



I Know What You Did Last Summer: Workplace Investigations

Protecting Your Employee Assets: The Life Cycle of the
Employment Relationship

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Meet the Faculty

Panelists

[Max Barack](#) – Garfinkel Group, LLC

[Amit Bindra](#) – The Prinz Law Firm, P.C.

[Helen Bloch](#) – Law Offices of Helen Bloch, P.C.

Moderator

[Charles Krugel](#) – Law Offices of Charles Krugel

About This Webinar

I Know What You Did Last Summer: Workplace Investigations

Employers must be prepared to promptly and effectively respond to complaints of workplace harassment and discrimination. Often, that requires knowing when and how to conduct an internal investigation.

Given the significance of the issues often at stake and the potential for negative outcomes (attorneys' fees, high dollar settlements, negative PR), learning on the fly is not advisable when undertaking an investigation.

This webinar provides guidance on the many issues that arise during the course of an investigation. These include (1) the sort of issues that should be investigated, who should conduct the investigation, (2) what steps should be taken and in what order, (3) who should be interviewed, (4) what sort of documents should be created, and (5) how to close out an investigation.

About This Series

Protecting Your Employee Assets: The Life Cycle of the Employment Relationship

- This webinar is part of a series titled “Protecting Your Employee Assets - The Life Cycle Of The Employment Relationship 2025.”
- Many companies' most important assets go home every night. This webinar series covers the legal aspects of the employer-employee relationship from the employer's perspective, from beginning to end.
- No employer, regardless of size, is immune from the reach of federal, state, and local employment laws and regulations. Employers must take a proactive approach to monitoring and auditing their employment practices and policies to ensure that they can better respond to issues before they escalate to third parties like government agencies or plaintiffs' attorneys.
- This webinar series approaches the employer-employee relationship from beginning to end, with programs covering the most important steps along the way, including artificial intelligence, biometric information, hiring and onboarding, policy and procedure development and training, wage and hour compliance, accommodating disabled employees, conducting investigations and considerations associated with ending the employment relationship.

Episodes In This Series

#1: Welcome to the Team! Recruiting & Hiring, Including Restrictive Covenants

Premiere date: 1/23/2025

#2: An Ounce of Prevention: Policies, Procedures and Proactivity

Premiere date: 2/27/2025

#3: Show Them the Money: Wage & Hour Compliance

Premiere date: 3/27/2025

#4: Leaves of Absence & Medical Issues

Premiere date: 5/7/2025

#5: I Know What You Did Last Summer: Workplace Investigations

Premiere date: 6/5/2025

#6: It's So Hard To Say Goodbye: Minimizing Risk When Terminating Employees

Premiere date: 7/20/2025

#7: AI @ Work: Legal Issues Concerning Use of AI in HR

Premiere date: 8/7/2025

Episode #5:

I Know What You Did Last Summer: Workplace Investigations

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Overview



What is an Internal Investigation?

- Compliance tool to determine whether policies or procedures have been violated by an employee
- Assures adherence to company goals, mission & values
- Assures quality in products or services
- Ensures a sound & factual basis for informed decision-making or appropriate discipline
- Reduces exposure to claims / risk management

When is an Internal Investigation Triggered?

- Complaint or report of policy violation
 - Even if victim insists on no action
 - Written or verbal complaints (pay attention to gossip!)
- Management observation
- Injury or illness
- Threats
- EEOC, NRLB or other lawsuit
 - Even if employee did not complain internally
- DOL, unemployment compensation or other agency audit
- Theft or misuse of company property or information

When is an Internal Investigation Required?

- If discrimination laws are implicated (Title VII, ADA, ADEA)
 - Farragher/Elterth Defense
- OSHA
- Drug Free Workplace Act
- SOX
- Securities Act
- DOT regulations
- HIPAA

Scope of Internal Investigations

- “Informal” investigation?
 - Minor policy violation
 - Resolve the issue quickly without many interviews or witnesses
 - “Formal” Investigation?
 - If there is legal exposure
 - Serious policy violation
 - Document process & results

Formal Internal Investigations

- How serious is the policy violation or conduct?
- How many employees are involved?
- Is there an immediate threat to loss of company information or danger to employee(s)?
- What areas of law are implicated?
- Does the investigation need to be completed immediately?
 - Statute of limitations?

Formal Investigations Should Take Place Immediately

- Lock in witnesses' stories & recollections
- Focus on the W's: what happened, when, where, who involved, witnesses, what was said, why, how
- Contemporaneous accounts are usually more credible
- Documents / emails / texts can be lost or destroyed; don't destroy anything
- Prevent spoliation & potential adverse inference at trial
- Witnesses may leave the company
- Ensures compliance with legal duty to investigate promptly & thoroughly

Elements of a Good Internal Investigation

- Prompt – but not rushed
- Thorough – but not too long (sliding scale)
- Confidential – as much as possible but no absolute guarantees
- Impartial & objective
- Conducted by disinterested & respected personnel or third parties
- Effective at facilitating an appropriate outcome for all sides

Conducting an Effective Investigation

Outline of Internal Investigation

- Identify goals & outline plan
- Identify investigator or team of investigators
- Gather documents
 - Personnel file
 - Prior complaints
 - E-mails, documents, correspondence, texts
 - Employee handbook or policies implicated
 - CBA (collective bargaining agreement) – if unionized

Outline of Internal Investigation *(cont'd)*

- Maintain investigation file
 - Interview notes of all witnesses
 - Signed statements
 - Final report with conclusions & recommendations
 - Consider external resources
 - Outside counsel
 - Private investigators
 - IT (information tech or forensic examinations)

Who Should Investigate?

- Human Resources
 - Good for minor violations of policy
- Outside consultant/investigator
 - Particularly if there could be a conflict of interest or you want appearance of impartiality
- In-house or outside counsel
 - If a threat of litigation
- Forensic examiners
 - Electronic data or misappropriation of proprietary information, FLSA claims
- Law enforcement
 - If violence or theft is suspected

Who to Interview?

- Decide who to interview & when
 - Complainant
 - Victim (if not the complainant)
 - Accused
 - Witnesses
 - ✓ Employees in the same department
 - ✓ Employees other witnesses identify as knowledgeable
 - ✓ Authors of documents
 - Management
 - HR
 - Experts within the company
- Typically interview the complainant, then the accused, then witnesses & conclude with the complainant again

Interview Techniques

- Prepare an opening statement
 - Thank interviewee
 - Explain what you are investigating
 - Explain why the interviewee was selected
 - Explain that the company takes this matter seriously & has a commitment to investigate
 - Cooperation is expected
 - Company has firm no-retaliation policy
 - Information will be kept “as confidential as possible”

Additional Interview Techniques

- Use traditional, deposition style questions; try to get the subject to do most of the talking:
 - Ask open-ended questions
 - Don't dominate the conversation
 - Allow time for follow up & responses; don't rush the witness
 - Active listening & follow-up
 - Cover all bases ("Is there anything else you can remember? Anything else said? Anything unusual occur/said?")
 - Ask if there is anyone else you should speak to

Interview Documentation

- Written statement from witness
- Recorded interview/statement from witness
- Interview notes
 - Personal observations vs. reported facts
- Summary memorandum
- Relevant documents relied upon & used for each interview
- Report
 - Include recommendations for action?

Other Sources of Information

- Metadata
- Emails
- Text messages
- Instant messages
- Voicemails / telephone records
- Home computers
- Personal electronic devices
- Video / audio surveillance
- Social networks

Consider format of final report

- Formal? Summary? Memo to file?
- Who will read it?
- Board of Directors
- Outside auditors
- Legal counsel
- Government agencies
- Plaintiff's counsel
- Press
- Law enforcement

Fundamentals of Final Report

- Report should contain:
 - Summary of the issues
 - Relevant facts
 - Methodology used to conduct the investigation
 - Scope of the investigation
 - Applicable law
 - Findings
 - Recommendations

Next Steps

- Appropriate remedial action taken
 - To the accused
 - ✓ Discipline for the misconduct
 - ✓ Consistent with past practice
 - ✓ Sufficient to avoid future problems
 - To the victim
 - ✓ Restore lost job benefits & compensation
 - ✓ Report results of investigation
 - ✓ Confirm in writing
 - To others to avoid future conduct
 - Avoid retaliation!

Special Considerations

Special Considerations

- Attorney-Client Privilege
 - *Upjohn v. United States*
 - But, must give a corporate “*Upjohn*” warnings
 - ✓ Counsel represents the company, not the individual
 - ✓ Employee being interviewed to assist counsel in providing legal advice
 - ✓ Statements made by employee will be shared with company
 - ✓ Communications are privileged
 - ✓ Company alone owns the privilege

Rights of the Interviewee

- Right to counsel?
 - If accused is facing possible criminal charges
 - If employee reasonably believes answer would incriminate them in a criminal case
- Right to a “friend?”
- Right to union representative?
 - Consider whether CBA applies to investigations of complaints
- Can an employee refuse to participate?

Confidentiality Issues

- Can you keep the investigation confidential?
 - NLRB's position
 - ✓ Employer cannot maintain a blanket policy/rule regarding the confidentiality of employee investigations.
 - ✓ Employer must demonstrate a need for confidentiality on a case by case basis – is there a “legitimate & substantial business justification” that outweighs Section 7 rights?
 - EEOC's position
 - ✓ Similar to NLRB

Privacy Issues

- Does the employee have a reasonable expectation of privacy in private files on office computer?
 - Courts are split – some find that private emails sent from work computer is protected & some find they are not
- Social networking privacy
 - State laws restrict employers from asking for passwords to private social media accounts or passwords to private email accounts
 - Don't ask a subject of an internal investigation to grant access to their private online social networking accounts as part of the investigation.

Strategies to Avoid Claims after Investigation

Strategies

- Regularly train managers & supervisors on HR policies
- Develop & disseminate policies to lower privacy expectations
- Investigate only on reliable, documented factual allegations that justify investigation
- Do not investigate more than necessary
- Maintain confidentiality to the extent possible
- Use the appropriate investigator
- Make decisions & take action

Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar [On Demand](#), please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

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About the Faculty

Charles Krugel – cak1@charlesakrugel.com



Charles Krugel is owner of *Charles A. Krugel, Labor & Employment Law on Behalf of Businesses* (www.charlesakrugel.com), and has 25 years of experience in the field. He has been running his own practice for 20 years. His clients are small to medium sized companies in a variety of industries, and he has been lead negotiator for hundreds of labor & employment agreements & contracts.

Additionally, he's litigated dozens of court cases, administrative proceedings & arbitrations. In addition to providing traditional labor & employment law services, he represents companies desiring to institute preventive & proactive HR functions. These functions include policies & procedures, which help to efficiently & discreetly resolve issues in-house & prevent lawsuits & complaints; they also help to reduce costs & act as catalysts for increasing productivity & profits. Moreover, he's frequently the subject labor & employment law related TV, radio & print interviews. [Read More](#)

Max Barack – max@garfinkelgroup.com



Max leads the Garfinkel Group, LLC's employment law practices groups and is a plaintiff-side employment law attorney. He has been practicing law since 2013 and has spent the majority of that time handling plaintiff-side employment matters. He concentrates his practice primarily on representing plaintiffs in their claims of discrimination, as well as wage & hour violations, whistleblower actions, & severance negotiations.

He has extensive litigation experience, with a focus on electronic discovery (ESI). He has represented & assisted employers in defending discrimination & wage & hour disputes, including in department of labor investigations. He is a member of the Board of Directors of the National Employment Lawyers Association of Illinois & co-chair of its Legislative Committee. He is a regular contributor to the Chicago Bar Association's @theBar blog, & is fluent in Spanish. [Read More](#)

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Amit Bindra is a partner with The Prinz Law Firm, P.C. and was an adjunct law professor of appellate writing and oral advocacy at Loyola University Chicago. Amit has completed the Certificate Program in Mediation Skills Training from the Northwestern University School of Professional Studies and serves as co-host of the Employee to Lawyer podcast for NELA Illinois.

Amit has extensive experience advising C-suite executives, physicians, & hedge fund managers on a variety of employment matters, including negotiating employment & separation agreements. He also advises businesses and executives at start-ups, mid-market businesses, Fortune 500 corporations, privately-held companies, and in the cannabis industry to find creative and pragmatic solutions to their legal challenges. Various media outlets have quoted Amit regarding non-compete & other employment law matters.

In addition to providing business counseling and executive career counseling, Amit's work largely focuses on non-compete and non-solicitation agreements, arbitration agreements, trade secret disputes, wage and hour claims, and employment discrimination and whistleblower claims. Amit has also successfully worked on several appeals in Illinois and Indiana. [Read More](#)

Helen Bloch – hbloch@blochpc.com



Helen Bloch is the principal and founder of the Law Offices of Helen Bloch, P.C., a general practice firm that is a Certified Female Business Enterprise. In the employment & business context, Helen represents clients on all sides of the employment relationship – individual employees, managers, or employers.

Routinely Helen negotiates and counsels clients on employment agreements, including non-competition, confidentiality, and severance agreements. Also, she drafts employment handbooks and various policies and procedures. Helen will advise businesses on best practices, including providing sexual harassment training. Helen has lectured on topics such as gender role in the law, legal issues affecting small businesses, and legal rights and obligations from multiple sides of the employer-employee relationship.

Helen has been selected for inclusion in Super Lawyers in the area of employment law every year since 2019. Helen belongs to several civic and professional organizations. She is a past President of the Decalogue Society of Lawyers, which awarded her the Presidential Citation in 2015 and the Intra Society Award of Merit in 2001. She serves on the Alliance of Bar Associations, where she assists in screening judicial candidates. Her other bar association memberships include the Illinois chapter of the National Employment Lawyers Association, Women's Bar Association of Illinois and the Illinois State Bar Association. An active National Association of Women Business Owner's (NAWBO) member, Helen leads NAWBO's Lincoln Park Business Exchange Group. [Read More](#)

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