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## **Knowing How to Know: How to Conduct and Navigate the Investigation Process that Becomes the Subject of Litigation**

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# Lessons Learned from *SHRM* Decision

# INTRODUCTION & RELEVANCE

## Summary of the Society for Human Resource Management (SHRM) Verdict

- Federal jury verdict against SHRM (2025)
- \$11.5 million award (compensatory + punitive damages)
- Claims: racial discrimination and retaliation
- Termination followed internal complaint
- Investigation process became central issue at trial

# WHY THIS CASE MATTERS

- Defendant was a national HR professional organization
- Jury expectations were heightened
- Retaliation claim drove damages exposure
- Investigation integrity scrutinized more than policies
- Similar situations faced daily

# *Mohamed v. SHRM*

## Factual Background

- Rehab Mohamed was a senior instructional designer at SHRM
- SHRM's summary judgment motion denied, allowing case to proceed
  - Court flagged concerns about
    - Whether SHRM properly investigated Mohamed's internal complaints,
    - Whether the investigator was neutral and whether the process was adequately documented
- Judge also allowed Mohamed to highlight SHRM's status as an HR authority, despite SHRM's contention that it would unfairly hold the organization to a higher standard than other employers

# WHAT OCCURRED AT TRIAL

- Investigator neutrality
- Timing of performance documentation
- Internal communications
- Separation (or lack thereof) between investigation and discipline
- Credibility determinations

# WHAT WAS REVEALED AT TRIAL

- Blurring investigator and advisor roles
- “Justification building” after a complaint
- Informal or undocumented witness interviews
- Performance discipline closely following protected activity
- Inconsistent explanation across decision-makers

What are the hallmarks or parameters of a legally defensible internal investigation considering the *SHRM* case?

# Parameters of a Legally Defensible Investigation

## Importance of Neutrality and Credible Investigators


- Assigned investigator lacked specialized experience in discrimination-related investigations
- Evidence suggested internal HR investigator coached leadership communications later used to justify performance issues
  - Raised impartiality concerns

## Documentation and Process Rigor

- Lack of documented, neutral investigative process undermined defense
- Courts and juries may closely scrutinize not just policies but actual implementation

## Separation of Complaint Handling from Performance Actions

- Retaliation risk increases when performance actions closely follow complaints
- Performance management actions taken without clear, documented, and communicated criteria can appear retaliatory

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What are best practices for structuring investigation?

# Parameters of a Legally Defensible Investigation

## Game Plan

- What information gathered at the outset?
- Who will conduct?
- Who will assist?
- Who will be notified and when?

## Documentation Character

- Determine whether it will be privileged or not
- Segregate legal opinions and recommendations from investigative materials

## Reaffirm no retaliation for participants

- Confidentiality as best possible under the circumstances

Evaluate and mitigate potential bias or credibility concerns in your investigation teams

# Practical HR Best-Practice Takeaways

## Intake and Tracking

- Implement clear, documented channels for reporting discrimination, harassment, and retaliation claims

## Investigator Qualifications

- Assign investigators with documented training and expertise in workplace dispute matters
- Avoid dual roles that compromise neutrality (e.g., investigator + performance advisor)
- Whether to use outside counsel?

# Practical HR Best-Practice Takeaways (cont.)

## Training for Managers and HR

- Managers should receive training on:
  - How to respond to initial complaint reports
  - What *not* to say or do
  - Escalation practices
- Documentation Standards
  - Detail each step of investigations, including evidence considered and rationale for decisions
  - Maintain separate tracks for complaint, investigation, and performance evaluations
- Communication to Employees
  - Transparency about roles, process, and neutrality in investigations improves trust
  - Clarify consequences of performance issue *before* taking actions that could be construed as punitive

What lessons does the *SHRM* case offer about the relationship between internal complaints and subsequent employment actions (e.g., performance reviews, terminations)?

# Subsequent Employment Actions

## Investigators Wear One Hat

- Separate HR or investigator from Managers or decision maker
- Document, document, document

How do reputational and credibility risks (especially for organizations that brand themselves as “best practice” leaders) factor into internal investigations, and what role should legal counsel play in aligning internal conduct with external messaging?

# Reputational Considerations

## Consistency is key

- Treat likes alike
- Objectivity
- Adherence to policies and best practices

Looking ahead, what proactive steps can in-house counsel take now to anticipate litigation trends — such as privilege challenges or claims of sham investigations — and ensure internal investigations are both legally protective and defensible under scrutiny?

## Looking Ahead: Future-Proofing Internal Investigations

### Anticipating Litigation Trends

- Build independence into the process
- Protect privilege intentionally
- Standardize protocols
- Pressure-test for retaliation risk

# Questions

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