



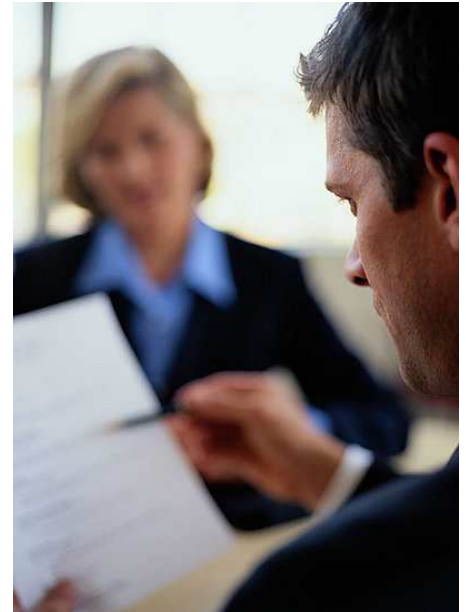
## Workplace Investigations

Many laws **require** employers to undertake investigations in order to meet their employment obligations. The state's position is that **it is your duty** as an employer to know about a discrimination, harassment, and threat or safety issue faced by an employee. In some courts whether you know or not, it is your responsibility to take prompt action to put an end to the problem. Therefore, employers need to investigate the situation and ascertain the facts. Employers who fail to investigate will usually lose claims or lawsuits brought by an employee.

Common laws and situations that require investigations are:

- Job Discrimination Laws (Civil Rights Act of 1964, the ADA, ADEA or the Texas Human Rights Act)
- Health and Safety Laws - OSHA - employers must investigate problems and prevent future similar problems, such as violence and threats
- Drug Free Workplace Laws - The drug free workplace act of 1988
- Background and Credit Checks - Fair Credit Reporting Act - negligent hiring or retention

Employers must be aware of important limitations that apply to the **privacy interests** of employees. Generally, employees have **the right to keep private facts** about themselves and their families **confidential** as well as the right not to be accused wrongly and the right to enjoy a degree of "personal space". Generally, whatever is in an employee's personnel file can be accessed **only** by those who have a "job-related need to know". In order to reduce the chance of confidential information getting out, most attorneys recommend keeping different types of files. (I.e. personnel file, medical file, I-9 records, safety records, grievances and investigations).



At work, employees have a reasonable expectation of privacy, unless they have been given notice that something in particular might be inspected or monitored. For instance, employees who have never been told that purses or backpacks or lockable desk drawers or personal lockers might be subject to inspection would have a reasonable expectation of privacy.

**Drug tests** are, of course, a form of investigation. In Texas there are a wide variety of circumstances for drug testing, but the results must be kept absolutely confidential. **Defamation** is also a concern and this consists of communicating false information to a third party. **Retaliation** is prohibited against employees who file claims and any action that appears to be retaliation must be warranted. **False Imprisonment** can be brought by an employee who feels that they have been restrained or confined during an interview. **Intentional Infliction of Emotional Distress** can also be the basis of a lawsuit when an employee feels unusually humiliated or threatened. **Assault and Battery** can arise if an employee fears that an employee was going to touch them, or was actually touched. **Malicious Prosecution** can arise when attempting a criminal prosecution if an employer pursues arrest, but there turns out to be no basis for criminal charges. **Invasion of Privacy** consists of disclosure of private facts about a person and contains either intimate facts about private affairs, or if information of no legitimate concern was released to a third party.

When a problem arises, a company must move quickly to determine who knows what. Waiting too long might mean that the investigation will be compromised.

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