

# Staying Above the Fray

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CONDUCTING EFFECTIVE WORKPLACE INVESTIGATIONS

PRESENTED BY: NIKI RAMIREZ, MBA/PHR & LUIS RAMIREZ, ESQ.

# Welcome & Thanks!

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This presentation has been prepared specifically for human resources professionals and business leaders and is educational in nature.

*This presentation is intended to be used as general instruction and is not intended to constitute legal advice.*

*Thank you to the HRUnite! team for allowing us the opportunity to be here today!*





NIKI AND LUIS  
RAMIREZ

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# Today's Agenda ...

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- Why investigate?
- Creating an investigation strategy and plan
- Interviewing skills and tactics, quick activity
- Creating reports and making recommendations
- Closing considerations





# Why Investigate?

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- Reasons that you may find yourself faced with an investigation
- Causes of action; elements
- Employee morale, motivation and productivity

# Legal Considerations



Communications, attorney-client  
privilege



Documentation, retention



Policies, procedures, Agreements  
and regulations



# Deciding Who Will Investigate

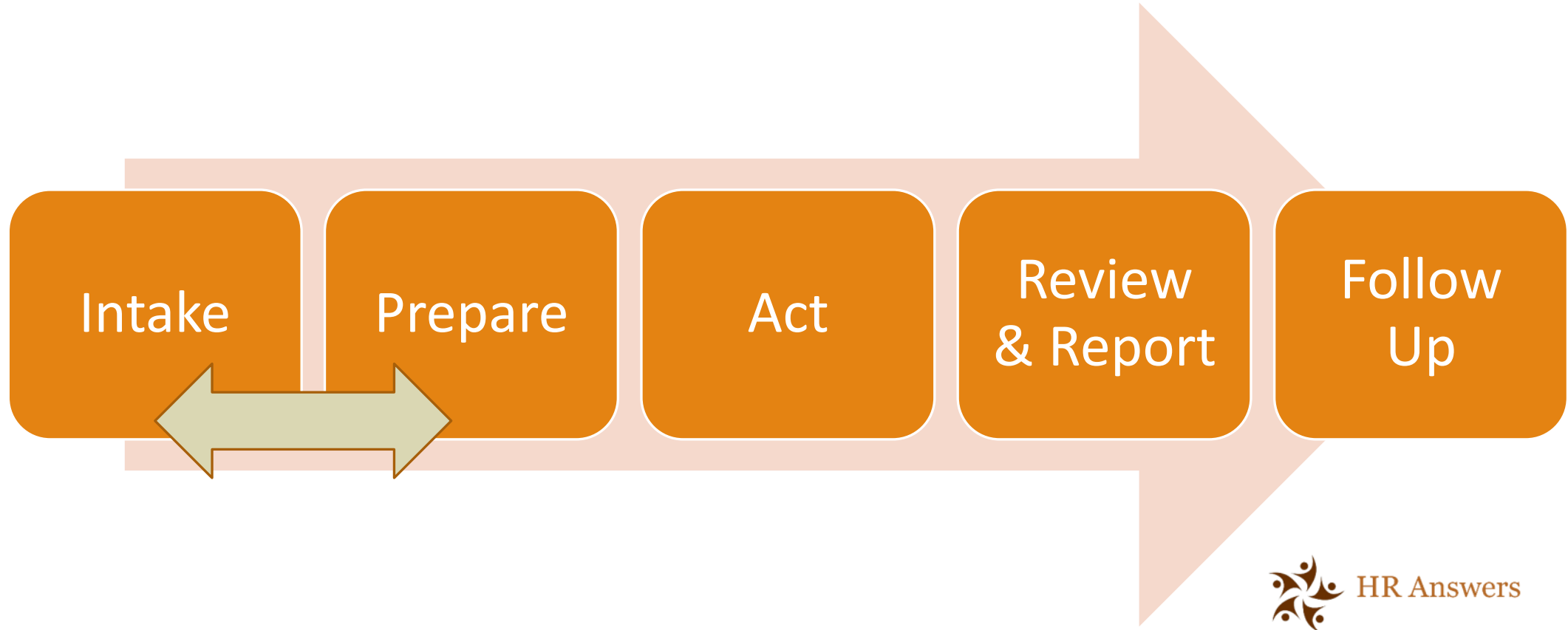
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- In-House
  - Human Resources Professional
  - Other Manager
- Attorney
- Other Outside Investigator



# The Process...

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# Immediate Considerations

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- Safety and security
- Who
- What
- When
- Where
- How severe is/was the issue



# Gather & Review Necessary Documentation

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## Electronic

- Email
- Social Media Postings
- Internet Comments
- Policies and procedures
- ... Other?

## Written/hard-copy

Files

Surveillance videos



# Create Investigation Documentation

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How will you record your findings?

- Hand-written notes
- Video recordings
- Audio recordings





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# Communication & Confidentiality

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With whom will you communicate?

- Inside the organization
- Outside the organization
- What about “protected” communications



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# Make an Interview Plan

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# Investigation / Interview Plan

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- Order of interviews
- Questions
- Time of day
- Location
- Will anyone else participate in interview(s)



# Order of Interviews

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1. Complainant
2. The Accused
3. Witnesses





# Logistics

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- Time of day
- Location
- Which chair to choose





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# Interviews & Questions: Considerations & Ideas

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# Opening and Closing Interviews

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- Opening statement
- Closing statement
- Retaliation Prohibited
- Confidentiality



# Questions to Ask

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- Types of questions
- Start easy and build rapport
- Getting clarification
  - ... Tell me more about...
  - ... What did you mean by ...
  - ... When you say, what do you mean ...



# Follow-Up Interviews:

*clarifications, when new questions come up*

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- Notify the participants in your investigation that you may need to contact them for a follow-up conversation.
- Get their agreement in advance.
- Gather their best contact information.



# It's Show Time!

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- 1) Responding to a verbal report or verbal complaint:** an employee comes to you explaining that she was touched inappropriately by her boss.
- 2) Opening interview with the Accused:** allegedly asked a subordinate to go on a date; when the offer was declined, threatened to cut hours and change employee to graveyard shift.



# It's Show Time!

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- 3) Closing statement with Complainant:**
- 4) Open ended questions practice – How do you phrase the question when:**
  - You need the complainant to confirm their statement
  - Did you see Mr. Jones touch Ms. Smith's buttocks?
  - Was Manuel in the room with you when this happened?



# Creating Reports, Making Recommendations & Closing an Investigation



# Reports – What You Might Include

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- Table of Contents
- Executive Summary
- Dates/times, locations of the investigation; and who investigated
- List of individuals interviewed
- List of documents reviewed
- Summary of Complaint(s), including policy or regulation violation, if possible
- Summary of Interviews
- Recommendations
- Unresolved Issues
- ... What else?





# Closing the Investigation

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- Conclusions vs. Recommendations
- Who should decide if:
  - A policy was violated
  - Misconduct occurred
  - A law was broken
  - A contract was breached
- What about inconclusive investigations?
- Types of recommendations
  - Discipline, separation, transfer, demotion, training, etc.



# Important Considerations for HR Professionals



Dealing with bias and  
preconceived notions



The ultimate balancing act:  
protecting the company, managers  
and employee rights

# Lessons Learned

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# What questions do you have?

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# What type of support is best?

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- ❑ Bring a custom **investigations workshop** to your team
  - Conducting Effective Investigations Workshop for HR Professionals
  - Workplace Investigation Basics for Business Leaders
  
- ❑ Let us facilitate your annual **non-harassment/non-discrimination training**
  - Training for leaders includes communication skills and conflict resolution training content
  - Training for all employees includes pre- and post-session surveys to ensure clear communication and follow up
  
- ❑ Let us review and refresh your related **policies and procedures**
  - Compliance, policy, and procedure review and refinement.



# Meet Your Panel: Luis F. Ramirez, Esq.

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Luis F. Ramirez is the Managing Partner of the Consumer Rights Protection Center. Mr. Ramirez graduated Magna Cum Laude from the Arizona State University College of Law. Mr. Ramirez also holds a Master's Degree from Arizona State University in Spanish Literature and a Bachelor's degree in Spanish from Rutgers University.

Mr. Ramirez is licensed in Arizona, California, Colorado, Oregon, and Washington. He started his legal career in 2003 representing companies in employment and commercial disputes, as well as providing legal advice and training to employers concerning employment matters. In the course of these duties, Mr. Ramirez has continued to expand on his excellent legal writing, communication, and analytical skills. Presently, Mr. Ramirez uses those same skills to protect and enforce the rights of consumers and to continue to provide services in employment matters.

# Meet Your Panel: Niki Ramirez, MBA/PHR/SHRM-CP

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Niki Ramirez is the Founder and Principal Consultant at HR Answers, a firm dedicated to providing impactful yet practical human resources advice and organizational development support to businesses of all sizes.

Niki is a dual-certified HR professional with experience spanning over 20 years, including: serving in operational leadership roles, adjunct business faculty member, and as a human resources executive. Niki carries with her a strong desire to educate and empower employees and their leaders to work in partnership to design and implement meaningful human resources programs that drive the success of their organizations.



*Before undertaking any investigation, a proper plan should be prepared: get organized, gather important information and get started.*

### Investigations are often initiated as a result of the following:

- Complaint of sexual harassment, or other type of workplace harassment or discrimination
- Violence in the workplace
- Workplace bullying
- Workplace safety concerns
- Accounting or financial errors or issues
- Theft or fraud in the workplace

### Before beginning any investigation:

- **Have a plan to gather and securely store all documents**, emails, notes, employee files that are relevant to those involved in the investigation and **lock them in a secure location**/password protect files as needed.
- **Have policies and procedures in place** to outline whom employees should contact with complaints, and the company's process and commitment to investigating complaints.

**As an HR professional or leader, you may be asked to lead an investigation.** Here are 15 top tips for getting prepared and crafting your investigation plan:

- 1) **Be timely.** Investigations should begin promptly as soon as a complaint is received by any member of the supervisory, management or HR teams.
- 2) Ask the **complaining employee to complete an Incident Report or complaint letter** immediately.
  - a. If they refuse or are unable to do so, you will document on their behalf and obtain their signature where feasible.
- 3) Review the complaint and **identify alleged policy violations.**
- 4) **Review related, relevant policies and procedures.** Make copies for your file.
- 5) **Review training programs relevant to the alleged violation;** confirm the participation of those involved in the complaint, where feasible.
- 6) **Determine who will conduct the investigation** based on the information provided.
- 7) Review the complaint and identify **who should be contacted for interviews.**
  - a. Complainant
  - b. Witnesses?
  - c. Accused
- 8) Prepare/send letter to complainant acknowledging that the complaint has been received.
- 9) Prepare **interview questions** for all those who will be asked to participate.
- 10) Prepare **opening and closing statements;** confidentiality and no-retaliation statements, as desired.
- 11) Decide **where and when** to conduct interview. Set up interviews.
- 12) **Conduct fact-finding interviews;** document.
- 13) **Prepare written report;** findings and recommendations where required.
- 14) Prepare **letters** to notify those who participated that the investigation is closed.
- 15) **Take action** to prevent reoccurrences. **Follow up** with the complainant to ensure no retaliation has occurred; no new issues.



*From time to time, an incident occurs in the workplace that requires an investigation. Depending on the issue, investigations are conducted by managers, HR professionals, attorneys, members of law enforcement or other members of the team, as applicable. All items on this list are simply recommendations. Contact your HR Consultant or attorney for assistance as needed.*

### Is the complaint a violation of policy; what is the basis of the complaint?

- Sexual harassment, racial harassment, religious harassment, etc. in the workplace
- Violence in the workplace
- Workplace bullying
- Workplace safety concerns
- Accounting or financial errors or issues
- Theft or fraud
- ... Something else?



### If you are conducting the fact-finding investigation, get prepared, take action:

- Make a list of known employees and others involved;** including their contact information
  - Complainant
  - Accused
  - Witnesses
  - Vendors, clients, etc. may be witnesses
- Determine which **workplace policies** apply to this situation; gather copies of policies
- Take action to mitigate on-going issues** immediately (change employee schedules? Assign accused to administrative leave? Modify work duties to avoid interaction between complainant and the accused?).
- Draft letter** opening investigation (to be delivered to the complainant)
- Determine methods** that you will use to document the investigation/interviews
- Gather resources** (notebooks, files, audio and/or video recorders)
- Schedule interviews** and **select a private location** (recommended sequence of interviews complainant, witnesses, accused). Set up room/office space properly before interviews.
- Draft opening and closing statements** to be used during interviews.
- Draft no-retaliation statement** to share with all interviewees.
- Draft privacy/confidentiality statement** (if desired) to be shared with interviewees.
- Draft interview questions** (foundation questions, open ended questions, follow up questions; “close the door”).
- Conduct interviews** (in person is best, phone is acceptable if necessary).
- Review interview notes.** Contact interviewees with follow-up questions as needed.
- Create summary report.**
- Determine next steps and make recommendations** for decision-makers.
- Meet with complainant and the accused to close the investigation.**
- Send letters closing the investigation** to complainant, witnesses and the accused.
- Schedule follow up contact with complainant** to ensure no retaliation/no additional issues.

Contact your HR Consultant, [Niki Ramirez](#), for assistance with workplace investigations.

## Investigation Documentation – A Manager’s Quick Take

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A critical piece of each and every workplace investigation is the written documentation that is created and gathered during the process. Managers should only interview employees or other witnesses if instructed to do so by the organization’s top leader, or designated human resources representative.

**1) Create a written record** of your personal understanding of the complaint, along with any and all relevant details related to the claim or charge. When creating documentation:

- **Include only facts, not assumptions.** Only document what you know to be true. Do not make guesses, judgments or decisions about next steps when investigating a complaint or assisting with an investigation.
- **Ensure that your notes are legible and professional.** Type your investigation notes whenever possible. Sign and date or timestamp your documents. The easiest way to timestamp an electronic document is to email it to yourself or to your manager or human resources, where appropriate.

**2) What to document**

- **Who initiated the claim, complaint or charge?**
  - If it was an employee, include: name, date of hire, positions held with the company.
  - If it was not an employee, obtain their name, address, and phone number.
- **Describe the allegation and your understanding of the situation.**
  - Where, when and how did the infraction occur, if known.
  - Who else is aware of the issue? Are there any witnesses? If so, list their personal information.
  - What was happening just prior to the incident?
  - What occurred following the incident; what action was taken?
  - If true, does the incident or infraction violate a policy or law? If so, explain to the best of your ability.

**3) Save and secure relevant video footage.** In order to ensure that it can be accessed and reviewed if necessary as a part of an investigation, speak with your manager or human resources for detailed instructions on how to properly download and store surveillance footage.

**4) Conduct interviews to gather information.** As instructed by your manager or human resources, interview employees to gather information about the situation.

- When interviewing the complainant (the person who complained), the person who allegedly violated a policy, or any witnesses:
- Ask open ended questions, rather than yes/no questions. Here are *just a few* examples:
  - What happened?
  - When did it happen?
  - Why do you think that happened?
  - What did you hear?
  - What did you see?
  - What did he/she tell you?
    - Where were you when they told you that?
    - Did anyone else overhear their statement?
  - Who else should I speak to that may know something about this?
- NOTE: Try to stay away leading questions (which are questions that suggests an answer)