INVESTIGATION CHECKLIST: 
DO’s AND DON’Ts

A. Planning

☐ Determine purpose and scope of investigation
☐ Who should investigate?
  o Single or multiple departments?
    □ Include security? IT? legal counsel? other?
  o Investigator(s) should be free of bias and appearance of bias.
☐ Determine timeline by which investigation should proceed / be completed.
☐ Will investigation tread into unfamiliar territory? If so, review do’s and don’ts with legal counsel.
☐ Is litigation likely? If so, involve legal counsel.
☐ Is there potential criminal liability? If so, involve legal counsel and determine whether Security and/or law enforcement should be contacted?
☐ Take appropriate interim action, if warranted (e.g. possible suspension or transfer of alleged wrongdoer).

B. Selecting Investigative Tools

- Review materials appropriate to investigation
  ☐ Personnel policies
  ☐ personnel files
  ☐ HR records of previous complaints involving accused and accuser
  ☐ medical and/or disability files
  ☐ surveillance tapes
  ☐ e-mails
  ☐ drug testing results
  ☐ conviction check results
  ☐ background check results
  ☐ security records of entering and leaving building
  ☐ work schedules and/or employee time sheets
  ☐ expense reports and payroll records
  ☐ network or system log in records
  ☐ Internet use reports
  ☐ documents on employees’ local hard drives, personal network drives, and other devices
  ☐ work phone records of incoming/outgoing calls and voice mail messages
  ☐ phone, email and instant messaging records on company cell phones
  ☐ social media content
  ☐ external records (e.g. phone company or bank records)
• Consider other investigative tools
  □ reasonable suspicion drug or alcohol test
  □ “mystery shopper”
  □ psychiatric or medical fitness for duty exam
  □ private investigator
  □ cameras, video recording

C. Interviews
  □ Use two HR professionals; one to ask questions and one to take notes and act
    as witness.
  □ Begin with complainant...then corroborating witnesses...then alleged wrongdoer.
  □ Conduct interview in private setting/minimize interruptions.
  □ If decision maker or accuser relies upon a third party, interview that person.
    Do not rely upon hearsay if it can be avoided.
  □ Consider whether Security should be nearby or on stand-by
  □ Explain purpose of interview.
  □ Let all interviewees know that...
    o The company takes these allegations very seriously.
    o It is expected that employees will actively participate in investigations
      and respond truthfully to all inquiries.
    o There will be no retaliation. If interviewee believes anyone is retaliating,
      it should be reported immediately.
    o Confidentiality is requested from all. Water cooler conversations about
      the investigation or questions asked in interview could impair the
      investigation.
    o Neither interviewer nor company can guarantee confidentiality to the
      interviewee, but will exhibit discretion and share information only on a
      need-to-know basis.
  □ Outline questions pre-interview.
  □ Have copies of relevant documents available to show to witness.
  □ Begin with facts (who, what, where, when, why, how).
  □ Ask open-ended questions (“Tell me about...”).
  □ Listen to answer/observe body language.
  □ Ask follow-up questions as appropriate based upon answers received.
  □ Ask interviewee if there are additional documents or other evidence that
    relate to the investigation.
  □ Create a written record of interviews/timeline that includes dates, locations
    and participants (including second HR rep).
  □ Document impressions: (e.g. witness evasive, angry, tearful, inconsistent).
    Remember...document the behavior and observations, do NOT draw
    conclusions!
☐ Ask interviewee to write his/her own statement in addition to notes. If interviewee resists, type up your notes and have him/her – in your presence – review and edit/sign-off on your notes.

☐ Do not communicate your personal views of the claim or a particular allegation.

☐ Do not characterize interviewee’s responses or provide an opinion in your notes or during any of the interviews.

☐ Do point out inconsistencies in interviewee’s responses and attempt to resolve them.

☐ Revise scope of investigation, as appropriate, to follow up on new information raised in interview.

☐ Re-interview employees to verify information obtained in other interviews or documents. Try to keep the source of contradictory information confidential.

• **Complainant (in addition to above)**
  
  ☐ Ask complainant what outcome he/she is looking for.

  ☐ Do not make any promises (other than that the company is undertaking a thorough investigation)

  ☐ Provide complainant with a deadline by which you reasonably expect to complete the investigation.

  ☐ Update Complainant if investigation will extend beyond deadline so he/she knows the investigation is still in process.

• **Accused (in addition to above)**
  
  ☐ Give the accused full opportunity to share his/her side of the story.

  ☐ Don’t disclose identity of witnesses other than Complainant.

D. **Reaching A Conclusion**

• **Tools to Determine Credibility:**

  ☐ Memory

  ☐ Perception

  ☐ Consistency with statements of others and with contemporaneous written records (e.g. time or cell phone records, e-mails, etc.)

  ☐ Consistency of witness’s own accounts

  ☐ Bias (What else is going on in the workplace? Any ulterior motive?)

  ☐ Witness’s ability to observe

  ☐ Witness’s prior history of (mis)conduct

  ☐ Plausibility of account (common sense)

  ☐ Body language and behavior during interviews and investigation
- Decision-Making

- Review and evaluate all of the evidence.
- Review policies/determine violation (if any).
- Prepare a written factual (NOT conclusory) investigation summary if appropriate. Include:
  - The time of, and information regarding, the initial complaint;
  - A summary of the basic allegations of the case;
  - A summary of the interviews, including credibility assessments;
  - A summary of the investigator's factual findings;
  - A statement of remedial action recommended to final decision maker.

- Decide if disciplinary action is appropriate.
- Decide if counseling or other remedial action is warranted even if no policy violation occurred.

E. Communication and Follow-Up

- Communicate separately to complainant that investigation is completed.
  - If appropriate, communicate results of investigation in general terms.
  - Communicate to complainant any actions to be taken that directly impact complainant.
  - Avoid specifics when addressing actions that only impact others.
- Decide if third parties (law enforcement/regulators) should be notified.
- Communicate separately to the accused that investigation is complete.
  - Impose discipline if appropriate.
- Ensure information is communicated only to those with “a need to know.”
- Ensure no retaliation. Monitor regularly and carefully.
- Audit internal operations that allowed event to occur.
- Revise operational and personnel policies/procedures if and as appropriate.
- Re-train and re-distribute policies if and as appropriate.

F. Preserving Evidence

- Does evidence need to be safeguarded?
- Has electronic data been saved?
- Have key documents been identified and preserved?
- Should photographs be taken to preserve evidence (e.g., evidence of physical injury, defacement of property, offensive graffiti or posters, etc.)?
  - If so, date and time each photo.
- Maintain a separate investigative file – in a secure place - that contains all original documents, statements, photos and other items of evidence relied upon in investigation.
G. PRACTICES TO AVOID

✓ DO NOT copy anyone on documents who is not in the direct decision making loop/avoid “cc”ing scores of others. The fewer in the loop, the better.
✓ DO NOT retain drafts. Once a final document is complete, discard the drafts.
✓ DO NOT begin interviews by asking leading questions. (e.g. “Didn’t you inappropriately touch Jill?” or “Isn’t it true that you falsified your time?”)
✓ DO NOT discuss the investigation or results with anyone who does not have a compelling business need to know.
✓ DO NOT diagnose a medical or psychological illness as the reason for the problem (unless the accused requests a reasonable accommodation).
✓ DO NOT stereotype any of the accused, victims or witnesses.
✓ DO NOT ask judgmental questions.
✓ DO NOT appear to have made up your mind.
✓ DO NOT promise complete confidentiality to the alleged victim or any witness – you have a legal duty to investigate and, where appropriate, to allow the accused employee to know the allegation against him or her.
✓ DO NOT promise an “off the record” discussion. An allegation of unlawful conduct cannot be ignored even if the employee asks that you take no action.
✓ DO NOT coerce witness, or refuse to let witness leave the room.
✓ DO NOT allow witness/accused to bring legal counsel to the interview. This is not a courtroom.
✓ DO NOT allow witness/accused to refuse to cooperate with the investigation, even if there is a threat of criminal jeopardy.
✓ DO NOT incorporate a guarantee of best investigation practices in company policy, but DO keep this list as an informal confidential guideline.