

SUPERVISORS' GUIDE TO ADMINISTRATIVE INVESTIGATIONS

What is the purpose of an administrative investigation?

The purpose is to gather relevant evidence to determine whether misconduct occurred, if the misconduct warrants disciplinary action, and what disciplinary action is most appropriate.

What is the legal basis for the agency to perform investigations?

Right to manage workforce. The right to manage an agency workforce and take appropriate disciplinary and adverse action is implicit in the Civil Service Reform Act (CSRA). The CSRA requires that an agency prove by a "preponderance of the evidence" that an employee's alleged misconduct occurred and that the disciplinary or adverse action is being taken against an employee to "promote the efficiency of the service." The statutory burden of proof of "preponderance of the evidence" necessitates the agency's right to investigate.

Right to discipline employees. The right to discipline employees is reserved to management by the federal statute 5 U.S.C. § 7106(a)(2)(A). This statute states that management has the right to "...suspend, remove, reduce in grade or pay, or take other disciplinary action against ...employees." According to the Federal Labor Relations Authority (FLRA), this includes the right to "investigate to determine whether discipline is justified" and "encompasses the use of evidence obtained during the investigation."

What legal rights do you have in collecting information?

Right to full cooperation. A federal agency conducting an official work-related investigation has the right to require the full cooperation from all federal employees.

Refusal to cooperate is grounds for disciplinary action, up to and including removal, if the employee has been informed that *his/her reply will not be used against him/her in the prosecution of a criminal case and that failure to cooperate may result in disciplinary action, including removal. *Consider using the enclosed Employee Investigation Form.*

**If you believe that the investigation could lead to criminal prosecution, discontinue the interview/investigation and contact the proper law enforcement authority.*

Right to truthful answers. The agency has the right to expect truthful answers during the investigation. False answers or misrepresentations provided during the course of an investigation may be the basis for disciplinary or adverse action, including removal.

What legal rights do employees have in an investigation?

An employee is not entitled to be informed of the charges made against him or her at the administrative investigation stage.

Legal Rights for Non-Bargaining Unit Employees. A non-bargaining unit employee does not have a right to legal representation, unless the investigation may lead to criminal prosecution.

If you believe that the investigation could lead to criminal prosecution, discontinue the interview/investigation and contact the proper law enforcement authority.

If an employee has a reasonable belief that information that he or she provides could be used in a criminal prosecution, he/she does not have to cooperate with the administrative investigation and may not be disciplined for refusing to respond.

Legal Rights for Bargaining Unit Employees. A union or employee may have additional rights under an applicable collective bargaining agreement (or past practice).

Unless otherwise provided for in a collective bargaining agreement (or past practice), if a bargaining unit employee has reason to believe the investigation could lead to disciplinary action, and requests union representation, the agency must stop the investigation and do one of the following:

- (1) grant the request,
- (2) cancel the interview, or
- (3) offer the employee a choice between continuing without representation or canceling the interview (if employee chooses to continue without representation, have the employee put it in writing before proceeding).

You do not need to advise the employee of the right to request union representation unless a provision of an applicable collective bargaining agreement requires you to do so.

If a union representative accompanies the employee to the investigation, you may insist on hearing the employee's own account of the incident. The union representative does not have the right to interrupt or otherwise obstruct the investigation. However, the union representative may ask you to clarify questions that you are asking the employee, help the employee present the facts in his defense, and "consult privately" with the employee.

What about Confidentiality?

You have an obligation to keep the files and statements safe, advise all witnesses that they are not to discuss the investigation or their testimony, and refrain from discussing the investigation outside of those who have a need to know.

It is important that you do not promise confidentiality or anonymity to witnesses because those who have a need to know may be privy to statements made during the investigation.

What if harassment, mistreatment, or discrimination based on an employee's affiliation with a protected class (e.g.: race, gender, age, national origin, etc.) under Title VII is raised by an employee or surfaces during an investigation?

Contact the WHS Equal Employment Opportunity (EEO) office immediately for guidance and assistance.

13 Steps to Conducting a Successful Investigative Interview

1. Interview one witness at a time.
2. Advise the witness of the general purpose of the investigation and of his/her rights and duties in the investigation. *Considering using the enclosed Employee Investigation Form.*
3. Advise the witness that a written declaration/affidavit will be prepared and he/she will receive a copy of the completed document.
4. Advise the witness to tell you everything he/she knows about the issues. Record the testimony but do not interrupt the employee to ask questions. *During free narration, interviewees frequently provide valuable information while talking about things that may have seemed unrelated to the investigator prior to the interview.*
5. When the employee is finished, go back through your notes on the testimony carefully and ask specific and directed questions. Take verbatim notes and maintain a pace that allows you to take complete notes. Inform the witness that you may require follow-up meetings.
6. Many experienced investigators ask easy questions first then move to the more difficult issues. Leave the issues most likely to be in dispute until the end.
7. **Clarify everything!** Pin down the facts. Never accept a vague or conclusory statement by the witness. You do not want to know that a person was angry; you want to know what they did, what they said, how they said it, if it was said in a loud voice or a screaming voice, etc. Likewise, words like drunk, confused, impolite, disrespectful, late, troublemaking, numerous, threatening, frequent, etc. are all too imprecise.
8. Put the interview into a first person statement using the exact words used by the witness. Do not edit or summarize in your own language or include your conclusions. Prepare the statement in one sitting, if possible, as soon as possible after the interview. Include the statement, "I declare under penalty of perjury that the foregoing is true and correct." When a witness signs such a statement, he/she may be found guilty of the crime of perjury if his/her statement is shown to be materially false. *Consider using the enclosed Witness Statement Form.*
9. When the draft witness statement is complete, provide a copy to the witness to read for accuracy. If changes are required, have the employee record corrections directly on the witness statement and have the employee initial next to each change. Have the employee sign and date his/her review of the statement.
10. After incorporating all necessary changes, sign and date your final account of the interview.
11. Give the witness a copy of his/her final statement and have the witness sign and date the statement. Tell the witness to contact you immediately if he/she thinks of any new information. Make sure you know how to contact the witness again and make sure he/she knows how to contact you in the event of newly remembered information.
12. Advise the witness to refrain from discussing his/her testimony with other prospective witnesses.
13. Keep your original notes with the finished statement.

Employee Information and Acknowledgement of Investigation Form

Please carefully read and initial each section:

___ I have been informed and I understand this is an official investigation involving matters relating to my official duties as a federal employee.

___ I have been informed and I understand, as a federal employee, I am required to cooperate with this official investigation and provide truthful answers.

___ I have been informed and I understand that if I refuse to cooperate and answer questions in this official investigation, my refusal to cooperate can be a basis for disciplinary action, which may result in my removal from federal service.

___ I have been informed and I understand this is not a criminal investigation and neither the information I provide in response to questions by the investigator will not be used against me in a criminal proceeding unless I knowingly provide false information.

___ I have been informed and I understand if I provide information during this official investigation that I know to be false at the time I provide that information, my providing false information may be the basis for criminal prosecution and/or disciplinary action, which may result in my removal from federal service.

_____	_____
Print Name	Title
_____	_____
Signature	Date
_____	_____
Print Name (Witness)	Title
_____	_____
Signature (Witness)	Date

Witness Statements Form

Pursuant to 28 U.S.C. § 1746, I, [Name of Person Providing Testimony], declare as follows:

[body of declaration]

I declare under penalty of perjury that the foregoing is true and correct. Executed on
___[date]___.

Print Name

Title

Signature

Date

Print Name (Witness)

Title

Signature (Witness)

Date