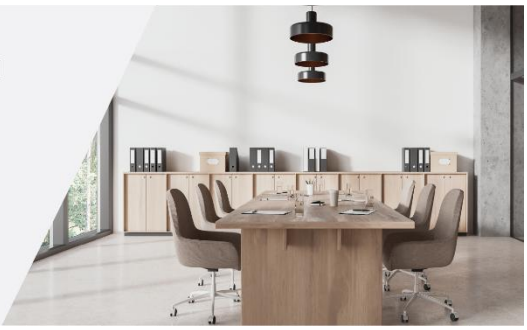
Atsumi & Sakai Newsletter

JAPAN
NEW YORK
LONDON
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BRUSSELS
HO CHI MINH

November 2026
No. CRM_011

STRATEGIC COMPLIANCE INSIGHTS / 2026.11

Matters to Consider Before Conducting Fact-Finding Interviews for Internal Investigations



1. Introduction

It is not uncommon to conduct interviews with parties who may have relevant information to verify facts after receiving an internal report or harassment complaint.

While interviews are important for ascertaining the facts, there may be times, especially for in-house staff, when you may be unfamiliar with the process and unsure how to prepare.

Prior preparation is essential for conducting meetings appropriately and effectively. In this article, we will explain the basic points to consider before conducting a fact-finding interview with a focus on internal investigations initiated by internal reports, harassment complaints, and similar issues.

2. Matters to Confirm Before Conducting Fact-Finding Interviews

(1) Organization of the Facts and Related Materials

For example, suppose the company receives a report through the firm's internal reporting system from B, a subordinate of Department Head A, stating, "I have been harassed by Department Head A."

In such cases, the usual first step is to speak with B (the person who filed the report) to confirm the specific details of the conduct at issue, the surrounding circumstances, the individuals involved, and existence of any relevant documents before conducting interviews of other individuals involved.

Then, based on the information obtained from B, compile the details of the language or conduct at issue (e.g., on [Month] [Day], during the team's regular meeting, A said "__" to B in front of other employees), identify individuals who may have heard the statements or witnessed such conduct, and organize the relevant documents such as emails, chat logs, and meeting minutes. In complex cases, it may be helpful to create a chart showing the relationships between the individuals and a chronology of relevant events.

When organizing such information and documentation, it is important to assess the extent to which the reporting person's account is supported by objective evidence. For example, even if the calendar records show that a meeting was scheduled, those records alone do not establish whether the meeting actually took place or whether any of the alleged statements were made. With these points in mind, distinguish the information that has been verified and the information that requires further verification, and determine who needs to be interviewed and what information needs to be gathered.

In addition, depending on the circumstances, there may be concerns that conducting fact-finding interviews could alert those involved to the existence of the investigation, leading to the deletion or alteration of relevant documents. Before conducting interviews, therefore, please keep in mind that it may

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be advisable to consider the necessity of preserving emails, chat logs and relevant materials as well as the methods and timing of preserving them, before the fact-finding interview.

(2) Selecting Fact-Finding Interviewees and the Order of Implementation

i Selection of Interviewees

In the above case, assuming that, based on the internal calendar records provided by B, it was confirmed that a regular team meeting was scheduled for the day on which B claims the statement was made, but it has not been confirmed whether A actually said "---" to B (statement at issue). In such a case, in order to verify whether A made the alleged statement, what was said and the surrounding circumstances, it would be appropriate to interview not only A but also those scheduled to attend the meeting in question, including first confirming whether they actually attended. In addition, to understand the background to the statements, it may be helpful to speak with employees who are familiar with the details regarding the working relationship between A and B and the situation at the time.

Thus, when selecting interviewees, it is important to consider not only the individuals mentioned in the report, but also other individuals who may have relevant information and the matters on which each may be able to assist.

ii Order of Implementing Fact-Finding Interviews

While there is no single correct order for conducting fact-finding interviews, a common approach is to interview other relevant individuals before interviewing the person who is the subject of the reportit is generally common practice to first interview parties other than the person who is the subject of the report, and then interview the person in question. By speaking with relevant partiesthose individuals first, you can gather information about whether any problematicthe alleged conduct occurred and the circumstances at the time, and organize identify the points that need to be confirmed with the person who is the subject of the report. It also serves to minimize the risk that person who is the subject of the report might learn of the investigation and, by influencing other parties involved or asking them to coordinate their stories, affect compromise the subsequent interviews.

When conducting fact-finding interviews with relevant parties, it may be helpful to begin with those familiar with the surrounding circumstances to understand the context of the alleged language or conductthere are times when you begin by speaking with people familiar with the surrounding circumstances in order to understand the context behind the language or behavior., while at other times you may prioritize confirming details with those who directly witnessed or heard the language or conductbehavior. Consider factors such as the extent to which the information obtained from each interviewee is important for clarifying the facts of the case and the need to prevent the dissemination of information related to the investigation. When doing so, it would be helpful to take into consideration practical considerations including the workload of the interviewees and the staff members in charge of coordinating schedules.

(3) The Role of External Investigations Amid Conflicts of Interest

Before a fact-finding interview, organize matters to be clarified for each interviewee and prepare a list of questions. At such time, if the facts substantiate the report, it is important to identify which laws, regulations, and internal rules might be breached if the allegations were substantiated, and be prepared to gather the facts necessary to determine whether a breach has occurred.

For example, when considering whether the alleged conduct in the above case constitutes power harassment in the workplace, examine questions in light of the following three elements: (i) language or behavior based on a relationship of superiority in the workplace; (ii) it exceeds the scope necessary and reasonable in the course of business; and (iii) it damages the work environment of the employer's workers. Also consider the six typical types of conduct outlined in the so-called Guidelines for the Prevention of Power Harassment[1]. In addition, if the company's internal rules or other regulations contain provisions regarding power harassment, it is necessary to review those provisions as well.

[1] Guidelines Concerning Measures to Be Taken by Employers in Terms of Employment Management in Connection with Problems Arising as a Result of Behavior that Constitutes Bullying in the Workplace (Public Notice of the Ministry of Health, Labor and Welfare No. 5 of 2020) https://www.mhlw.go.jp/content/11900000/000605661.pdf

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Specifically, you will also not only need to confirm the content of A's language or behavior but also the purpose and context of such language or conduct, the circumstances at the time, A's usual management style, the working relationship between A and B, and the impact on B's working environment.

When preparing questions, avoid wording that suggests a particular answer. For example, rather than initially asking an employee who attended the meeting, "Did you see A verbally abuse B?", ask, instead "What do you recall A and B saying to each other during the meeting that day?". In other words, it is better to prepare open-ended questions that allow the interviewees to explain the situation based on their own understanding and recollection.

It is also important not to adhere too rigidly to the questions prepared in advance or the order in which they are asked. During the actual interview, it is important to remain flexible, for example, by adding questions based on the interviewee's responses. The order of the questions can be adjusted, as long as you can ascertain the necessary information within the natural flow of the conversation with the interviewee.

(4) Confidentiality and Privacy Considerations

When preparing for a fact-finding interview, consider in advance the scope of information to be communicated to the interviewee and the materials to be presented, so as to prevent the information regarding the reporting person and other relevant parties from being unnecessarily disclosed. Even if the name of the person who filed the report is withheld, the person may still be identified based on their department, role or the details of the incident, so it is important to exercise caution regarding the information to be disclosed.

In particular, in cases such as harassment where there is a risk that the reporting person’s identity may be revealed during the course of the investigation, it is important to explain this possibility and the investigation process to them in advance and discuss their concerns and preferences. However, simply discussing those preferences does not mean that information that could identify the person who filed the report can be shared unconditionally. Consider the need to consider the necessity and scope of information sharing, and limit the information shared, and the recipients, to what is necessary for the investigation.

In addition to maintaining confidentiality, preventing adverse treatment of the reporting person and pressure on those involved is an important consideration. Prepare to explain to interviewees that they should not indiscriminately disclose to other employees the fact that they were interviewed or the details of the interview.

To ensure that we thoroughly take these considerations regarding the handling of such information into account during the actual meetings, prepare the explanations to be given to interviewees and responses to likely questions in advance. For example, avoid unnecessarily attributing information to particular individuals by saying, "Mr./Ms. ___ said this."

Interviewees may ask, "Who reported this?" or "Who is saying such things?" Consider in advance how to explain the purpose of the investigation and the matters to be clarified without unnecessarily disclosing information that could lead to the identification of the reporting person or other involved parties. If necessary, preparing a script or similar document that summarizes anticipated questions and answers will help you stay calm and respond more effectively during the actual interviews.

3. Conclusion

This article has outlined the key points to consider before conducting fact-finding interviews as part of an internal investigation initiated in response to an internal report or similar matter.
We hope it provides practical guidance for those responsible for planning and conducting internal investigations.

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