

# INVESTIGATIONS



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## An Affirmative Defense May Exist if:

Once the Employer knew or should have known of a violation;

- it investigated
- &
- took prompt action reasonably calculated to correct the problem.



# Who Should Investigate?

- Supervisor
- HR
- In House Counsel
- Outside Investigator
  - Non-Attorney
  - Attorney

# Identify the Investigator's Role

- To Be Neutral
- To Gather Information
- To Present Information to Whom?
  - Orally?
  - In Writing? (Signed Witness Statements?)
- To Draw Conclusions?
- To Make Recommendations?

# UNIVERSAL RULES OF THUMB

- R\*E\*S\*P\*E\*C\*T
- Neutral
- Let common sense rule
- 0 Tolerance for retaliation
- Document each step

## THE MOST TYPICAL STEPS

- Enlighten the Accused
- Interview:
  - Complainant
  - Accused
  - Witnesses
- Present the Evidence
- The Decision Makers Review the Evidence
- A Decision is Made
- The Investigation is Closed:
  - Accused
  - Complainant

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[2018 Essential Employment Law eConference](#)

First appeared as part of the conference materials for the  
2018 Essential Employment Law session

"Investigating Sensitive Employment Complaints"