Resolving conflict in the workplace is a key issue for employers. Legal requirements have continued to expand in terms of what courts expect employers to do in order to prevent and correct wrongful behavior. In response, employers have increased mechanisms through which employees can lodge complaints related to their work environments. Employees have embraced their ability to provide information to their employers about problems they are experiencing, which has exponentially increased the importance of conflict resolution.

HR and other professionals are now expected to be experts at conducting investigations and resolving conflict in the workplace. In 20 years of resolving workplace conflicts, I have seen employers do many things well and have also seen employers make key mistakes. In this two-part series, I summarize 10 of the most common mistakes that employers make while conducting workplace investigations—which, in many cases, also prove to be the costliest mistakes employers make. Here are the top five:

1. **Failure to Develop and Disseminate Effective Complaint Mechanisms**

Despite companies’ obligation to perform investigations, company representatives still fail to look into issues raised by employees. Sometimes, the failure occurs at the outset, for example when a company fails to provide employees with a reliable complaint mechanism that makes them feel comfortable and safe. Perhaps the company policy does not offer employees an alternative to complaining directly to a supervisor, which may be a problem if the offending party is the supervisor or closely linked to the supervisor. A good complaint mechanism should:

- provide multiple complaint avenues;
- make it clear that once received, complaints of misconduct will be reported to the proper department so that the company can undertake a fair, timely, and thorough investigation;
- indicate that the company will keep information confidential to the extent possible;
- state that if misconduct is found, appropriate remedial steps will be taken; and
- make it clear that employees will not be exposed to retaliation because they lodged a complaint or participated in an investigation about an employee complaint.

2. **Ignoring Complaints**
Assuming a company has established an effective complaint mechanism, how do companies then tend to err? The first mistake a company can make is to simply ignore a complaint.

One reason this might happen is because an employee has told his or her boss to keep the information confidential. Of course, there is some information that warrants confidentiality, but in most cases, if an employee lodges a complaint, the company is under a strict obligation to look into the matter. Another common scenario occurs when an employee raises an issue, but wishes to handle the matter on his or her own. Again, there are certainly circumstances when it is appropriate for matters to be handled by the employee, but too often business representatives fail to look into matters simply because they assume that they are required to honor employees' requests to either keep issues confidential or resolve issues on their own.

As I'll discuss below, there is certainly such a thing as overzealousness, but one good rule of thumb might be to consider what your response would be if someone asked (perhaps on the witness stand) six months or one year from now whether you looked into an issue appropriately. If an employee has said he or she feels “harassed,” “retaliated against,” “discriminated against,” or has used some other buzzword, you should carefully analyze a decision to let the employee solve the issue on his or her own. While most of these decisions (like many decisions related to workplace investigations) will require that you use your common sense and good judgment, be mindful of the strict legal obligations that require prevention and correction of wrongful workplace conduct. Just as importantly, remember that preventing and resolving issues in the workplace is a good business practice.

3. Failure to Plan

Beginning a journey having no idea where you're headed is dangerous in any situation. In the context of workplace investigations, this happens more often than you would think. Beginning a workplace investigation with an idea of the scope of the investigation—such as which questions to explore and answer—as well as a roadmap for how the investigation will proceed, is critical. The plan may change—you might decide not to interview a witness or you might decide to add a witness to your list, you might realize that you need to review and analyze a document you didn’t know existed, or you might need to add an issue to the scope of your investigation. Planning requires staying several steps ahead by identifying witnesses and documents; anticipating issues, such as whether you need to make any immediate changes in the workplace (e.g., putting someone on administrative leave, suspending an employee, or changing someone’s shift temporarily); notifying the appropriate departments and managers about the allegations and the investigation; and possibly limiting the parties’ ability to delete computer records. Keep track of these decisions, making note of the reasons for any change in your planning.

4. Lack of Objectivity

Investigator objectivity is a principal component of a fair investigation. We all may be influenced by our unconscious biases. All investigators should take stock of what those biases might be and make sure that he or she does not allow those biases to influence his or her credibility analysis or influence ultimate conclusions.

What are some ways investigators fail to be objective? One is by reaching conclusions before even beginning the investigation. A common scenario involves a high-level executive who is accused of wrongdoing and an investigator who understands drastic steps (including discharge) will have an immediate negative
impact on the business. In that scenario, there is a high likelihood that the entire investigation will be conducted in a manner that justifies a decision that has already been made—that the executive will not be harshly disciplined or fired under any circumstance.

As an impartial investigator, you should seek to uncover all facts that will help you judge credibility and reach a fair conclusion. In an investigation, there is no such thing as a "bad fact." All information you collect—whether it supports or contradicts the allegations—will help you to reach a fair and reasonable conclusion.

5. Allowing the Investigation to Become a Witch Hunt

This mistake is similar to the bias issue, but usually becomes apparent once the investigation is underway rather than at the outset of the investigation. During the initial phases of the investigation, the investigator may become convinced that one party's version of events is true and he or she may then steer the investigation in that direction. To perform a legally compliant and effective workplace investigation, you must be sure that the investigation does not transform into a witch hunt.

For example, in a sexual harassment case, the investigator might determine that the allegations are not credible before finishing all of his or her work. As a result, the investigator might begin to focus attention on the complainant's behavior exclusively to see if the complainant's story can be challenged or contradicted. One investigation that I had reviewed involved allegations of egregious physical contact and extremely offensive statements that the complainant found to be sexually-charged and offensive. The investigator heard from a few witnesses that the complainant had herself engaged in inappropriate behavior, though the behavior was completely unrelated to the allegations. Although the details might have been relevant, the investigator in that case veered off track—he failed to perform additional work to examine the validity of the complainant's concern and instead spent the rest of his time trying to prove that the complainant had been the bad actor.

In part two of this two-part series on workplace investigations, I'll cover five more employer errors, including failure to reach a conclusion, to draft a final report, or to close out an investigation.