Conducting Proper Investigations and Pitfalls of Ineffective Investigations

Presented by
Bradley W. Howard, Esq.
806-345-6310
bhoward@bf-law.com

© 2018 Brown & Fortunato, P.C.
How Not to Suck at Investigations

Lessons Learned from Everyone Else’s Mistakes
Most Common Public Employer Investigations

1. Hostile work environment
2. Race bias
3. Age discrimination
4. Disability accommodations
5. Serious misconduct
6. Retaliation

DISCRIMINATION IS NEVER OK
Conducting proper investigations in the workplace is important because:

• it encourages necessary reporting by employees,
• ensures employee’s misconduct is properly addressed,
• and limits liability for employer.
A Thorough and Well Done Investigation Is One of the Best Offenses in Discrimination Cases
Conducting Proper Investigations

But A Shoddy Investigation Can Also Subject Employer to Legal Liability In Discrimination Cases
Conducting Proper Investigations

Conducting workplace investigations has become one of the most challenging duties for employers now because so much can go wrong, and often does.
Conducting Proper Investigations

For Example:

“The lack of a rigorous investigation by defendants is evidence suggesting they did not value discovery of the truth so much as a way to clean up the mess uncovered when [plaintiff] made his complaint.”

Mendoza v. Western Medical Center Santa Ana (2014).
Formal Investigation May Not Always Be Required

• Depending on the type of misconduct, if minor, a formal and full investigation may not be required.

• However, the alleged conduct will still have to be sufficiently addressed in a prompt manner and documented.
Formal Investigation May Not Always Be Required

But Most Workplace Complaints Alleging Harassment, Hostile Work Environment, or Discrimination **MUST** Be Investigated
Conducting Proper Investigations

1. Act Promptly to Address Employee Complaints, But Have a Plan of Action

2. Take Complaint Seriously

3. Document Your Investigation
Not the Best Response!

WHAT'S THIS I HEAR ABOUT YOU FILING AN AGE DISCRIMINATION SUIT, YOU OLD FOOL?
Keep the Investigation Confidential to the Extent Necessary to Ensure Its Effectiveness
Banner Health System v. NLRB says requiring unconditional blanket confidentiality by rank and file employees violates the NLRA but…
Investigation Confidentiality

Narrowly Tailored Confidentiality is Defensible if:

1. Evidence may be destroyed
2. Testimony is in danger of being fabricated or
3. There is need for confidentiality to prevent a cover-up
Investigation Confidentiality

Special Considerations for Unionized Settings

• Johnnie’s Poultry Statement
• Weingarten Rights
Model Johnnie’s Poultry Statement

[The following statement is one which should be used with any non-supervisory union-represented employee when an employer is investigating facts necessary to the preparation of an unfair labor practice charge. The statement is based on *Johnnie’s Poultry*, 146 NLRB 770, 55 LRRM 1403 (1964) as provided by Dennis P. Duffy.]

This interview is for the purpose of investigating facts about issues raised in [describe the proceeding]. I am the lawyer representing [name of employer] in connection with [name of proceeding]. Anything you tell me may be disclosed for use in that proceeding.

Your participation in this interview is voluntary. If you do not wish to participate, please tell me, and you are free to go.

There will be no reprisal because you either participate or refuse to participate in this interview or because you tell me anything unfavorable to the employer. I cannot, however, promise to keep anything you tell me secret.

I will not inquire into your union sentiments or beliefs.

_____________________________________ Date: ______________
(Signature of Non-supervisory Employee)

_____________________________________ Date: ______________
Pitfalls of Ineffective Investigation

- Ineffective investigations can lead to expensive litigation, distrust in the workplace, and bad policies.

- Employers should avoid certain pitfalls in their investigations to ensure they are conducted properly.
Pitfalls of Ineffective Investigation

Common pitfalls for employers to avoid include:

• Failing to implement adequate complaint mechanisms
• Failing to conduct a thorough investigation
• Biased investigator/investigation
• Improperly trained investigator
• Failing to investigate
• Delaying investigation
• Failing to keep consistency
Pitfalls of Ineffective Investigation

Common pitfalls for employers to avoid include (cont’d.):

- Failing to reach a conclusion
- Failing to evaluate evidence
- Inadequate documentation
- Retaliation

STEER CLEAR
Failing to Implement Adequate Complaint Mechanisms

• Employers should have an adequate complaint mechanism in their company policy for reporting misconduct in the workplace.

• It is important for employees to feel comfortable and for employers to provide a safe environment to bring complaints.
Failing to Implement Adequate Complaint Mechanisms

Examples of effective complaint mechanisms include:

- Have a standard complaint form and designate multiple people in the workplace to receive complaints
- Have a strict no-retaliation policy
- Indicate that complaints of misconduct will be addressed with the proper department and thoroughly investigated
- Ensure employees that if employer concludes there was misconduct, appropriate action will be taken
Failing to Investigate

Failing to investigate reported misconduct illustrates an indifference to employee’s well-being in the workplace and disregard for their legal rights and can lead to significant legal exposure.

- For example, if an employee reports sexual harassment or discrimination to an employer and/or manager and no investigation is conducted, the employee may be able to sue the employer for damages.
Failing to Investigate

• Failing to investigate also prevents proper discipline and deterrence if the investigation would have led to a finding of misconduct.

• A formal investigation may not always be required in minor misconduct instances, as discussed earlier; however, an inquiry will still need to be made and a result reached to ensure the employer covers its bases and limits future liability.
Failing to Investigate

Practice Tip

• Even if an employee insists that a matter has been resolved and not to conduct an investigation, an employer should at least look into the matter further and conduct an inquiry if it is serious misconduct. It is important to never ignore complaints of wrongdoing.

• Tell the Employee you’ll “Look into it” but **DO** investigate!
Delaying Investigation

Investigations should always be done promptly after employer becomes aware of any alleged misconduct.

Waiting to investigate a certain allegation can result in
  • evidence disappearing,
  • a witness’s memory fading,
  • and potential for misconduct to continue.

Delaying an investigation can also lead to legal exposure.
Delaying Investigation

The Fifth Circuit stated that in certain circumstances it has found that an employer took “prompt remedial action” because “it took allegations seriously, it conducted prompt and thorough investigations, and it immediately implemented remedial and disciplinary measures based on the results of such investigation.”’’ Williams-Boldware v. Denton County, Tex., 741 F.3d 635, 640 (5th Cir. 2014).
Failing to Conduct a Thorough Investigation

If a lawsuit results, an employer may be left defenseless in court because it won’t be able to rely on the results of its investigation if the investigation was conducted poorly.
Failing to Conduct a Thorough Investigation

Examples of a thorough investigation include:

• Make a plan for the “scope of the investigation”
  ✓ who will be the investigator
  ✓ what will be investigated
  ✓ what evidence will be needed
  ✓ who to interview

• Wait until an investigation is fully complete before evaluating the evidence and making a decision.

• Avoid other pitfalls that add to the ineffectiveness of the investigation.
Failing to Conduct a Thorough Investigation

The Fifth Circuit has stated “whether an employer’s response to discriminatory conduct is sufficient will necessarily depend on the particular facts of the case—the severity and persistence of the harassment, and the effectiveness of any initial remedial steps.” *Williams-Boldware v. Denton County, Texas*, 741 F.3d 635, 641 (5th Cir. 2014).
Failing to Conduct a Thorough Investigation

Practice Tip

• Interview all relevant witnesses and follow the evidence where it leads, even if it uncovers a bigger scheme in the workplace or if the evidence points to a high-level employee.

• While it may be uncomfortable to investigate someone high up in the chain of command (e.g. an assistant city manager, HR Director, or a fire or police department chief), it is part of leading a thorough investigation.
Who Should Investigate?
Who Should Investigate?

Hon. Robert Mueller, III

Janet Reno
Biased Investigator/Investigation

Appointing a biased investigator or conducting a biased investigation will definitely lead to an ineffective investigation and can result in legal liability (e.g. asking a subordinate of the accused to head up the investigation of an incident).
Municipal Investigation Example

1. Mayor’s office

2. Allegation of favoritism and bias in appointments

3. Best and worst choices of investigation?
Investigator Should Be Independent

WHAT DO YOU CALL AN ALLIGATOR IN A VEST?

AN INVESTIGATOR
Biased Investigator/Investigation

• Many employers have been criticized by courts because of who they selected as an investigator, and the results of the investigation can be called into question.

• For example, it would be inappropriate for a supervisor to investigate alleged misconduct by an employee if the employee has previously accused the supervisor of wrongdoing.

• Friends of the accused should not investigate.
Biased Investigator/Investigation

Appropriate investigators include a Human Resources representative, a supervisor, an outside person, or an attorney.

But not always true!!
Biased Investigator/Investigation

Investigators Not to Use:
1. A person accused of discriminatory involvement
2. Person with some vested interest
3. Gossipers, troublemakers, or untrained
4. Perceived as unfair
5. Must be a good fit for the particular investigation
6. Former law enforcement are suspect
7. Person close to complainant or respondent
8. HR Representative if will be involved in the disciplinary process (2 hats)
Biased Investigator/Investigation

Practice Tip

• If you are selected as the employer’s investigator and feel that you might lack the skills or training or otherwise believe you will not be able to stay objective during the investigation, ask if someone else within the workplace can take your place, or maybe the employer will want to hire an outside investigator.

• Unbiased investigations are vital for conducting a proper investigation and for limiting liability of the employer in case of future litigation.
Investigators Must Understand Various Types of Evidence

1. Direct Evidence

2. Circumstantial evidence ("eyeball evidence" is rare)

3. Statistical evidence (some cases)
Attorney as Investigator?

Key considerations include:

1. Is the attorney involved to provide legal advice? OR
2. Is the attorney involved only to determine what happened?
3. The attorney should not do both!
Attorney as Investigator?
City Attorney’s Office as Investigator?

Not usually a good idea...
Attorney as Investigator?

Outside attorneys can conduct good investigations, but
Recent Investigation

Example:

- Public health system with very divided workforce
Practice Tip

• When conducting an interview, allow the witness/employee to feel comfortable in the environment first by asking open-ended and easy questions. Employees accused of the misconduct will most likely be nervous and possibly defensive; therefore, the investigator should start with a casual dialogue and build up to the tougher questions. However, the investigator should focus on the facts and keep an open mind, which goes back to conducting an unbiased investigation.

• But then specific questions should be written down and followed!
Failure to Reach a Conclusion
Failure to Reach a Conclusion

• Failure to reach a well-reasoned and informative conclusion is a common mistake made by investigators when conducting investigations.

• Decisions should be reached by evaluating all of the evidence as a whole and determining whether the allegations of misconduct have been substantiated.

• Investigators often must make witness credibility determinations and identify if certain evidence is corroborative or contradictory.
Failure to Reach a Conclusion

- Reaching a well-informed conclusion is also necessary to create a final investigation report detailing the decision reached.
- The report should include a detailed analysis of the investigator’s conclusion, reasons for reaching that conclusion, credibility determinations, and all relevant facts.
Failing to Take Action/Inconsistency

I don’t wanna get into that
Failing to Take Action/Inconsistency

• Failing to take action when employee misconduct has been determined and an investigation report has been issued is another common pitfall of ineffective investigations.

• When an employer fails to take action after a conclusion affirming the misconduct is reached, the victim is left with no administrative recourse and the problematic behavior is likely to continue.
Inadequate Documentation

• The employer must show that an investigation was thorough and conclusive with sufficient documentation as evidence; otherwise, the investigation can be determined by the court to be ineffective or biased.

• Documentation can include notes from interviews, emails, any evidence obtained, and an investigation report.
Inadequate Documentation

Practice Tip

• Employer’s investigation is usually Defendant’s Exhibit 1 at trial!
Retaliation

In *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*, the Supreme Court held that Title VII not only protects employees who launch complaints, but it also protects witnesses and others who oppose an illegal practice during an investigation. 555 U.S. 271 (2009).
Retaliation

• If an employer takes any adverse action against an employee for reporting a complaint of harassment or discrimination or participating in a related investigation, it can be considered retaliation.

• Retaliation can be anywhere on a spectrum to firing or demoting an employee to mistreating an employee or transferring them to a different department.
Failure to Comply with Employee’s Due Process Rights

• Public sector employees have certain constitutional rights as a public employee that an employer should always be cognizant of when conducting an investigation.

• These rights include First amendment protection in specific situations, protection against self-incrimination (Garrity), and due process before termination or discipline (Loudermill).
Privacy Concerns in Public Sector Investigations
The Reasonableness Standard

- Is the search proper?
- Email and Computers are hot topics.
Good Investigation Reports Usually Contain the Following:

1. The specific employee complaint
2. People interviewed
3. Documentary evidence received
4. An investigation timeline
5. A chronology of key events if necessary
6. Conclusions and basis for each
7. Weigh the Evidence
8. Recommendations possibly
9. Proofread! Organize!
Some Common Investigative Mistakes

1. Failure to commit to very specific complaints. “Is this everything?”
2. Failure to take respondent through each allegation.
3. Ignoring other workplace issues that emerge in the investigation
4. Witness statements don’t match up to allegations. (So ask specific questions!)
5. Interviewer “chatter”
6. Scheduling interviews with hard stops
7. Factual mistakes/supply report (or unorganized)
What Do Courts Say About Workplace Investigations?
Mendoza v. Western Medical Center Santa Ana

(2014)
Facts

• Romeo Mendoza, a nurse at Western Medical Center, reported to his manager that he was being sexually harassed by another male employee, Erdmann, who also happened to be Mendoza’s supervisor when they worked the same shift. The human resources department started investigating after the complaint was brought to their attention.
Facts

- Mendoza stated that Erdman made inappropriate comments, physical contact, and lewd displays to him while on the job. Erdmann testified that Mendoza consented to the conduct and participated in other mutual interactions to which Mendoza denied.
Mendoza v. Western Medical Center Santa Ana

Facts

- The employer did not prepare a formal investigation plan nor did it take written statements form Mendoza or Erdmann. Furthermore, both Mendoza and Erdmann had their investigatory interview together by an employee who was not trained to conduct investigations.
Mendoza v. Western Medical Center Santa Ana

Facts

• After the investigation concluded, the employer fired both Mendoza and Erdmann for “unprofessional conduct.” Mendoza sued for wrongful termination in violation of public policy and the jury awarded Mendoza for past economic loss and emotional distress.
Mendoza v. Western Medical Center Santa Ana

Court’s decision:
Mendoza’s report of sexual harassment was a substantial motivating factor behind Mendoza’s firing.

The court also noted specific inadequacies in the hospital’s investigation which included:

- lack of a formal investigation plan
- failure to take witness statements
- delay in interviewing the employees and conducting their interview at the same time
- allowing investigation to be completed by an untrained supervisor
Mendoza v. Western Medical Center Santa Ana

Court’s Assessment of the Employer’s Investigation:

• The court stated that “lack of a rigorous investigation by defendants is evidence suggesting that defendants did not value the discovery of truth so much as a way to clean up the mess that was uncovered.”
E.E.O.C. v. Rite Way Service, Inc.

(2016)
E.E.O.C. v. Rite Way Service, Inc.

Facts

• Tennort was employed as a general cleaner for Rite Way Service, Inc., a janitorial services contractor. While working, Tennort observed interactions between her supervisor and another janitor. She witnessed her supervisor pretending to hit the other janitor’s bottom while making a lustful comment. Another time, she overheard her supervisor say he “could tell what was in the other janitor’s pants pocket” and stated that “somebody must be looking real hard at [the other janitor’s] behind.”
E.E.O.C. v. Rite Way Service, Inc.

Facts

• The other janitor complained and identified Tennort as an eye witness. Tennort submitted a written report about the second incident after which her supervisor was transferred and replaced with his brother-in-law as supervisor. Tennort began to receive written and oral warnings for job performance and was fired for alleged neglect of duty.

• The EEOC sued Rite Way on Tennort’s behalf, claiming that her termination was in retaliation for her report.
E.E.O.C. v. Rite Way Service, Inc.

Court’s decision:

- For protection under Title VII’s anti-retaliation provision, courts have generally required that the employee had an objectively reasonable belief that the practice “opposed” was illegal.

- The Fifth Circuit concluded that the “reasonable belief” standard applies equally to persons cooperating in an investigation and not just the person who brought the claim.
E.E.O.C. v. Rite Way Service, Inc.

The Court identified two deficiencies with the Employer’s investigation:

1. Investigator attempted to serve as a “peacemaker” rather than a fact-finder

2. Investigator attempted to dissuade a witness from providing more facts that would have expanded the investigation.
Jones v. Evergreen Packaging, Inc.

(2013)
Jones v. Evergreen Packaging, Inc.

Facts

• Jones, an African-American supervisor, was accused by two employees he supervised of making a statement that he “might go postal” if a mandatory meeting with human resources regarding a disagreement with a subordinate resulted in his termination.

• Jones denied these statements, but his employer placed him on unpaid leave and required him to complete an anger management class and obtain an evaluation from a doctor showing he did not present a threat of workplace violence before coming back to work.
Jones v. Evergreen Packaging, Inc.

Facts

• Prior to this incident, on two occasions, a Caucasian employee that Jones supervised, Conner, intentionally caused Jones to be sprayed with water; however, Conner was not disciplined. On another occasion, Conner approached Jones with a wood hook and acted as if he were going to hit Jones; Jones reported it, but Conner again received no discipline because the investigation concluded that it did not threaten Jones’s life.

• Jones brought a claim of discrimination against employer.
Jones v. Evergreen Packaging, Inc.

Court’s decision:
• While the court agreed that the employer proffered a “legitimate, nondiscriminatory reason for suspending Jones,” the employer’s disparate treatment of Jones as opposed to Conner could give rise to an inference of discrimination.
Jones v. Evergreen Packaging, Inc.

Court’s decision:

• Because both Jones and Conner were similarly situated and both used threatening conduct (Conner’s being physical threat with a potentially deadly tool), the employer did not treat the employees the same in terms of investigation and punishments, i.e. Jones was suspended without pay and without giving him a chance to explain and Conner was not disciplined at all.
Jones v. Evergreen Packaging, Inc.

Court’s decision:

- Therefore, there was sufficient evidence for a fact finder to decide whether the differential treatment of Jones in this situation was a pretext for discrimination.

- Similar situations, different discipline = evidence of discrimination
Pryor v. United Airlines, Inc.

(2015)
Pryor v. United Airlines, Inc.

Facts

• Pryor, an African American flight attendant at Dulles Airport, found a racist death threat left in her company mailbox which was located in a secure area where only United Airlines employees had access.

• Pryor reported it to her supervisor, but her supervisor responded that nothing could be done because there were no cameras in that area. Furthermore, the incident was not reported to Employee Service Center (“ESC”), which is required by United Airlines’ discrimination policy.
Pryor v. United Airlines, Inc.

Facts

• An investigation was conducted; however, no witnesses were interviewed and no documents or physical evidence were obtained. The investigation was concluded without identifying the culprit or informing Pryor.

• Ten months later, Pryor, along with nine other employees, received another death threat. United installed cameras ten days later, but did not ever identify the suspect. Pryor filed a complaint against United alleging she was subject to a racially hostile work environment in violation of Title VII.
Pryor v. United Airlines, Inc.

Court’s decision:

• The Fourth Circuit held that although anonymous harassment presents challenges for the employer to identify the culprit and protect victims, the employer still has a duty to investigate.

• The court stated that United failed to promptly respond to Pryor’s first complaint in a manner that was reasonably calculated to end the harassment given the severity of the threat.
Pryor v. United Airlines, Inc.

Court’s decision:

• Furthermore, it failed to follow its own policy by reporting the incident to ESC, did not conduct any interviews or obtain evidence, and did not provide Pryor with any security or protective measures.

• Because this investigation was poorly conducted, the court found that a jury could conclude that United’s actions (or lack thereof) failed to deter future acts of harassment.
Smith v. Rock-Tenn Services, Inc.

(2016)
Smith v. Rock-Tenn Services, Inc.

Facts

- Plaintiff worked as a support technician on a plant in which he ran machinery. While on the job, an employee back from leave, Leonard, slapped Plaintiff on his tail as he went by. Several other occasions of harassment occurred in which Leonard grabbed his behind and also simulated a sexual act on Plaintiff.
Smith v. Rock-Tenn Services, Inc.

Facts

- Plaintiff notified his supervisor and was sent home for the day. The next day he reported it again to his supervisor, but the supervisor responded that he would have to wait another week and sent him back to his work station. Plaintiff then submitted a written request and was granted sick leave because of Leonard’s harassment.
Smith v. Rock-Tenn Services, Inc.

Facts

• After Plaintiff’s written request, management questioned Plaintiff, Leonard, and other employees who made complaints. However, no witness statements or investigatory reports were generated; and Leonard was only suspended for less than two days. Plaintiff did not return to work due to a diagnosis of post-traumatic stress disorder; and his short-term disability ran out.
Facts

• Plaintiff brought suit against the employer for sexual harassment, wrongful termination, and retaliation. The jury found for the Plaintiff because the employer failed to promptly and adequately investigate Plaintiff’s claims of sexual harassment.
Smith v. Rock-Tenn Services, Inc.

Court’s decision:

• The Sixth Circuit affirmed the jury’s verdict holding that the jury was reasonable, in its determination, that the employer did not promptly initiate an investigation upon Plaintiff’s report of Leonard’s misconduct and sexual harassment towards him which, in fact, created a “hostile or abusive work environment.”

• Failure to investigate quickly enough can create a legally hostile work environment.
Vandegrift v. City of Philadelphia

(2017)
Vandegrift v. City of Philadelphia

Facts

- Vandegrift, a female police detective, reported complaints to Philadelphia’s police department of sexual assault and harassment by Chief Inspector Holmes. The harassment took place over the course of her employment with the city, but the sexual assault by Holmes occurred in 2007. The city was also in receipt of an additional complaint from another female employee alleging sexual assault by Holmes.
Vandegrift v. City of Philadelphia

Facts

• During her time employed at the police department, Vandegrift witnessed and experienced coworker and supervisor’s making inappropriate sexual comments to and about her that are sufficiently detailed in the opinion.
Vandegrift v. City of Philadelphia

Facts

• In 2014, Vandegrift made an internal EEO complaint alleging sexual harassment and retaliation; and shortly thereafter, the city moved Vandegrift to a different unit.

• The city began conducting its internal investigation in which Vandegrift underwent five interrogations. After conclusion of its investigation, the city found only one employee that violated its policy; and Holmes did not receive any discipline as a result of the sexual assault allegations against him.
Vandegrift v. City of Philadelphia

Facts

• Vandergrift hired an expert in internal investigations to review the city’s investigations procedures. The expert concluded that the city’s investigation practices and procedures for sexual harassment reports failed to meet appropriate workplace investigation standards.
Vandegrift v. City of Philadelphia

Facts

• The expert found that the investigators failed to:
  o investigate all claims, including Vandergrift’s retaliation complaint
  o interview or investigate or even attempt to interview/investigate anyone not currently employed by the police department
  o review or consider background information about alleged harassers
  o failed to judge the credibility of the complainant, witnesses and alleged harassers
Vandegrift v. City of Philadelphia

Facts

• The city charged Vandegrift with misconduct; and she sued for gender discrimination, hostile work environment, and retaliation.
Vandegrift v. City of Philadelphia

Court’s decision:

• The trial court further found that based on Vandegrift’s expert’s opinion regarding the city’s investigations, the city knew of its specific problems with sexual harassment and assault in the police department but did nothing to stop or prevent the conduct from occurring.

• The court stated that a reasonable jury could conclude that the city’s police commissioner had acquiesced to a custom of sexual harassment by failing to address the offensive conduct of its employees.
Hanson v. Colorado Judicial Department (2014)
Hanson v. Colorado Judicial Department

Facts

• Hanson, a support clerk in the probation department of Colorado’s Fourth Judicial District, reported in an email to human resources that her immediate supervisor and another supervisor were harassing her and treating her differently because of her race. Hanson said she felt her job was in jeopardy.
Hanson v. Colorado Judicial Department

Facts

- The department assigned a senior HR analyst to conduct the investigation immediately in response to the complaint. The investigator interviewed seven witnesses and found that one of the supervisors contributed to problems between the clerks; however, she concluded that the claims of discrimination and harassment were unsubstantiated.
Hanson v. Colorado Judicial Department

Facts

• Months later, a volunteer in the department filed a sexual harassment complaint against Hanson. The department then assigned two senior HR investigators to conduct the investigation. During this time, a co-worker brought the investigators’ attention to Hanson’s fraudulent use of FMLA time, which they independently verified.
Hanson v. Colorado Judicial Department

Facts

• The investigators did not substantiate the sexual harassment claims against Hanson; however, they found that Hanson attempted to interfere in the investigation and also uncovered inappropriate emails sent by Hanson.
Hanson v. Colorado Judicial Department

Facts

• The investigators recommended that Hanson be terminated. The Chief Judge held a hearing in which Hanson admitted the fraudulent use of FLMA time, and she was terminated.

• Hanson sued alleging that her termination was a retaliatory action for raising her claims for racial discrimination.
Hanson v. Colorado Judicial Department

Court’s decision:
• The court found that any retaliatory motivation was mitigated by the fact that the department conducted two independent investigations, and the decision was made by an independent decision maker who adequately verified facts to reach her conclusion.
Hanson v. Colorado Judicial Department

Court’s decision:

• The court emphasized the importance of thorough and independent investigations into alleged misconduct in the workplace. The fact that the employer assigned independent investigators who conducted interviews and prepared reports with all relevant information found in conjunction with employer’s policies, really insulated the employer from allegations of bias or improper conduct in its decision to terminate Hanson.
Hanson v. Colorado Judicial Department

Court’s decision:

- Therefore, the employer’s thorough and separate investigations independently uncovered Hanson’s violations of employer’s policies, and her termination was not motivated by retaliation.
Ways to Prevent Ineffective Investigations

• Develop effective and clear policies for reporting, anti-harassment, anti-discrimination, and use complaint forms
• Train managers and employees on policies and procedures
• Avoid common pitfalls
• Be aware of employee rights
• Make investigations a priority
Keys to a Successful Investigation

- Prompt, defensible response to all claims
- Select an unbiased investigator
- Conduct a thorough investigation
- Evaluate all relevant evidence obtained in the investigatory process to reach a well-reasoned conclusion
- Appropriate response to allegations
- Preserve a comprehensive investigation file
THAT'S ALL I HAVE TO SAY
ABOUT THAT.
Questions?

Bradley W. Howard, Esq.
Brown & Fortunato, P.C.
905 S. Fillmore, Suite 400
Amarillo, Texas 79101
806-345-6310
bhoward@bf-law.com
www.bf-law.com