

# INVESTIGATIONS



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## An Affirmative Defense May Exist if:

Once the Employer knew or should have known of a violation;

- it investigated

&

- took prompt action reasonably calculated to correct the problem.



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## Who Should Investigate?

- Supervisor
- HR
- In House Counsel
- Outside Investigator
  - Non-Attorney
  - Attorney

## Identify the Investigator's Role

- To Be Neutral
- To Gather Information
- To Present Information to Whom?
  - **Orally?**
  - **In Writing? (Signed Witness Statements?)**
- To Draw Conclusions?
- To Make Recommendations?

# UNIVERSAL RULES OF THUMB

- R\*E\*S\*P\*E\*C\*T
- Neutral
- Let common sense rule
- 0 Tolerance for retaliation
- Document each step

# TYPICAL STEPS

- Enlighten the Accused
- Interview:
  - Complainant
  - Accused
  - Witnesses
- Present the Evidence
- The Decision Makers Review the Evidence
- A Decision is Made
- The Investigation is Closed:
  - With the Accused
  - With the Complainant

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## Title search: Investigating Sensitive Employment Complaints

First appeared as part of the conference materials for the  
2023 Essential Employment Law “Nuts and Bolts” (Live Webcast Replay) session  
"Investigating Sensitive Employment Complaints"