Everyone is Entitled to a Good-Faith Investigation

As a HR professional, when accusations are levied against somebody they are entitled to a good faith investigation. In our latest blog post, we examine if this is reality or just HR talk.

Published April 18, 2018

So many headlines these days seem to follow this trajectory:

- **Day 1 – allegations are made of harassment, or similar misconduct, against a high-level individual in an organization.**
- **Day 2 – the accused individual is fired.**

We hear a lot these days about these previously high-powered individuals rapidly falling from grace (and power and profit!) when allegations of harassment, discrimination, or other similar misconduct come to light. Inappropriate, unlawful behavior that was once tolerated or, at the very least, ignored in the workplace has rapidly cost many previously 'untouchable' individuals their jobs. When the a llegations turn out to be true, of course, termination of the accused is a good thing! By all accounts, i nappropriate behavior in the workplace is tolerated much less than it may have been in the past. W orkplaces are striving to become safer, and more inclusive. The public backlash against discrimination a nd harassment has resulted in rapid, positive changes to previously toxic work environments. Responsible parties are finally answering for behavior that has no place in the workplace (or anywhere, f or that matter).

Public Perceptions of HR

All of that said, as an HR Professional, I have serious concerns about some of the rapid-fire decisions that have been made as a result of accusations. While every employee is absolutely entitled to a safe and inclusive workplace, employees who are accused of misconduct are also entitled to a *complete and thorough* good-faith investigation. You can absolutely take measures to protect the alleged victim during your investigation, too. In fact, based on the allegations, you may actually be *obligated* to take immediate protective action. Just don't conflate this obligation with adopting the mindset that the accused is guilty as charged, until and unless the facts lead you to that conclusion. It's not about taking sides. It's about making strides toward actually reaching that ideal of truly impartial HR that makes the organization better. The current environment around situations like these is obviously uncomfortable on every level. From an HR perspective, these stories present dilemmas of equitable treatment on all sides. When I hear of immediate terminations as a result of allegations, I can be

almost certain the accused individual has not received the benefit of a good-faith investigation. Note: this is their right! Further, I worry that the public perception of HR may continue to trend negatively as more situations like these come to light. HR has a responsibility to protect employees as well as the employer - and in many cases, we as an industry need to do more to change the current public opinion that HR exists solely to protect those in power. But HR must also remain as fair as possible to *all* employees. If the general public begins to feel that HR is reactionary and will arbitrarily terminate an employee based on allegations alone, our industry as a whole is harmed. Look, I get it. Much of the behavior we hear of in allegations is reprehensible in nature, beyond unethical, the kind of behavior I could never tolerate in the office. However, as HR professionals, it's *also* unethical *not to* give the accused the benefit of a good-faith investigation. This means carefully parsing out the facts in each case, investigating from a headspace of neutrality, and doing our best to ensure we aren't biased by any of the allegations, or people involved.

Preserving the Integrity of the Investigation

Sometimes, we need to check ourselves and ask if we are even *capable* of neutrally investigating allegations: is the accused your boss? A close friend? Time to recuse yourself and bring in an outside investigator. There are several options to preserve the integrity of an investigation while also ensuring the alleged inappropriate behavior does not recur. However, when an HR department makes snap decisions – even when presented with allegations that, if true, you absolutely must act on – you expose your organization to risk. The accused can just as easily bring claims of unfair or discriminatory practices against a company who does not treat them fairly and in good faith. I should note: it's not common for an employee to completely fabricate or makeup allegations of misconduct. When an accusation is made in 'bad faith' – meaning, it is knowingly and intentionally false and intended to h arm the accused – the situation will become far more complex. And, if you know the accuser well, y our first instinct may be to say, "I know they wouldn't lie about something like this!" That is a normal h uman response. But as HR practitioners, our workplace duty is to respond as fairly and unemotionally a s possible. We owe this to both parties. If it does turn out that an employee fabricated an accusation, b e prepared to counsel and support the accused. Because that is also our workplace duty in HR – to h elp each employee. We are all people with feelings, and an employee who was the subject of false a ccusations likely lost sleep over the allegations during an investigation and may need support in p rocessing the events before they are performing at their best again. So, as with any sensitive issue, I r ecommend caution. Ensure you are protecting the employee who is the alleged victim of inappropriate w orkplace conduct, but also ensure you are investigating thoroughly, and from a neutral point of view. If p ossible, don't come to any conclusions or make any employment decisions until you have had a chance t o gather all the facts available. And, if for any reason, you feel you cannot investigate in good faith, bring in an outside expert to help. The more thorough the investigation, the easier it will be to defend against allegations of inaction, and, just as importantly, claims of unfair treatment or bias. *Rebecca McCormick is our HR Director, and she is passionate about creating remarkable experiences for our employees. Prior to joining Viventium, she served in a variety of HR Management positions and was*

a Senior HR Consultant practicing in all 50 states. She holds an SPHR certification and an SHRM-CP certification. Rebecca's mission is to help us Live Human Capital Management.

This information is for educational purposes only, and not to provide specific legal advice. This may not reflect the most recent developments in the law and may not be applicable to a particular situation or jurisdiction.