
A Guide to Virtual Employment Investigations

axiom

Introduction

The rapid shift to remote work has generated new challenges for employment investigations. Most employment investigations now must be conducted virtually, complicating the overall process, and raising a new set of concerns about privacy, security, and data access. Virtual investigations are crucial to get right, as inadequate investigation reports can open companies to litigation risks.

In our recent webinar on navigating virtual employment investigations, experts on labor and employment law addressed what legal leaders must do now to manage their investigation programs, and shared concrete steps to take to conduct successful virtual investigations.

SPEAKERS INCLUDED



David Feldman
Solutions Marketing Director *Axiom*



Saloni Mavani
Labor & Employment Attorney *Axiom*



Hannah Perkins
Labor & Employment Attorney *Axiom*



Liza Ring
Labor & Employment Attorney *Axiom*

THIS GUIDE COVERS

Step-by-step guidance and best practices on how to:

- Set up and run a virtual investigations process
- Maintain investigation integrity in a virtual environment

In a virtual environment, legal leaders must:

- Create consistent, thorough investigation protocols to avoid litigation
- Choose the right investigators with proper training
- Consider how unconscious bias may negatively impact the investigation
- Preserve investigation data to maintain defensibility
- Identify takeaways from investigations and build them into HR or legal processes to continuously improve report quality and avoid future issues
- Use learnings from today's environment: incorporate virtual investigations as a part of future investigation strategies



[CLICK HERE](#) FOR THE AUDIO RECORDING

How to set up and run a virtual investigations process

It is critical that every company have procedures in place to run an effective, thorough investigation process. Every employee complaint has the potential to become a lawsuit, and investigations that lack critical details or contain mistakes and inaccuracies can carry higher risk for litigation. While each company has its own approach to investigations, every investigations process should include consistent protocols and structures, clarity of investigators' responsibilities, investment in training, and a clear plan for data management. A well-run investigations program with consistent protocol will help you avoid litigation.

Set up a successful employment investigations process:

- Follow the mantra: “Thorough, accurate, prompt”
- Decide which department houses the team, such as
 - Legal
 - HR
 - Security
 - Compliance
 - Ethics
- Determine the structure of the team
 - A dedicated team of employees conducting investigations
 - Employees taking on investigations in addition to other duties
 - An outside investigator retained on a case-by-case basis
- Create a consistent structure for investigations
 - How investigations should begin
 - What questions will be asked
 - How investigations should conclude
- Streamline your reporting process
 - Create a single hotline or reporting process
 - Simplify the reporting process for an audit committee by having a single stream of reporting

“If you can get every investigator to follow the same structure, you’ve gone a long way toward having a program with integrity.”



LIZA RING
AXIOM LABOR AND EMPLOYMENT LAWYER

- Consider employee perception and experience
 - Build an environment where your employees trust that their concerns will be handled correctly
 - Solve issues when they are small to avoid litigation or agency charges
 - Maintain investigative independence to reduce perception of bias by employees
 - Properly document and use legal terms to reduce litigation issues
 - Work with an internal person with the proper training or trusted third party
Managers or HR may not have the right skills, or may be perceived as biased

Know your investigators: Are they in the right roles with the right training?

- Know your investigators
 - Clarify when investigations are part of an employee's responsibilities
 - Select the right investigator for the job
Some investigators may have a softer touch, while others may be more aggressive, with a security background. Selecting the correct investigator for the situation is a strategic choice.
 - Remind investigators that their opinion may be important in other contexts, but does not belong in investigations
- Invest in investigator skill sets and training – untrained and unqualified investigators can open a company to litigation risk
 - Outside counsel can put together training protocol
 - Invest in training programs from the Association of Workplace Investigators
 - Ensure investigators are trained properly, with certifications from outside organizations and professional associations, such as Wicklander-Zulawski certification
- Provide training to build awareness about unconscious bias and how to recognize it to help insulate your investigation process from negative impacts

Preserve investigations data, especially when performing virtual investigations:

- Manage your investigations data
 - Use a robust case management system, ensuring all cases are complete and no details are missing
 - Establish a common lexicon across the teams collecting data, especially if data is from multiple sources

“The more ‘arm’s length’ your investigator can be, the better off your report will be.”



LIZA RING
AXIOM LABOR AND EMPLOYMENT LAWYER

- Proactively identify data gaps
 - Move from reactive to proactive
 - Identify gaps in your policies and risk areas, and potential issues to address within your organization to avoid situations requiring additional investigations
- Identify data-driven takeaways from your investigations and build them into your HR or legal processes to continuously improve report quality, existing processes, and defensibility

Maintain investigation integrity in a virtual environment

Even with the rapid shift to remote work due to the pandemic, labor and employment professionals are still required to investigate workplace complaints promptly and thoroughly. Remote employment investigations necessitate unique attention and actions.

Successfully adapt to investigating in a virtual environment:

- Adapt your data protocol or work with a data security team to ensure data is being preserved
 - Data is now stored in employees' homes and devices, and distributed all over the world
 - The ability to locate, authenticate, and collect this data is key to conducting credible and defensible investigations, and made more challenging in a remote work environment
- Invest in tools that allow investigators to review data securely, share the data remotely, and interview witnesses
- Place timeliness and promptness at the forefront of investigations
 - As companies have major layoffs and furloughs, data and witnesses may become inaccessible
 - It is very difficult to get former employees to cooperate, so timeliness is key
- Review and authenticate all relevant evidence
 - Witness interviews
 - Electronic data
 - Documentation

“I worked with a lawyer who always said to me, ‘You’re better off not having a report than a poorly written one, because you will spend all your time focused on defending the document rather than whether you did the right thing.’”



HANNAH PERKINS
AXIOM LABOR AND EMPLOYMENT LAWYER

- Be aware of the new risks technology solutions may pose
 - Web conference tools allow for video and audio recording
 - Confidential documents shared by investigators may be able to be photographed or otherwise accessed

- Inform or remind your employees about the investigations process
 - Remind employees about their duty to cooperate
 - Request employees not to record
 - Ask employees not to copy materials shared on web conferences
 - Ensure employees do not have third parties with them in the virtual interview

- Be aware of limitations of virtual interviews
 - The ability to use non-verbal cues to communicate belief or disbelief, or to have eye-contact levels of communication is often lost
 - Find ways to make up for lost non-verbal cues
 - Have backup evidence to prove or disprove the story you're being told. Use pregnant pauses to communicate your disbelief.*

- Use what you learn in today's environment to improve your process – virtual investigations will be part of investigations strategies in the future

“I used to work in healthcare, and we used to say, ‘You don’t want to go to the surgeon who does a procedure once a year; you want the person who does it day in, day out’. I think investigations is something similar to that.”



HANNAH PERKINS
AXIOM LABOR AND EMPLOYMENT LAWYER

Get in touch with us today

Whether your company needs support with employment investigations, compliance with changing labor and employment regulations, or employee policies and procedures, Axiom’s network of 100+ labor and employment lawyers can provide your team with the experience and expertise that you need.

@ axiom@axiomlaw.com

📞 +1 (917) 237-2900

🌐 www.axiomlaw.com/contact-us