



In-Depth Discussion | February 22, 2018

## **DEAR LITTLER: CAN I IMMEDIATELY FIRE A VP BASED ON SEXUAL HARASSMENT ALLEGATIONS?**

By: Helene Wasserman

**Dear Littler:** I am a senior HR manager at a mid-sized company. One of our female team members just reported her manager, a vice president, for inappropriate conduct. She claims that what started out as mild flirtation on his part has progressed to outright sexual solicitation and unwelcome physical contact. Our company just can't accept this kind of behavior. Can I go ahead and terminate him immediately?

- *Anxious in Albuquerque*

**Dear Anxious,**

Your question touches on a very important issue that has gotten somewhat lost in the flurry of recent sexual harassment allegations. It does seem that one day we hear about allegations against a celebrity or industry leader, and the next day we hear that he has lost his job.

You, and your employer, certainly find yourselves in a delicate position: you are obligated to address this report, and you aren't about to let this person off the hook if the claims have merit. While many of us can certainly appreciate that predicament—particularly with a high-level executive under scrutiny—you should take a breath and try to avoid a kneejerk response.

With any harassment or discrimination allegations, involving any employee, it is vital to undertake a thorough investigation. In fact, your employer probably has established policies concerning how to handle such claims. (If not, it should!) You would, of course, want to review and comply with any

protocols in place. And if this particular VP has an employment agreement, you should also review that document to see if it defines terminable offenses or otherwise addresses disciplinary procedures.

In any event, the investigation step is critical. Otherwise you essentially adopt a “ready, fire, set!” mentality, which can lead to errors and even litigation. Even though the employee’s claim sounds terrible, and even though you are taking it seriously—as you should—and even if you personally believe her, you have to pause and acknowledge the possibility that the allegations could be false or exaggerated. Until an investigation is conducted, and more of the truth peeled back, you should proceed cautiously, because you may not have the entire story. As always, your employer will want to make a fully-informed determination and thus should be wary of making personnel decisions without first gathering details.

As you prepare for an investigation, be sure that the individual handling that process has been trained and knows how to go about it. A sexual harassment investigation is far more intricate than simply asking the accused if he did it, or asking the two people involved what happened.

Because of the importance of the investigation, it is often recommended that the employer retain an outside investigator, especially if the alleged harasser is a senior executive in the organization. An outside investigator offers several advantages. First, this person is a trained expert with experience in conducting sensitive investigations. After all, this work is their entire business. Second, an outside investigator will not be influenced by any internal politics, favoritism, or preconceived perceptions of the people involved. His or her livelihood does not depend on this VP’s or the employer’s success. That detachment can help ensure a neutral and fair investigation. Third, hiring a dedicated, impartial investigator signals—to the alleged victims, their coworkers, and others—that the company is taking these allegations very seriously. Furthermore, this step can encourage cooperation and trust in the investigatory process, which benefits everyone involved.

If an employer faces allegations lodged against an employee who is not high up in the company, the employer certainly could perform an investigation in-house. Nonetheless, that individual needs to know how to run an investigation, including who to talk to and when, how to ask questions, and how to document the process. Investigators (whether internal or external) also need to know how to appropriately present their results to stakeholders and the ultimate decision-makers.

In short, Anxious, you should consider holding off on any discipline until you take the time necessary to ensure a proper investigation can be conducted. Depending on the circumstances, you could impose other conditions while the investigation unfolds, such as a suspension of the accused. But in this situation, it might be better to be patient and complete your due diligence before making any major decisions.