



Legal *counsel*

How to Assess Credibility In

It's the key to any successful inquiry. Here are the steps to take.

WORKPLACE INVESTIGATIONS

by Melanie A. Kastl, Louis Avitabile, & Brian H. Kleiner

Problems such as harassment and violence in the workplace are growing and always require an investigation of some depth. When workers make a complaint, it's the employer's responsibility to look into the charges. You should be able to answer "yes" to these questions:

- Are complaints taken seriously and investigated promptly?
- Can employees validate your sincerity and objectivity in investigating complaints?
- Do you know what you want the investigation to accomplish?
- Do all participants in the investigation receive fair treatment?
- Are the investigation's findings reported? Is the report useful and thorough?
- Is the investigation designed to prevent similar problems in the future?

Is an Investigation Needed?

When someone brings a problem to your attention, the first step is to decide if an internal investigation is required. To make this decision, answer these questions:

- Do the charges place your organization in danger of breaking laws or organizational policies?
- Is more than one employee involved?
- Do you need more information before you can make a decision?
- Is expertise required from others in the organization to make

an informed and accurate determination of the facts?

If the answer to any of these questions is yes, an internal investigation may be necessary. If the answer to all these questions is no, you may be able to resolve the issue by talking to the people involved and explaining the appropriate policies and guidelines.

The interviewer's role is that of information gatherer, not judge.

Who Should Lead the Investigation?

If you decide an investigation is warranted, the next question is: Are you the proper person to investigate the complaint? Use this checklist to determine the answer:

- Do you have any conflicting interests such as personal relationships, bias, or anything to gain from the investigation?
- Are you able to meet deadlines and keep information confidential?
- Will you put the best interests of the organization first?
- Are you fair and impartial? Can you keep from being influenced by peer pressure?
- Can you instill confidence

and establish rapport with the respondent, complainant, and other interviewees?

- Are you able to diffuse anger and tension?

If you don't have the time, skills, or neutrality to lead the investigation, find someone who does.¹

How Should Interviews Be Conducted?

Here are steps for the interviewer to take:

- Prepare interview questions in advance, based on your knowledge of the facts.
- Whenever possible, give face-to-face rather than telephone interviews so that you can assess the non-verbal messages being sent.
- Create a comfortable environment by being cordial and respectful to interviewees. Thank them for their participation, and stress that their disclosures will be kept as confidential as possible and revealed only on a "need-to-know" basis.
- Explain the process and purpose of the interview, seeking the interviewee's commitment to full disclosure.
- Ask interviewees to describe the event in their own words. Then use a checklist to gather other needed information. Hearing interviewees tell their own stories is the best way for you to assess their truthfulness, consistency, and credibility.
- Listen attentively, and watch

for non-verbal cues, such as attitude, body movements, and facial expressions. Such body language makes up 50% to 60% of a conversation.

- **Keep in mind** that the interviewer's role is that of information gatherer, not judge. Seek to understand the experiences and perceptions of the witness.

- **Jot down** your impressions during the interview. If possible, have someone else there to take more detailed notes. It is difficult to watch people's body language and take notes at the same time.

- **When gathering information,** use open-ended questions, which require more than a "yes" or "no" answer. Such questions give you a chance to probe, explore, and clarify feelings and situations.

- **Keep the conversation** focused while challenging the interviewee with confrontational exchange.

- **Allow enough silence** for the witness to think and for you to observe body language.

- **Near the end of the interview,** summarize the evidence, and review it with the interviewee to assure accuracy.

How Do You Judge Credibility?

After the interview, the next step is to assess the credibility of the complainant, respondent, and witnesses. Sometimes — in sexual harassment cases, for example — the validity of the allegations may rest on a single person's testimony. Thus, your ability to evaluate the reasonableness of the facts is vital. Here are ways to assess credibility:

- **Evaluate the truth** of the information given by different parties. Give less weight to facts that are vague, sketchy, or contradictory. Give more weight to information presented honestly and straightforwardly without attempts to hide or exaggerate.

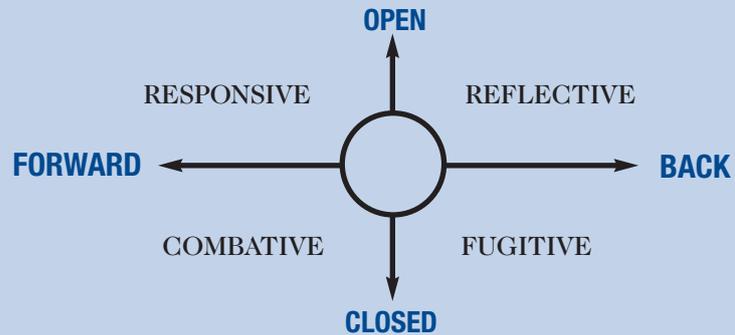
- **Be suspicious** if a person shows lack of cooperation or inability to recall important details.

- **Weigh** people's body language. It can point to inconsistencies, contradictions, and other signs of deception. See Figures 1 and 2 for

Figure 1

The Basics of Posture

There are two groups of body postures: (1) **open** or **closed** and (2) **forward** or **back**. People who sit forward with their body relaxed and their arms out are willing to communicate freely. Those who sit back and hunch their body closed, crossing their arms, are unwilling to cooperate.



details on decoding body language.

- **Go with** your gut feelings. If interviewees strike you as reluctant or hostile, there is probably good reason to be wary.

- **Pay attention** to people's hand movements when they answer questions. If they gesture away from the body, the answer is probably truthful. If their hands touch their body — wiping the forehead or nose, for example — their answer is most likely deceptive.²

- **Consider** people's posture. It shows three things: their level of interest, their level of confidence, and their emotional involvement. (See Figures 1 and 2.)³

- **Draw conclusions** from the way interviewees' use pronouns, nouns, and verbs. When trying to draw attention away from themselves, people use words such as "they" or "them," rather than "I" and passive phrases such as "The files were lost" rather than "I lost the files."

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Figure 2

Decoding Body Language

There are four forms of body language. The first two show truthfulness and willingness to cooperate. The third and fourth indicate someone who has something to hide and is unwilling to cooperate.

1. RESPONSIVE

Engaged: leans forward with open body, open arms, open hands

Eager: leans forward with open legs, feet under chair, on toes

Ready to Agree: closes papers, nods, puts pen down, lays hands flat on table

2. REFLECTIVE

Listening: tilts head, nods, makes lots of eye contact, has high blink rate

Evaluating: sucks glasses or pencil, strokes chin, looks up and right, crosses legs or puts ankle on knee

Attentive: smiles, puts arms behind back, stands with feet apart

3. FUGITIVE

Bored: stares into space, doodles, taps foot, has slumped posture

Let Me Go: looks around, buttons jacket, aims feet toward door

Rejecting: sits or moves back, folds arms, frowns, looks down

Defensive: points feet toward each other, clenches hands

4. COMBATIVE

Let Me Speak: taps fingers, taps foot, stares

Aggressive: points finger, clenches fist, leans forward in a threatening way

Defiant: puts hands on hips, shakes head, glowers

Lying: touches face, puts hand over mouth, pulls ear, looks down, glances at you out of corner of eyes

• **Notice** the pitch and tone of people’s voices and whether they answer questions too quickly or too slowly.

• **Gain additional evidence** by asking people to write their version of the incident in their own handwriting and by tape-recording their statements. Sometimes clues will jump out at you when you read or listen to these transcripts. If not, you may need to hire a professional to analyze the transcripts.

How Do You Reach a Conclusion?

After you’ve reviewed all materials and assessed people’s credibility, it’s time to make a decision.

• **Decide whose version of events** is most believable. Based on this conclusion, determine whether you need to discipline anyone.

• **Review results** in light of laws and organizational policies, and decide what action to take.

• **Match** the disciplinary action to the severity of the infraction. You may, for example, provide resources to help employees change unacceptable behavior or order them to undergo sensitivity training. Or, if the offense is serious enough, you may need to suspend or terminate the guilty party.

• **Be sure** the disciplinary action is legal, enforceable by law, and will stand up to a challenge by the employee in court.

Glossary of Legal Terms

Complainant: Person who has a complaint or grievance. Always thank the complainant for bringing an issue to your attention.

Credibility: Worthiness of belief. Credibility is the watchword of any investigation and is the ultimate source of strength when litigation is inevitable.

Due Diligence: A complete amount of work expended toward a subject. When a worker complains about an action, it is the employer’s responsibility to exercise all due diligence – that is, to take whatever steps are necessary to lessen the effects of the action.

Harassment: Behavior of one or more employees which unreasonably interferes with another worker’s performance or creates an intimidating, hostile, or offensive working environment. Make it clear to everyone that harassment will not be tolerated in your organization.

Investigator: Person who gathers information in a search for the truth. It is important to choose an investigator who employees respect.

Neutrality: Taking neither side, no position. The investigator must assume a position of neutrality throughout the investigation. Doing so will promote confidence by employees and the feeling that the investigation is in the organization’s best interests.

Respondents: People who are called upon to answer a complaint about them. Body language is especially important when interviewing respondents, since they may have reason to disguise the truth.

How Full Is Your Toolbox?

Every manager’s kit should contain these tools to maintain stability in the workforce and to prevent employee litigation:

- complete and updated policy manuals, including anti-harassment and anti-discrimination policies
- frequent performance evaluations
- performance improvement plans
- an internal complaint and disciplinary process
- an in-house investigation process, such as the one described in this article.

• **Once you have concluded the investigation, communicate** the results to the involved parties as soon as possible.

• **Monitor the situation** to be sure the unacceptable behavior has ceased. ■

Footnotes

¹ See Angelica in “Resources.”

² See *Techniques of Legal Investigation* (Illinois: Thomas), *Get the Facts on Anyone* (New York: Macmillan), *If You Only Knew* (California: Griffin Publishing), and *Gentle Art of Interview and Interrogation* (New York: Prentice Hall).

³ See these online articles: “Decoding Body Language” (<http://johnmole.com/articles18.htm>), “Evaluating Hand Behavior During an Interview” (<http://reid.com/materials>), “Statement Analysis: New Investigative Processes to Help You Uncover the Truth” (<http://www.pimall.com/nais/n.intera.html>), and “Template for Investigating Discrimination and Harassment Complaints at the University of Alberta” (<http://www.ualberta>).

Resources

Angelica, Marion Peters, “Eight Steps to Managing Conflict,” *Nonprofit World*, Vol. 20, No. 4.

Conroy, Charles, “Sexual Harassment: Don’t Let It Destroy Your Organization,” *Nonprofit World*, Vol. 10, No. 2.

Doyle, Tanya & Brian Kleiner, “The Most Likely Lawsuits—and How to Protect Yourself,” *Nonprofit World*, Vol. 19, No. 1.

Sroyetch, Nion & Brian H. Kleiner, “How to Conduct Discipline Interviews,” *Nonprofit World*, Vol. 20, No. 4.

Van Vlaenderen, Heidi & Brian Kleiner, “Your Duty to Investigate Workplace Complaints,” *Nonprofit World*, Vol. 19, No. 3.

These publications are available from the Society’s Resource Center, www.snpo.org.

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