Workplace Investigation Tips from Sherlock Holmes

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Recently, many of our clients have focused on increasing their readiness to respond to and manage employee complaints, workplace investigations, and employment practices liability (EPL) claims.

An excellent example of EPL claims risk is Sherlock Holmes himself. If you're a fan of the stories, you might remember Sherlock's interesting treatment of Dr. John Watson, his associate. A dependable friend and colleague, Watson is often the butt of jokes and quips from Holmes. In *A Scandal in Bohemia*, Holmes comments on Watson's weight gain: "I think, Watson that you have put on seven and a half pounds since I saw you." Although that single statement would not constitute actionable harassment even today, most public entity leaders would cringe at the thought of a supervisor saying those words. And while Sherlock Holmes may not be an inspiration for proper workplace etiquette in the 21st Century, his techniques may be useful as you reflect on how your entity manages workplace investigations. Keep in mind that conducting effective and ethical investigations of workplace issues and employee complaints could reduce your organization's exposure to EPLI claims.

Skillful sleuth Sherlock Holmes typically used the following four investigation techniques.

1. **Forensic Science**: Holmes had knowledge of geology, botanic poisons, medicine and anatomy, and according to Watson, a 'profound' understanding of chemistry. These special skills made Sherlock an adept forensic scientist, able to collect and analyze clues to learn about the past. Forensic evidence loses some of its value over time. The same holds true with workplace investigations. Resolve to begin investigations within 24 hours after a complaint or report of wrongdoing is made. Immediate action will lead to fresher, more accurate investigation results, and timeliness will convey your genuine concern for the wellbeing of your employees.
2. **Holmesian Deduction**: Sherlock's logic wasn't always infallible and neither is that of any entity leader. Play it safe by tracing your steps throughout any workplace investigation. Detailed records will serve as evidence of your actions. Document every step and subsequent action taken during the investigation; be sure to record your reasoning for any corrective action taken against employees, as well as an explanation of any investigation that is inconclusive. Remember Sherlock's mantra: "When you have eliminated the impossible, whatever remains, however improbable, must be the truth."
3. **Disguises**: Holmes used multiple identities to gather evidence during his tenure as a detective. Watson fell for some of Holmes' disguises, stating "The stage lost a fine actor…, when [Holmes] became a specialist in crime." Although disguise is not an option during workplace investigations, you do have the

option of engaging another ‘identity’ to assist with the process. In the case of employee complaints of discrimination or harassment, consider involving an outside facilitator, such as employment counsel, to conduct employee interviews. Employees may be more comfortable speaking candidly to an objective outsider.

4. **Weapons**: Sherlock and Watson both carried pistols, but Sherlock was also known to be skilled at boxing, martial arts, singlestick, and sword fighting. He was rarely left unprepared for a fight, and your entity should aim to be the same. Invest in a diverse array of ‘weapons’ to prepare to manage employee complaints and reduce the likelihood of workplace investigations. These policies and procedures will put your organization at the ready:
    - **Simple Grievance Procedure**: Encourage employees to speak directly with their supervisors about their concerns, rather than co-workers. The former is the first step to resolving concerns, while the latter leads to viral discontent. If your entity has a restrictive, formal grievance procedure, consider its downside implications. When employees believe they must jump through hoops and be subjected to cross examination in order to voice their concerns, they head to the water cooler instead of a supervisor’s office.
    - **Friendly, Frequent Feedback**: An open door policy implies that when employees have concerns, they should first approach their supervisors for an informal discussion and attempt at resolution. Unfortunately, many supervisors who boast about their open door policy are in fact difficult to approach. Instead of promoting an “open door policy” to employees, train supervisors to ask their direct reports for feedback, including whether staff have any concerns about any aspect of the workplace.
    - **Broad Anti-Discrimination and Anti-Harassment Policies**: Adopt broad policies that detail what constitutes prohibited discrimination or harassment in the workplace, as well as the rights of employees who wish to report this type of misconduct. Reinforce these policies by offering employee training or by referring to policies periodically during team meetings. Make it clear that performance counseling, performance-related discipline and constructive criticism are necessary to the success of the workplace and do not constitute harassment. Explain to new employees that respect for one’s supervisor and peers is a workplace requirement.

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