



U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

YOU WANT ME TO INVESTIGATE WHAT?: HOW TO CONDUCT AN INTERNAL EEO INVESTIGATION

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TODAY'S DISCUSSION

- The investigator
- The investigative plan
- Disparate treatment investigations
- Tips investigating hiring/promotion cases
- Tips investigating discipline/discharge cases
- Investigation challenges
- Interviewing
- Writing the report



THE INVESTIGATOR





THE INVESTIGATIVE PLAN



DISPARATE TREATMENT INVESTIGATIONS





TIPS INVESTIGATING HIRING/PROMOTION CASES



HIRING AND PROMOTION (DISPARATE TREATMENT STANDARD OF PROOF)

- Applicant is a member of the protected class
- Applicant applied for a job for which she/he met the stated qualifications
- Applicant was rejected
- Employer filled the job with someone outside the protected class or continued to seek applications from persons with similar qualifications
- Employer articulates a legitimate, nondiscriminatory reason for rejecting applicant
- The reason is a pretext to hide discrimination

HIRING AND PROMOTION (MADE SIMPLE)

- If the position was selected, is the applicant at least as qualified as the selectee?
- Is there some link to discrimination?

SCENARIO – HIRING

Sue, an accountant, applies for a promotion to a higher level accounting position in another department. The company awards the position to Bob. She is not interviewed. Sue believes that Bob has less accounting experience than she does, and they have both have roughly the same tenure with the company. She learns that Jack, whom she does not know and has never worked with, made the decision.

SCENARIO – HIRING

A manager interviews Andrew, a 55 year-old, 30-year employee for a computer systems manager position. The manager tells Andrew that he's concerned that he (Andrew) might not stick around because he's already near retirement age. He also makes the comment: "Computers, especially now, are a young person's game. There's so many new things going on, it's hard to keep up." Andrew does not get the job.



TIPS INVESTIGATING DISCIPLINE/DISCHARGE CASES




DISCIPLINE/DISCHARGE
(STANDARD OF PROOF)

- Complainant is a member of a protected class,
- Complainant was harmed,
- Other employees of a different class were not harmed under similar circumstances,
- The employer articulates a legitimate, non-discriminatory reason for the harm,
- The reason articulated by the employer is a pretext to hide discrimination.

DISCIPLINE/DISCHARGE
(MADE SIMPLE)

- Is there anyone similar to the complainant? (not harmed)
- Is the supervisor's articulated reason believable?
- Is there any connection between employment harm and complainant's membership in a protected class?

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- Bob was fired from his position as a patient case worker for a mental health care provider. He is African American. The stated reason for his firing was that he exhibited negligent conduct detrimental to the efficient operation of the center where he works. Specifically, Bob was four hours late submitting the annual patient report required by the State. It was the first time Bob was late with the report. Bob claims other, non-African-American employees miss report deadlines and were not fired. Jane, Bob's supervisor, made the decision to fire him.
 - **With whom should we compare Bob?**

Diane Cook, a woman, applied for a company-paid fellowship and was rejected. Cook was the third woman to apply and be rejected. The training committee, which considers fellowship applications, stated that Cook was rejected because she failed to meet the prerequisites of having completed 18 credit hours in business administration. The training committee also states that Cook satisfied all other prerequisites, including superior job performance, but that the credit hours were a major criterion under company policies.



INVESTIGATOR CHALLENGES





INTERVIEWING



CLOSED V OPEN

■ Closed

- Are usually answered
Yes or No
- Examples: Do you,
Did you, Was she, Is that
- Discover little new
information
- Wrap up a subject
- Cut off information flow
- Should be used as little as
possible

■ Open

- Cannot be answered
Yes or No
- Examples: Who, What,
When, Where
- Discover new information
- Draw out a story
- Keep the witness talking
- Should be used as much as
possible

CLOSED V. OPEN

- Closed: **Are you** a machinist?
- Open: **What** is your job?
- More Open: **Tell me** your history with the company.

- Closed: **Did you** tell John?
- Open: **Who** did you tell?

- Closed: **Is he** white?
- Open: **What's** his race?

- Closed: **Were you** interviewed in person?
- Open: **Tell me** about your interview.

MISTAKE: SUGGESTING THE “RIGHT ANSWER” (LET THE WITNESS TELL THE STORY)

Bad: **Did you report it to your boss?**

Better: **Who** did you **report it** to? Or,

Even Better: **What** did you do?

Bad: What did you do? **Write a letter?**

Better: **What** did you do?

MISTAKE: NEGATIVE QUESTIONS (ASK POSITIVE QUESTIONS)

Bad: **Didn't** you tell her to stop?

Better: **What** did you do?

Bad: **Weren't** you going to the office?

Better: **Where** were you going?

Bad: That **wasn't** in July, was it?

Better: Was that in July? Or,

Even Better: **When** was that?

MISTAKE: ASKING FOR CONCLUSIONS OR OPINIONS (FOCUS ON ACTIONS)

Bad: **Were you** sexually harassed?

Better: **What** happened?

Bad: **Did she** understand you?

Better: **How** do you know?

What did she do?

What did she say?

What happened next?

MISTAKE: SLANG OR INEXACT TERMS (CLARIFY INEXACT TERMS)

Bad: Was he talking **loudly**?

Better: **Where** were you when you heard him?

Bad: Where did Joe **grab** you?

Better: **What** did Joe do? or
Where did Joe **touch** you? or
Tell me what happened.

Bad: When I made that mistake, she really **took my head off**.

Better: **What** did she do? **What** did she say?

INTERVIEWING A VICTIM OF A TRAUMATIC EVENT

- It is not like interviewing everyone else
- We're asking people to recount deeply personal and stressful events. Their responses may be influenced by a number of factors:
 - Fear
 - Culture
 - Experience with law enforcement or other institutions
 - Language
 - Lack of privilege
 - Beliefs
 - Family
- Not properly interviewing a victim may, at best, hinder our ability to get the evidence we need, or at worst, it may traumatize the victim further and cause her/him to completely shut down.

COGNITIVE INTERVIEW

The cognitive interview (CI) is a method of interviewing those who have been subjected to trauma about what they remember about the traumatic event. The primary focus of the cognitive interview is to activate the person's memory of the traumatic event and make them aware of all the events that transpired. The cognitive interview aids in minimizing both misinterpretation and the uncertainty that may be seen if other methods of interviewing are used. Cognitive interviews reliably enhance the process of memory retrieval and have been found to elicit memory recollection without generating inaccurate accounts. A cognitive interview explores emotions, visual memories, and elements of a traumatic episode that victims may have put away and have not wanted to think about. The cognitive interview is designed to evoke memories leading to reliable information.

If you encounter this situation, you should probably retain an expert in cognitive interviewing to obtain the most reliable information.



WRITING THE REPORT





QUESTIONS



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