

RATH YOUNG PIGNATELLI

National Impact. Uniquely New Hampshire.

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WHAT EVERYONE NEEDS TO KNOW ABOUT INVESTIGATIONS

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By

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WHAT IS THE PURPOSE OF THE INVESTIGATION?

- What is the nature of the allegation?
- Does law require it?
- Does policy require it?

WHAT TYPE OF INVESTIGATION?

- Administrative.
- Criminal.
- Equal Opportunity.
- Safety.
- Background.

KEY POINTERS

- Obtain information and verify facts.
- No opinions.
- No accusations.
- Be calm, professional, unemotional and unbiased.

FIRST STEPS

- Identify policy.
- Set forth standard.
- Assign team.

STEPS TO USE IN PRELIMINARY INVESTIGATION

- Determine necessary documents.
- Develop witness list and order.
- Interview witnesses separately.
- Maintain confidentiality.
- Focus on facts.
- Document interviews.
- Comply with policy or union agreement.
- Comply with law.

THE FIVE “WS”

- What happened?
- When did it happen – off duty?
- Where did it happen – off grounds?
- Why did it happen?
- Who was present and either observed or participated in the incident?

OTHER IMPORTANT DETAILS

- Attitude of respondent – possibility for rehabilitation?
- Repeat behavior?
- Are the rules of conduct clear?
- Was there training and a well publicized policy?

LABOR MANAGEMENT ISSUES

- Is the employee covered by a union?
- Did the employee request a union representative?
- Is the employee entitled to representation rights?
- Does the employee believe he/she may be disciplined?
- Is this a criminal or an administrative issues?

INVESTIGATIVE *WEINGARTEN* SITUATIONS

Weingarten Rights: **an employee's right to have a representative present when being questioned about a possible disciplinary infraction.** The United States Supreme Court rules in 1975, in the case of NLRB v. J. Weingarten, that employees have a right to union representation at investigatory interviews. These rights have become known as the *Weingarten Rights*.

WEINGARTEN SITUATION

- ❑ A bargaining unit employee is being – or is about to be – questioned.
- ❑ The person(s) doing the questioning is a representative of management.
- ❑ Nature of discussion is or will be investigative.
- ❑ Employee being questioned has reason to believe discipline will result from the incident.
- ❑ Employee asks for a union representative.
- ❑ Temporarily end the discussion.
- ❑ Offer the employee the option of continuing without a representative.
- ❑ End of questioning until a union representative arrives, then resume.

EMPLOYEE RIGHTS DURING INTERROGATIONS AND INTERVIEWS

❑ Criminal Interrogation:

- 5th Amendment right to silence.
- 6th Amendment right to an attorney;
- Right to an attorney during all phases of criminal prosecution.

❑ Disciplinary Interview:

- No right to silence.
- Refusal to cooperate can lead to insubordination and dismissal.
- Qualified right to union representation.
- Duty for fair representation.

PREPARING REPORTS

- Thorough!
- Follow legal and policy requirements.
- Use appropriate interviewing techniques.
- Be impartial.
- Be objective.
- Be timely.

ACCURATE AND COMPLETE DOCUMENTATION

- Set forth authority for investigation.
- State purpose.
- List documents reviewed.
- List witnesses interviewed.
- Set forth applicable policies and procedures.
- Summarize allegations.
- Summarize witness statements.
- Make findings regarding whether conduct occurred -highlighting supporting evidence.
- Explain findings if evident is contradictory.
- Set forth findings regarding whether conduct violated applicable rules or policies.
- If requested, make disciplinary recommendations.

BEWARE OF STATUTORY REPORTING REQUIREMENTS

- Child Abuse.
- Hazing.
- Sexual Assault.
- Insurance Company.

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