

# Investigative Interviewing

## 1 Preliminary considerations

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### **How important are my interview questions?**

For every disputed or unproven issue, you need to make a factual finding. So the purpose of the interview is to obtain facts necessary for your findings. Relevant facts are those that are important to deciding whether misconduct occurred. Your questions must be designed to obtain the facts that will prove or disprove the elements of your applicable policy. (Because you are interested in learning the truth of the matter, facts which disprove an allegation are just as relevant.)

### **Do employees have to comply with my interview request?**

People don't really want to get involved with your investigation. Only the motivated ones usually want to speak to you (and then you should wonder why they are so motivated). For example, a subject may want to avoid being interviewed so his wrongdoing won't be discovered. He may even claim some Fifth Amendment right to remain silent (which does not apply to private-sector employment.) An interviewee who has relevant information but is not implicated may not want to speak to you for fear either of exposing himself to discipline or appearing like a tattletale. In most organizations, however, an employee has little choice.

Your employer pays you to provide personal labor on its behalf. In return, you receive compensation. There are certain conditions on your employment. One of them is to act in the best interests of your employer.

An employer is legally obligated to provide a safe and proper place to work. Besides obvious things like fire escapes and desk chairs that won't collapse, part of that obligation includes investigating misconduct when a credible allegation arises. This is one of the ways to ensure a safe and proper workplace. Otherwise, the employer exposes itself to legal liability.

That's where you come in. If you are conducting an investigation, every employee has an obligation to cooperate because that employee would be assisting his employer to provide that safe and proper place to work. (We will assume it is a legitimate investigation with a reasonable, factual basis.) So if an employee has relevant information or can otherwise assist your inquires, he should do so upon your reasonable request.

Cooperating with an investigation is a condition of employment. An employee can refuse to cooperate, and you cannot compel him. However, the employee may be terminated for refusing.

When you encounter an employee who is reluctant to be interviewed, don't make demands or threats. A reluctant interviewee may be trying to protect himself or someone else. Psychologists explain that people are often as reluctant to speak about themselves as they are about others. If you can create a sense of safety and acceptance — "I am just trying to understand the truth of what happened" — perhaps you will have better luck than threatening his continued employment.

Your investigation gains no additional evidence if the talk-or-walk rule gets enforced. So don't rely on it unless you have no alternative. Instead, explore why the interviewee refuses. You may be able to provide acceptable assurances or make accommodations which will overcome the employee's reluctance so you get the information you need.

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## How can I get an interviewee to cooperate with me?

No one gets a bonus or other reward for speaking to you. In fact, the best that can happen is nothing.

You have a two-step task: first, to make him willing to cooperate with the questioning, and secondly, to obtain relevant information. This is your challenge. There are a number of ways to obtain your interviewee's cooperation:

- Ask general questions.
- Explain the advantages of cooperation.
- Downplay the disadvantages of non-cooperation.
- Appeal to his conscience.
- Speak his language and empathize.
- Give him a chance to explain.

Whatever your approach, develop a rapport with the interviewee. This creates a connection between the two of you, and it then becomes possible to create a change in the behavior of your interviewee. The dynamics of rapport constitute the foundation of the inquiry-persuasion process. Try to enter the world of your interviewee.

## For the sake of completeness, should I interview everyone?

Interviews are usually your best sources of information. But you can't keep interviewing indefinitely or indiscriminately. If you feel reluctant to stop interviewing, it may mean you have an investigation plan that failed to articulate precisely what you sought to learn. But let's be more positive and assume you made a good plan. Therefore, consider yourself finished when, based on your experience and training, you reasonably believe that you have gathered sufficient information either to meet your burden of proof or to disprove the allegation, and that there is not an overlooked document or important person left unexamined.

Cumulative witnesses—those people who simply repeat known information without adding anything more—also pose a process risk. The human memory is not perfect, and truthful witnesses may have different recollections of the same event. What will you do if they contradict each other? How will you proceed then?

This is not to suggest you take a narrow approach and stop asking questions the moment you hear what you are looking for. The point is that layering witnesses simply for the sake of thoroughness but not for gathering additional information has its risks. Each interviewee should address a specific need in your fact finding. If you cannot articulate that need before the interview starts, perhaps you shouldn't proceed with that interview.

## Should I interview all the people the reporter identified?

The reporter may give you names of possible witnesses, but your interviewee list should not be drawn up exclusively from the reporter's information. To rely exclusively on the reporter for this information could bias the investigation in favor of the reporter's point of view. The interviewee list should include others likely to provide relevant information. The list should include anyone who could corroborate, confirm, substantiate, validate or otherwise help you learn the truth about the allegation. The list should also include anyone who could disprove or undermine the elements of the allegation. As the investigation proceeds, you may identify more interviewees to add to the list.

## **In what order are people interviewed?**

As a preliminary step, documents should be examined before interviews begin. This will give you an understanding of the potential evidentiary value of the information, as well as to protect the security of documents. It will also allow you to understand the nature of the matters at issue, to identify key players, and to plan for interviews.

Because the investigation has begun, we will assume that you have already interviewed the reporter to determine if a reasonable basis exists to begin the investigation. It is then often best to work with people having the most facts first, then branching out to interview those who can complete the investigation picture by providing additional information.

The subject is usually interviewed last. You may be tempted to confront him first. However, this must be balanced against the extent to which critical fact-finding will be impeded at an early stage of the investigation. Pre-confrontation investigation may uncover important facts reflecting the nature and extent of the misconduct, allowing the company to assess the actual harm. Facts which directly or circumstantially implicate the subject may also be uncovered. This will enhance the likelihood that your later confrontation will be effective. Consider the legality of certain investigation techniques, the subject's rights and the business implications if the subject is terminated. Only by carefully considering these issues in advance can you effectively design a strategy for confronting the subject.

Even if you believe that the subject will not offer admissions and will likely deny the allegations, an interview is still necessary. Inform the subject's immediate supervisor of the report and your intention to interview the subject. Ask his supervisor to be alert to further problems, retaliation or other reactions that may affect your investigation. The subject should be given full—or as full as reasonably possible—information about the allegations against him and a full opportunity to explain and defend against those allegations. Reinforce the fairness of the investigation process by giving the subject every opportunity to explain his actions and offer exculpatory information or mitigating circumstances.

In some circumstances, however, it is better to conduct interviews without advance warning. Surprise interviews may be necessary if there is a concern that interviewees will alter or destroy evidence or that interviewees will collude in an attempt to make their explanations consistent. In these situations, you have a demonstrable reason for deviating from the general rule.

## **If I only need limited information from a witness, do I need to take his interview?**

A questionnaire can be effectively used when you only need specific questions answered from a non-critical witness. This may save you time and effort because it avoids the need for a personal interview. It also helps because it creates a written document response which you can simply drop in the file. Just remember that questionnaires serve only a limited purpose for your investigation.

## **Is it okay to interview an employee a second time if, later in the investigation, I have additional questions to ask?**

Yes. You generally get smarter about the facts as the investigation proceeds. By the time you complete the final interview, you have a much better understanding of what occurred and the interpersonal dynamics underlying the actions of the people involved. Your need may also indicate that you didn't ask the first time all the questions for which you needed answers because you were not aware of those lines of inquiries.

As the investigator, you are entitled to a second bite at the apple, so to speak. There is nothing wrong with either

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(i) re-interviewing the interviewee, (ii) having a brief telephone conference to pin down the new details, or (iii) asking detailed questions in an email for which you seek a written response. Your goal is complete and accurate information that explains the truth about what happened. Not getting it all on the first try is no reason to settle for an incomplete effort.

## **What are some of the common mistakes I might make in an interview?**

An investigator may make multiple errors when conducting an interview. Some of the more common are:

- Showing a personal bias towards a witness or issue. This destroys your objectivity and credibility.
- Rushing through your questions, because it encourages mistakes. It also leads you to poorly assess the quality of the answers you receive.
- Making assumptions, drawing unconfirmed inferences, or jumping to conclusions may lead you not to ask important questions.
- Making promises you can't keep. This destroys your credibility.
- Patronizing or talking down to an interviewee. This may anger him and cause unnecessary emotional barriers.
- Getting distracted by trivial issues that send you off on an irrelevant tangent.
- Bluffing destroys your credibility and may allow the interviewee to take control once he calls you on it.
- Anger surrenders your control to the interviewee.

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