

# Effective Workplace Investigations

**April 9, 2025** 

Howard B. Jackson

Partner | Nashville, TN (615) 574-6702

hjackson@fordharrison.com

www.fordharrison.com



#### **Workplace Investigations**

Introduction

Who will lead the investigation?

Very important decision.



Who will assist the investigation?

Assistant should take notes.



What should the notes say?

Time. Date. Identify all persons.

Record preliminary comments/explanation of reason for interview.

Just the facts, ma'am.

No retaliation statement.



» Notes versus statements written by the witness.

» Witness can review and initial notes.



Before beginning the investigation, suspend the accused?



Who do you interview first?

Can vary with reason for investigation.

Harassment or discrimination complaint, normally the complainant.



**Interview of complainant.** 

Consider the place, space and time.

Who is the concern? Anyone else?



Interview of the complainant.

For each person identified as a concern, ask "W" question.

When did this start?

What did the person do at that time?

Any witnesses?



Interview of the complainant.

Try to go chronologically and capture each event of concern.

Witness may say the person does certain things "all the time".

Get estimate of number of times per day or per week.



**Interview of the complainant.** 

Continue with asking about events chronologically until the complainant says that is all.

Notes should reflect complainant verbalizing that he or she has provided all information as to the person named.

Go through this process for each person named as a concern.

Interview of the complainant.

Any texts, pictures, social media posts, voice mails?



Interview of the complainant.

At the end, have you thought of anything else you would like to tell us?

Explain the investigation will continue.

We may need to speak with you again.



- » Interview of the complainant.
- » Confidentiality? EEOC and NLRB oppose.
- » We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.
- » No retaliation statement. Be sure this is in the notes.

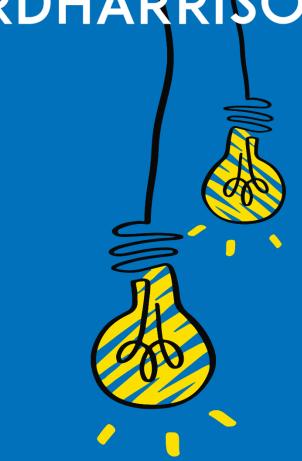
Interview of witnesses.

Explain purpose of interview.

There have been concerns raised about [name of person].

Begin more general.

Have you observed conduct that you found concerning?



Interview of witnesses.

Move to more specific.

We have been told that on April 9, you attended a very questionable seminar. Is that true?

Go through the list for the witness.



Interview of witnesses.

At the end, is there anything else you think we should know?

Anyone else you think we should speak to?



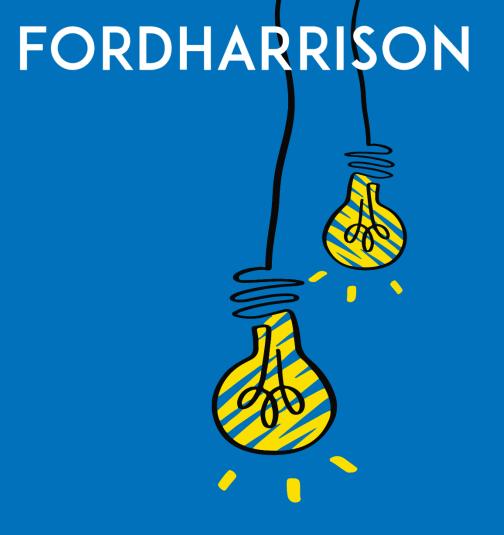


We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.

No retaliation statement. Be sure this is in the notes.

Interview of the accused person.

Very important step. Do not skip it.

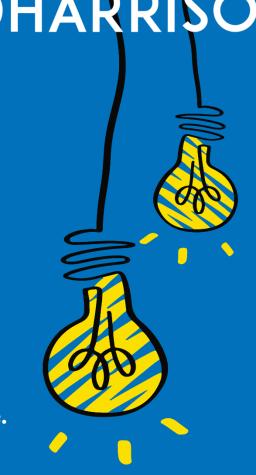


Interview of the accused person.

Prepare for the interview.

What have you learned via the complainant and witnesses?

Structure and order of questioning will vary depending on the evidence to date.



Interview of the accused person.

Begin more general.

[Name of complainant] has brought up concerns over your conduct.

Do you know why he/she would do that?



Interview of the accused person.

Consider whether to say, before getting to specifics, something like the following:

We understand people make mistakes sometimes. But we cannot have someone lie to us. (Pause)

This may result in the person confessing to what he or she may think you know already, or to what he or she may consider more minor events.



Interview of the accused person.

Move to more specific questions.

Anything else you want to tell us about that?

Any witnesses you believe we should speak to?



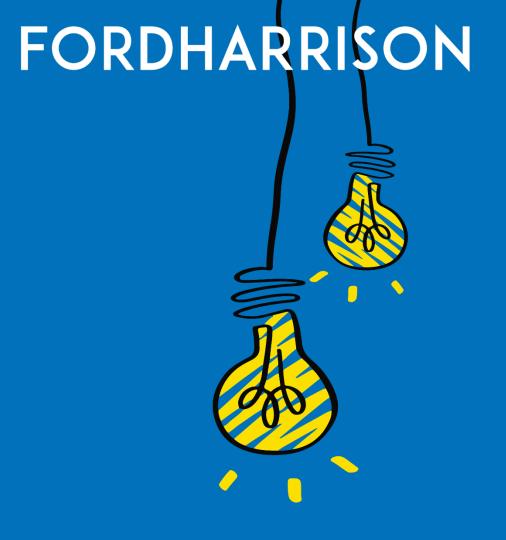
Interview of the accused person.

Any reason you know of that [name of complainant] would bring allegations against you falsely?

No retaliation statement. Needs to be emphasized with this person. In the notes.

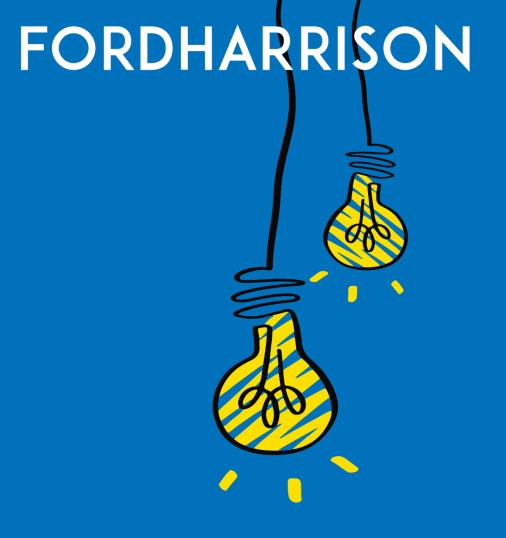
**Other considerations** 

When to call counsel?



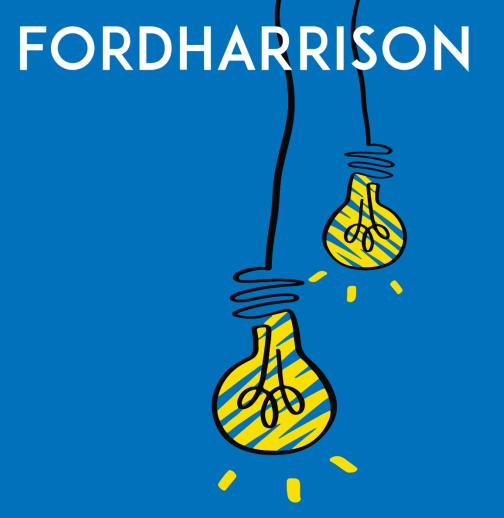
Other considerations.

When to use a third-party investigator.



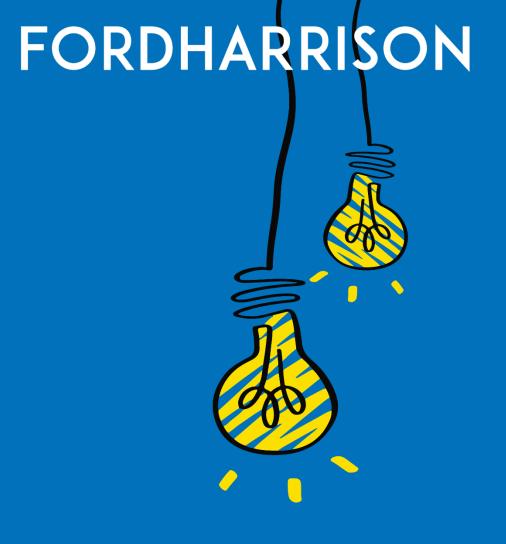
Other considerations.

Why can't my lawyer just do it for me?



Other considerations.

Avoid mission creep.



Sample case



#### Takeaways:

Retaliation claims are dangerous before a jury.

Good investigations matter. Those three were worth \$365 million.



# Thank you!





PRESENTED BY:
HOWARD B. JACKSON

(615) 574-6702

hjackson@fordharrison.com

