

Conducting Internal Investigations in the Real Estate Industry

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Real estate companies, including property management companies, brokerages, construction, and development and real estate developers, seeking to manage risks and avoid litigation must take seriously internal employment complaints, including those that raise compliance concerns.

Such companies often face unique challenges when dealing with third parties (e.g., subcontractors and managing agents). Below are some key issues to consider.

Third Party Claims

Development projects and worksites in the real estate industry often involve many who are not the real estate company's own employees. Nonemployees who violate the real estate company's policies can create exposure for the company and require the company to conduct an internal investigation. Discrimination, harassment, and workplace safety are examples of conduct that can violate the real estate company's policies. Likewise, complaints by third parties about the company's workers can create liabilities requiring investigation. Third-party harassment can form the basis for a claim in a lawsuit against the company.

Company Policies

Company policies should set out a means for lodging an internal complaint. They also should outline how compliance concerns and internal employment claims will be investigated. The company's managers should be trained to recognize conduct that requires investigation. For real estate companies and employers, policies should be reviewed to ensure they can apply to all who might interact with the workforce, regardless of whether employees or nonemployees are involved. Many companies also provide hotlines so complaints can be lodged anonymously.

Timing Is Key

Real estate companies and employers need to ensure they investigate internal complaints promptly. Memories fade over time and courts hold companies accountable for undue delay. Once aware of a claim or compliance concern, management should review the scope of the issues and develop a strategy when an investigation is warranted. While there is no bright line test, timing matters.

Selecting the Investigator

Not all companies have human resources personnel with the appropriate expertise to investigate complaints. In addition, depending on the individuals who are accused of misconduct, it may be best to select someone outside the organization. Potential claims of investigator bias or conflicts of interest could be detrimental to the integrity of the investigation. Ideally, companies should select an unbiased investigator with the appropriate background and experience, including knowledge of employment law and

the law implicated by the complaint.

Representation

Whether an employer must allow an employee to have representation during an investigation interview will depend on the employee's union status and the possibility of discipline. Union employees are entitled to union representation during investigation interviews if it could lead to any disciplinary action. Otherwise, companies need not allow representation, but may permit it. Real estate industry companies must be careful to ascertain the union status for any third party's employees interviewed as part of an investigation.

Investigation Report

After consultation with counsel, the investigator can review whether to prepare a final investigative report. A written record of the investigation can be important to the defense of employment claims. When a lawsuit is filed, the report can be introduced as evidence. The report should include items such as a summary of the allegations and how the complaint was made, a summary of the scope of the investigation, a list of individuals interviewed, a list of documents reviewed, a summary of the facts gathered, key factual findings, credibility determinations, and the applicability of any policies.

Proper policies and investigations are key to protecting employers. Please contact a Jackson Lewis attorney if you have any questions about the above or about complaint investigations.

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