#1 – Can We Use an In-House Investigator?

**In-House vs. Outside Investigator**

- **Pros**
  - Familiar with agency and parties involved
  - Familiar with agency policies and procedures to be followed
  - Ability to commence right away

- **Cons**
  - Reporting relationships, biases and personal relationships must be examined
  - Must possess training and experience to investigate
  - Availability if the investigation will be extensive
#2 – Does the Situation Necessitate an Outside Investigator

Any of the Following Factors Present to Necessitate an Outside Investigation?

- Potential significant liability
- Political concerns
- Allegations against a high-level official
- Remove a conflict of interest or appearance of a conflict

#3 – Selecting an Outside Investigator

- Knowledge and Experience
- Personality and Demeanor
- Impartiality
- Excellent Writing Skills
- Strength as a Witness
- Availability
  - Must be Licensed
    - Bus. & Prof. Code §§ 7512-7573
    - Exception for attorney-investigators
#4 – What About Using Outside Attorney as Investigator?

**Outside Attorney as an Investigator**

- **Pros**
  - Attorney client privilege (limited)
  - Outside/Impartiality
  - Handle complex matters; understand employment laws
- **Cons**
  - Cost
  - Limited attorney client privilege
  - Prevents representation during discipline appeal/litigation

#5 – Define Scope of Investigation for Outside Investigator

- Outline issues to be investigated
  - Not “free for all” investigation. If new issues arise, investigator should contact City for direction
- Develop specific questions for the investigator based on the allegations in the complaint
- What factual issues will the investigator determine (ultimate facts vs. legal conclusion)?
#6 – The Outside Investigator Should Stick to Factual Findings

**Factual Findings vs. Legal Conclusions**

- The question posed to the investigator is not whether there a policy or law was violated (a legal conclusion) but rather to determine what actually took place
  - Example – Harassment Case: What actions did Accused Employee take towards Complainant? Did the actions involve a protected category status?
- Once an ultimate fact is determined, the City can make legal conclusions

#7 – Ensure Investigator Provided Authority to Investigate

**Investigator Authority**

- Provide Investigator with authority to question involved employees as if coming from Management
- Make sure affected employees understand the role of the Investigator and authority
- Provide Investigator access to information and witnesses relevant to underlying investigation
#8 – Ensure Affected Employees Are Provided Their Rights

**Employee Rights in Interviews**

- *Weingarten* Rights
  - Complainant
  - Witnesses
- *Lybarger* Admonition (if Necessary)
- POBR/FBOR Rights
- Validity of “Gag” Orders

#9 – Make Sure the Investigator Makes Credibility Determinations

**Credibility Determinations Are Key to a Fact-Finding Investigation**

- Sometimes “he said, she said” allegations and there is no “smoking gun” to point to
- Duty to thoroughly investigate
- Investigator must judge the credibility of each witness where there are inconsistent accounts
#10 – Balance Independent Investigation with City’s Need to Conduct Thorough and Complete Investigation

**Investigator Independence vs. Ensuring Investigation Expectations Are Met**

- Check in and status updates
- Review draft report
- Revisit scope of investigation
- Ensure confidence in investigation findings before finalizing

Questions?

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