?
- ☞ Did ___ happen/ Was ___ said?
- ☞ Did anything else happen? (Twice)
- ☞ Was anything else said? (Twice)



Application of Interview Techniques

Interview Exercise



- ☞ Practice Interviewing
- ☞ Everyone break into groups of two
- ☞ Investigation:
 - ☞ What did you do this weekend?
 - ☞ If that is too personal: What did you do at work this week?



Confidentiality

Confidentiality



- ❧ Investigations are best conducted in a confidential climate
- ❧ Therefore, the investigator should promise the interviewee that the investigator will not reveal information about such matters except as necessary to fulfill its legal obligations
- ❧ Revealing may be necessary:
 - ❧ If the report must be made public
 - ❧ If discipline results

Confidentiality



- ❧ The complainant may wish to protect his or her identity
- ❧ While protecting the identity of the complainant is possible, it will likely impede the investigation
 - ❧ The accused has the right to confront the accusations against him

Confidentiality



Instruction to Witnesses

- ☞ Witnesses should be advised information revealed to an investigator is usually protected from defamation
 - ☞ However, statements made outside of the process may expose themselves to tort charges
- ☞ **IMPORTANT: Union employee witnesses should not be directed to maintain confidentiality, except in limited “serious” circumstances**
 - ☞ Theft, threats of violence, destruction of evidence
 - ☞ Especially with union representatives

Confidentiality



Instruction to Witnesses (cont.)

- ☞ The complainant and the witnesses may request information about any disciplinary actions
 - ☞ However, the privacy rights of the persons involved often prevent the Employer from providing such information
 - ☞ Disciplinary actions taken against employees are generally considered confidential
 - ☞ Complainants must trust the Employer to take appropriate action

Confidentiality



Best Practices

- ✧ Create a “Confidentiality Statement” that states:
 1. Information given to investigator will only be revealed to fulfill legal obligations
 2. Witnesses should be aware that there is no protection for statements made outside the Employer process
 3. However, union employee witnesses should **not** be required to maintain confidentiality except under “serious” circumstances
 4. Privacy concerns prevent the Employer from providing information relating to discipline



Investigation Report

Investigation Report

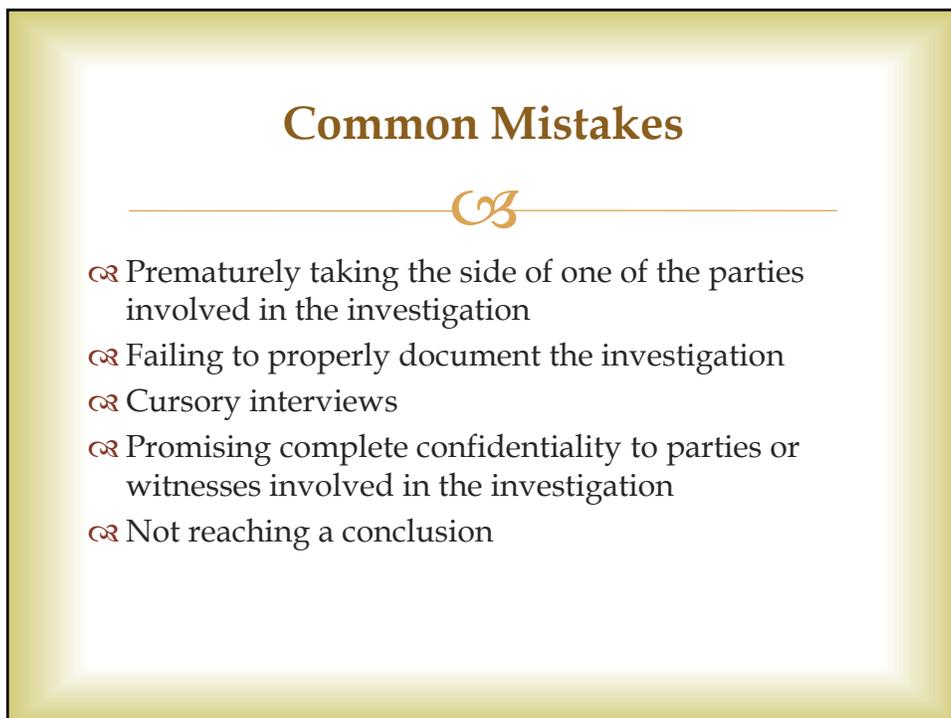
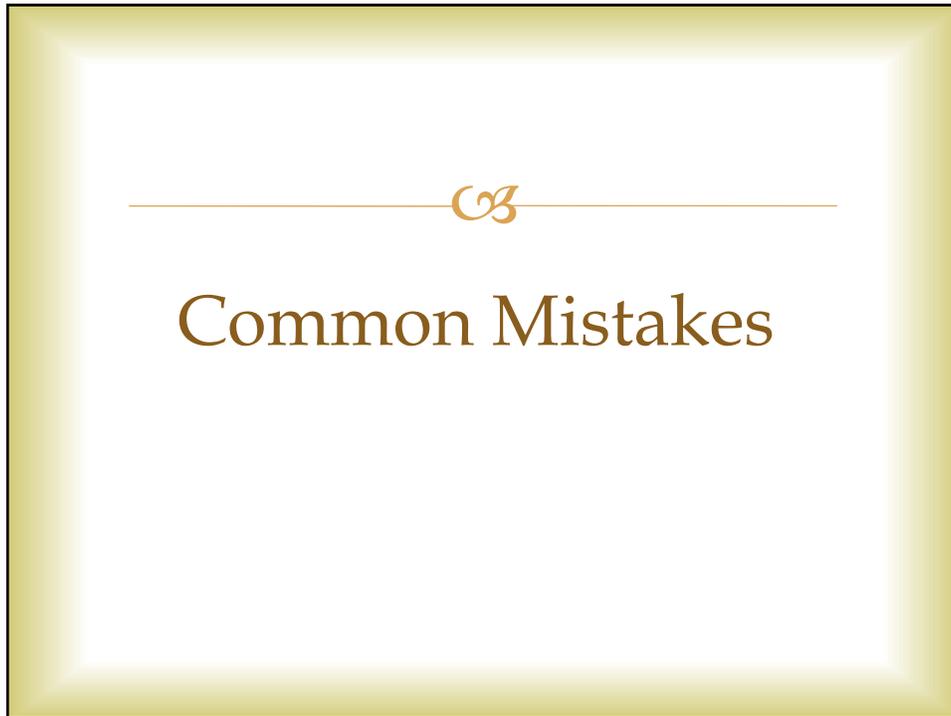


- ✧ A properly written investigation report should include:
 - ✧ Description of circumstances giving rise to the complaint
 - ✧ Summary of applicable authority or rules
 - ✧ Summary of testimony received by each witness
 - ✧ Analysis of documents and other data
 - ✧ Finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint

Investigation Report



- ✧ Keep all investigative materials, including interview notes, witness statements, correspondence, and documents gathered in the course of the investigation, in a separate file – not in personnel file
- ✧ Keep all investigation materials confidential
- ✧ Limit access to the investigation materials



Summary



- ❧ Develop an investigation plan
 - ❧ What is the purpose of the investigation?
 - ❧ Identify witnesses and other evidence
 - ❧ Follow appropriate policies
- ❧ Interviewing
 - ❧ Prepare questions in advance
 - ❧ T-Funnel Method
- ❧ No retaliation

Handouts



1. Lybarger Notice
2. Funnel Questioning
3. Sample Confidentiality Statement
4. Elements of an Investigation



Thank you!
Any questions?

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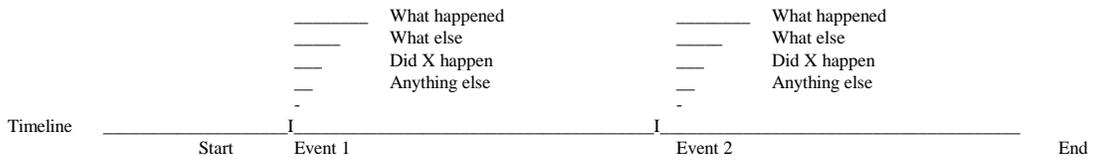
SAMPLE COMMUNITY COLLEGE DISTRICT
LYBARGER WARNING

You are about to be interviewed as part of an administrative investigation. You have the right to a representative, who is not involved in his investigation, present with you during your interview.

Because this is an administrative investigation, neither your statements nor any information or evidence which is gained by such statement can be used against you in any subsequent criminal action. You are being ordered to answer questions specifically related to your employment with the District. Your failure to answer questions directly related to this administrative investigation may result in disciplinary action up to and including your discharge or other punitive action. You are further ordered to be truthful in all your statements. Failure to be truthful will be considered insubordination and will subject you to further disciplinary action up to and including termination.

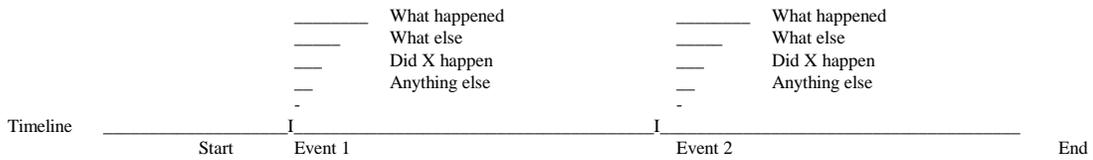
Signature

Date



1. **GENERAL**

- a. State full name for the record:
- b. Age:
- c. Current Address:
- d. Are you or have you ever been involved in any litigation before, including divorces
 - i. Nature of litigation
 - ii. Party or witness
 - iii. Have you ever had your interview taken before? - How many times
 - (1) Familiar with the procedures in an investigation?
 - (2) So there is no misunderstanding at all, I will explain ground rules
- e. Admonitions:
 - i. Testimony given under penalty of perjury as if testifying in a court of law.
 - ii. This interview is being recorded
 - iii. You are entitled to clear, understandable questions.
 - (1) If you do not understand my questions, ask that they be clarified
 - (2) If you answer a question without requesting clarification it will be assumed that you understood the question and were answering it.
 - iv. It is important you give full, complete & truthful answers to my questions.
 - v. I am entitled to your best answers to my questions.
 - (1) If you do not know an exact answer but have some information on the subject or can make some reasonable approximation or estimate, I am entitled to that information.
 - (2) Also entitled to best estimates regarding time, dates, distance, #'s
 - (3) An estimate requests information that you have perceived or knew at one time knew but do not recall exactly today
 - vi. I am not entitled to your guesses.
 - (1) A guess requests information you have never known or perceived
 - (2) If you truly don't know the answer and cannot provide any information, please say so.
 - vii. The recorder cannot pick up two people speaking at once
 - (1) Please wait until I have finished my question before you answer
 - (2) I will allow you to finish you answer before I ask my next question
 - (3) Also, please respond to Yes/No Q's with "Yes" or "no," not nods
 - viii. Do you have any questions at all about the procedures



- ix. Is there any reason you cannot give truthful and accurate testimony today
- x. Do you have any medical condition that might interfere with your ability to give truthful and accurate testimony
- xi. Have you taken any drugs or other medication that would interfere with your ability to give truthful and accurate testimony at today's interview.

f. **PREPARATION**

- i. Have you talked with anyone in preparation for your interview
- ii. Have you reviewed any documents in preparation for your interview.
- iii. Have you listened to any of the tape recordings at issue in this case
- iv. Have you done anything else to prepare for your interview today

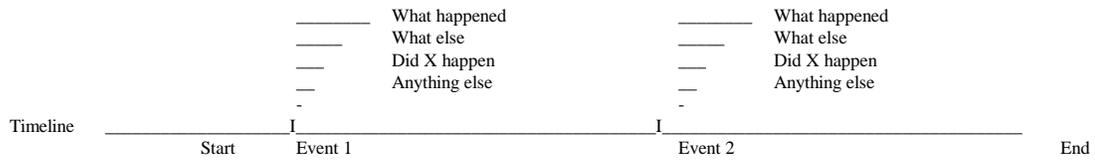
g. **BACKGROUND**

- i. **Education**
 - (1) Schools (from high school on)
 - (2) Degrees
 - (3) Area of focus (particularly those relating to subject of lawsuit)
 - (4) Other continuing education
- ii. **Occupational history since High School - Starting at beginning**
 - (1) Jobs
 - (2) Titles and duties
 - (3) Companies
 - (4) Supervisors

2. **Questions**

a. **Events** -

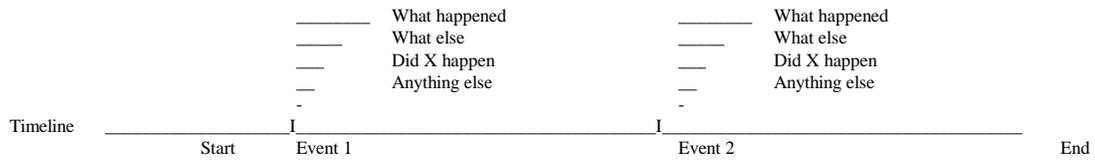
- i. **When was the first ***
 - (1) Approximate date
 - (2) **What happened during the first ***
 - (a) Where was it
 - (b) Who was there
 - (c) What was said
 - (d) Anything else
- ii. **When was the second ***
 - (1) Approximate date
 - (2) **What happened during the second ***
 - (a) Where was it



- (b) Who was there
- (c) What was said
- (d) Anything else
- iii. Did anything happen between the first * and second *?
 - (1) Approximate date
 - (2) What happened *
 - (a) Where was it
 - (b) Who was there
 - (c) What was said

b. **Discussions**

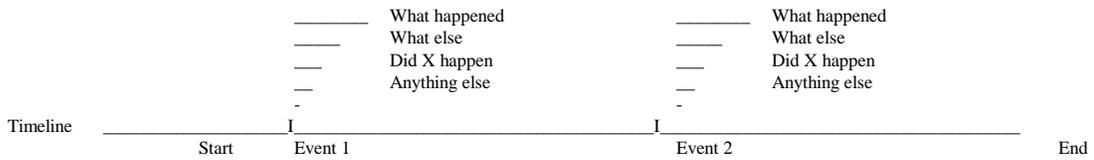
- i. Between * and *, did you have any discussions with * about *
 - (1) When was the first
 - (a) When was the next
 - (b) Any others
 - (2) Did anything significant happen between each conversation
 - (a) EG.
 - (i) Did you have any discussions with anyone
 - (ii) Did you obtain any information from anyone
 - (iii) Did you visit property or anyone
 - (b) When
 - (c) Who was present
 - (d) What was discussed
 - (e) Anything else
 - (3) For each discussion, what was said
 - (a) Where was it
 - (b) Who was there
 - (c) Who initiated the conversation
 - (d) What was discussed
 - (e) Anything else
 - (f) What was discussed
 - (g) Anything else
- ii. Between * and *, did you have any discussions about *
 - (1) When was the first
 - (a) When was the next
 - (b) Any others



- (2) Did anything happen between each meeting that affected *
 - (a) EG.
 - (i) Did you have any discussions with anyone
 - (ii) Did you obtain any information from anyone
 - (iii) Did you visit the property
 - (b) When
 - (c) Who was present
 - (d) What was discussed
 - (e) Anything else
- (3) What happened at each meeting
 - (a) Where was it
 - (b) Who was there
 - (c) What was discussed
 - (d) Anything else

c. **CONTRACTS**

- i. After receiving the contract did you read it
 - (1) Did you request any changes to the contract between the time you received it and the time you signed it
 - (2) What changes did you request
 - (3) Where those changes made
 - (4) When, where, who was present and what was said
- ii. Where did you sign the Lease
 - (1) Who was there
 - (2) Did you have any discussions regarding the contract prior to signing it
 - (a) Who with
 - (b) Who was there
 - (c) What was said
 - (d) Anything else
 - (3) Did you do anything prior to signing the contract
 - (4) Did you ask any questions about the language of the contract
 - (a) What was asked
 - (b) What was the response
 - (c) Would you agree that if you had any questions or concerns, you would have raised them before entering the contract



- documents
- (3) What was the nature of the contact
 - (a) What precipitated the contact
 - (b) Did you have any contact between X and Y? Etc.
- (4) Where did it take place
- (5) Who was present
- (6) What was discussed
- (7) Anything else
- ii. Did you have any other contact with * during this period
- iii. Did anything occur related to * during this time

e. **Particular Causes of Action**

- i. Complaint – Ask about each claim or allegation in the complaint.
- ii. Elements – Review elements necessary to establish their claim.
- iii. Determine if the facts provided support each elements

f. **Any Witnesses (Supp.Int.Resp.)**

- i. Witnesses
 - (1) *
 - (2) *
- ii. Purpose
 - (1) *
 - (2) *

SAMPLE EMPLOYER
STATEMENT OF CONFIDENTIALITY

Investigative processes can best be conducted within a confidential climate. Therefore, the Employer will not reveal information about such matters except as necessary to fulfill its legal obligations.

Potential complainants are sometimes reluctant to pursue or cooperate with a complaint if their names will be revealed. The inability to reveal the name of a complainant or facts that are likely to reveal the identity of the complainant can severely limit the ability of the Employer to respond. Complainants must also recognize that persons who are accused of wrongdoing have a right to present their side of the matter, and this right may be jeopardized if the District is prohibited from revealing the name of the complainant or facts that are likely to disclose the identity of the complainant.

If the complainant insists that his or her name not be revealed, the Employer will take all reasonable steps to investigate and respond to the complaint consistent with the request except as necessary to fulfill its legal obligations and as long as doing so does not jeopardize the rights of other employees or students.

It is also important that complainants and witnesses understand the possibility that they may be charged with allegations of defamation if they circulate the charges outside of the Employer's process. In general, persons who are participating in an internal investigative or disciplinary process that is related to a charge of discrimination are protected from tort claims such as defamation. However, persons who make allegations outside of these processes or who discuss their claims with persons outside of the process may expose themselves to tort charges. Complainants, witnesses, and those accused of discrimination will all be asked to sign a confidentiality acknowledgement statement.

Where an investigation reveals the need for disciplinary action, the complainant may wish to have information about what disciplinary actions were taken. However, the privacy rights of the persons involved often prevent the Employer from providing such information. Disciplinary actions taken against employees are generally considered confidential.

Complainants must trust the Employer to take appropriate action and must understand that the Employer is generally not at liberty to discuss personnel matters, particularly disciplinary matters.

I hereby acknowledge that I have received a copy of this confidentiality statement.

Signature

Date

ELEMENTS OF AN INVESTIGATION

1. Employee Misconduct Investigation

- a. Allegation
- b. Rule of Conduct (Employer Policy, Collective Bargaining Agreement)
- c. Would the allegation, if true, violate the rule of conduct?
- d. Do the facts support the allegations?
- e. Proposed Discipline (Employer Policy, Collective Bargaining Agreement, Progressive Discipline Procedure)
- f. Do the facts support the proposed discipline?

2. Sexual Harassment Investigation

- a. Allegation
- b. Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when:
 - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment
 - ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual, or
 - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment
- c. Examples of sexual harassment
 - i. Making unsolicited written, verbal, physical and/or visual contacts with sexual overtones including:
 - (1) Sex-oriented jokes
 - (2) Derogatory comments or slurs
 - (3) Subtle pressure for sexual activity
 - ii. Physical contact, including
 - (1) Patting, pinching, touching, brushing up against
 - (2) Assaulting
 - (3) Blocking movements
 - iii. Visual harassment including obscene posters, cartoons, drawings or computer programs
 - iv. Demands for sexual favors accompanied by
 - (1) Implied or overt promises for preferential treatment
 - (2) Threats concerning an individual's employment status
 - v. Continuing to express sexual interest after being informed that the interest is unwelcome
 - vi. Engaging in implicit or explicit coercive sexual behavior to control or influence another employee or student

- vii. Offering favors, grades, or employment benefits in exchange for sexual favors
 - d. Do the facts support the allegations?
 - e. Proposed Discipline (Employer Policy, Collective Bargaining Agreement, Progressive Discipline Procedure)
 - f. Do the facts support the proposed discipline?
3. **Racial, Religious, Age, Disability Harassment Investigation**
- a. Allegation
 - b. Harassment
 - i. The conduct was unwelcome
 - (1) Undesired
 - (2) Not solicited or triggered by the Complainant
 - ii. The conduct was severe or pervasive to alter the terms and conditions of employment
 - (1) Frequency of the conduct
 - (2) Severity of the conduct
 - (3) Whether the conduct was physically threatening or humiliating
 - (4) Whether the conduct unreasonably interfered with the employee's work performance
 - iii. Because of race, religion, age, disability, etc.
 - c. Examples of harassment
 - i. Offensive jokes, slurs, epithets, name calling
 - ii. Physical assaults or threats
 - iii. Intimidation
 - iv. Mockery
 - v. Offensive objects or pictures
 - d. Do the facts support the allegations?
 - e. Proposed Discipline (Employer Policy, Collective Bargaining Agreement, Progressive Discipline Procedure)
 - f. Do the facts support the proposed discipline?
4. **Race, Sex, Religion, Age, Disability Discrimination Investigation**
- a. Allegation
 - b. Prima Facie Case
 - i. Complainant is a member of a protected group
 - ii. Complainant was qualified for the position
 - iii. Complainant was rejected despite being fully qualified
 - (1) Not hired
 - (2) Terminated
 - (3) Reassigned
 - (4) Not promoted
 - (5) Otherwise discriminated against

- iv. After rejection, employer sought applicant with complainant's qualifications
- c. Do the facts in the allegation support the prima facie case?
- d. Is there a legitimate, non-discriminatory reason for the employer's action?
- e. Do all of facts ultimately support a finding of discrimination?