

# INVESTIGATION TRAINING

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Information is intended to be educational in nature and doesn't constitute legal advice.



## LEARNING OBJECTIVES

- How to determine when and what type of investigation is necessary.
- How to plan an employment investigation
- How to interview witnesses, including making credibility determinations
- Understanding the due process rights of the respondent and witness employees as you conduct your investigation
- How to write an investigation report

## INVESTIGATING EMPLOYEE MISCONDUCT



What happened

When it happened

Where it happened

Who was involved

How it happened

Why it happened

## THE IMPORTANCE OF INVESTIGATIONS

## SEVEN STEPS OF JUST CAUSE

Notice

Reasonable Rule or Order

Investigation

Fair Investigation

Proof

Equal Treatment

Penalty

## IMPORTANCE OF INVESTIGATIONS

Problems Can Escalate

Legal Obligations to  
Investigate

Proving Just Cause

## TYPES OF CONDUCT LEADING TO AN INVESTIGATION

Violations of  
Workplace  
Rules

Poor  
Performance

Job-Related  
Misconduct

Allegations of  
Discrimination  
and Harassment

Allegations of  
Criminal  
Misconduct

A diagram illustrating the spectrum of employment investigations. On the left, a large blue circle with a white border contains the text 'SPECTRUM OF EMPLOYMENT INVESTIGATIONS'. To the right of the circle is a large blue arrow pointing to the right. Inside the arrow, there are three dark blue rounded rectangular boxes arranged horizontally, each containing a type of investigation. The boxes are outlined in a thin yellow-green line. The background is split vertically: the left side is dark grey and the right side is white.

SPECTRUM OF  
EMPLOYMENT  
INVESTIGATIONS

Informal Internal  
Investigation

Formal Internal  
Investigation

External  
Investigation

CONSIDERATIONS FOR  
CHOOSING THE TYPE  
OF INVESTIGATION  
AND INVESTIGATOR

Training

Severity of alleged misconduct

Potential criminal violations

- *Garrity* implications

Appearance of or actual bias



## WHAT TYPE OF INVESTIGATION? (HYPOTHETICAL)

Molly is a new Officer in the Police Department. Recently, Molly disclosed to her female Sergeant that another new Officer -- Jake -- has been texting her inappropriate messages for the last three months, has repeatedly asked her on dates, and has told her that he has feelings for her. Molly's Sergeant reports this information to the Executive team.

- What next steps would you take?
- Should you investigate?
- If so, what type of investigation?

## WHAT TYPE OF INVESTIGATION? (HYPOTHETICAL)

- Jack has told his Sergeant that his co-worker Tracy is gossiping about him to others in the Department including Janet and Cory. Jack was very upset when he told his Sergeant, but he could not identify specific examples of Tracy gossiping but states it has been happening for months.
- What next steps would you take?
- Should you investigate?
- If so, what type of investigation?

# PLANNING THE EMPLOYMENT INVESTIGATION

1

Outline the Issues

2

Identify Policies,  
Rules, and/or Laws  
that may have been  
violated

3

Develop a Witness  
List for Conducting  
Interviews

4

Identify Sources of  
Information and  
Gather Documentary  
Evidence



## DUE PROCESS

- **Weingarten**– right to union representation
- **Tennessen advisory** – Data Practices
- **Garrity warning** – privilege against self-incrimination
- **Peace Officer Discipline Procedures Act**



## PODPA – WHEN DOES IT APPLY?

- PODPA formalizes process of obtaining "formal statements" from licensed peace officers under employment investigation.
  - Establishes procedural safeguards and protections during interview process.
- A "formal statement" means the questioning of an officer in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding against officer.
  - Not applicable to criminal investigations.
  - Not applicable to an informal conversation.
  - Not applicable to a coaching and counseling session.

# PODPA - COMPLAINT

- No formal statement may be taken from an officer unless there is on file with employing or investigating agency a written complaint signed by the complainant, stating the complainant's knowledge, and Officer must be given summary of allegations.
- Officer must be given a copy of signed complaint before an “administrative hearing” is begun.
- PODPA does not require employer to provide officer with a copy of the written complaint:
  - During the investigation of the complaint;
  - During processing of a grievance filed by the officer or union representative;
  - Prior to the imposition of disciplinary action against the officer; or
  - If no disciplinary action is taken against the officer.
- Evaluate need for amended complaints and amended summaries during IA.



# PODPA - TRANSCRIPT

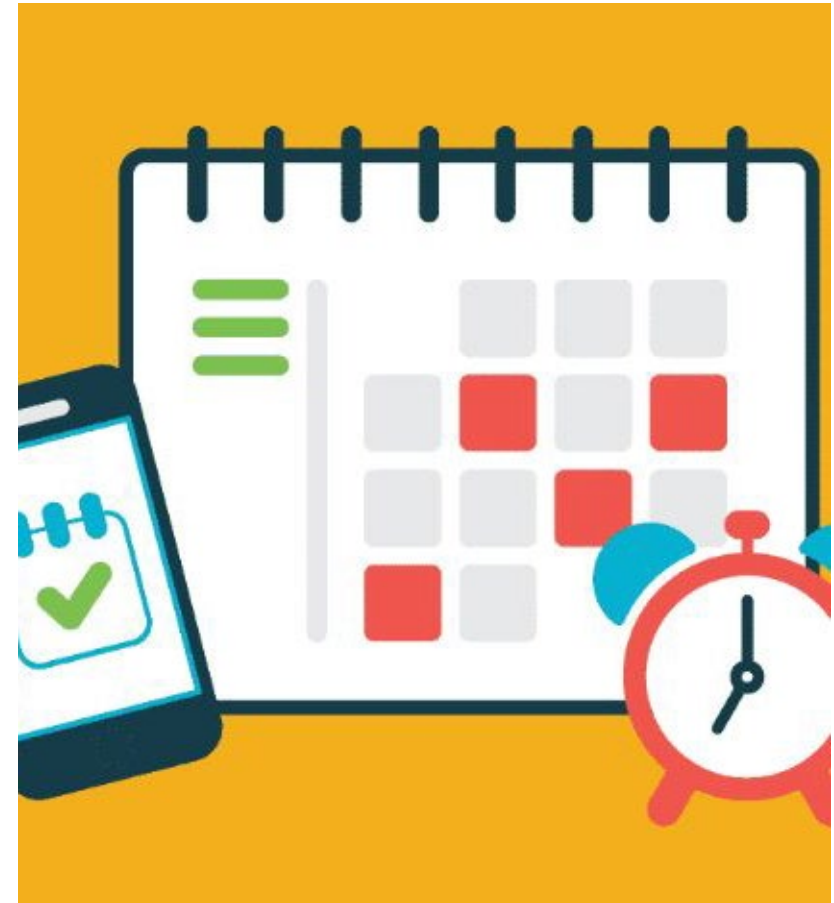
- Officer's formal statement must be recorded electronically, or by some other means.
- Officer must be given complete copy of transcript of formal statement upon request of officer.
  - Officer's request must be in writing;
  - Officer cannot be charged for a copy of transcript;
  - Transcript must be provided to officer without undue delay;
  - Right to copy of transcript of formal statement is officer's right, not right of exclusive representative or attorney.
- Session may be tape recorded by Officer.



## PODPA – REPRESENTATION AND SCHEDULING

Officer has a right to have an attorney and/or union representative of the officer's choosing present during the session when the officer's formal statement is taken.

No formal statement may be taken until a reasonable opportunity is provided for the officer to obtain the presence of an attorney and/or union representative.





## PODPA – ADMINISTRATIVE HEARING

- Rights that apply as part of “administrative hearing” meaning a nonjudicial hearing or arbitration authorized to recommend, approve or order discipline.
- Upon request, investigating agency or officer shall provide other party with list of witnesses that agency or officer expects to testify at “administrative hearing” and substance of testimony.
- A party is entitled to copies of any witness statements in the possession of the other party.
- Officer is entitled to a copy of investigating agency's investigative report.



## PODPA – RELATIONSHIP TO CBA

PODPA rights are in addition to rights in CBA.

PODPA does not diminish the rights and privileges of officers that are provided under an applicable CBA or any other applicable law.





## PODPA - PITFALL

### **TIP: REVIEW YOUR DEPARTMENT INTERNAL AFFAIRS INVESTIGATION POLICY**

Comply with it to the letter of the policy.

Make sure the people doing your internal affairs investigations adhere to policy.

# INTERVIEWING WITNESSES – PREPARING FOR THE INTERVIEWS

## Order

Create a plan for order of interviews

## Outline

Create an outline of questions for each interview – who, what, where, when and why

## Warnings

Prepare Tennesen and Garrity Warnings

## Notices

Send Interview Notices

# PLANNING THE INVESTIGATION (HYPOTHETICAL)

Molly is a new Officer in the Police Department. Recently, Molly disclosed to her female Sergeant that another new Officer -- Jake -- has been texting her inappropriate messages for the last three months, has repeatedly asked her on dates, and has told her that he has feelings for her. Molly's Sergeant reports this information to the Executive team.

- What steps would you take to plan this investigation?
- Who would you interview and in what order?
- What rules and policies would you review?
- What documentation would you gather?

## CONFIDENTIALITY

- An investigator should attempt to maintain as much privacy as possible

An investigator cannot promise absolute confidentiality

- Interview Setup
- Opening Statement
- Interviewing the Complainant
- Interviewing the Respondent
- Record the Interview and Take Notes
- Maintain Impartiality



INTERVIEWING  
WITNESSES –  
CONDUCTING  
THE INTERVIEW

## INTERVIEWING WITNESSES – CREDIBILITY ASSESSMENTS

Corroboration,

Inherent plausibility

Ability to observe accurately

Demeanor

Motive

Motive to falsify

Past behavior and past accusations



# THE INVESTIGATION REPORT

**I. Summary of  
Investigation**

**2. Factual  
Findings**

**3. Policy/Rule  
Violation  
Determinations**

# INVESTIGATION REPORT (HYPOTHETICAL)

## Findings

1. When asked about the allegations Jane did not refute or make any countering statements regarding the transaction, she only stated that she did not remember it. Jane acknowledged that she completed the transactions.
2. John, her supervisor, reviewed the physical records of the duplicate title transaction and found that Jane was the user that logged this transaction and verified in the electronic system that a duplicate title was printed and processed as part of this transaction.
3. John attempted but was unable to review security camera footage of that day and time to verify any of the activity. Recordings are only available for about a week which had already passed.
4. The State completed an audit and determined that with the information available they cannot determine if the customer was or was not the owner of the vehicle which would be the violation of State Statute.

- What additional questions do you have based on these findings?
- How would you revise these findings?
- What additional steps would you take as an investigator?

# THANK YOU

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