

Employment Disputes at Law Firms: Why External Aid Trumps an Internal Crusade

BY KIRALYN LOCKE AND DANIELLE FITZSIMMONS

Generally, an employer has a duty to investigate allegations of workplace discrimination or harassment. There have been many articles written that outline the importance of hiring an outside attorney to conduct such investigations. A large reason behind this is because attorneys are often considered to be “experts” in this area. But what happens when the “experts” are the ones accused of mistreating their employees or coworkers? Should law firms conduct their own internal employment investigations? The short answer is no.

While many lawyers are certainly capable of conducting their own internal employment investigations, the benefits of retaining outside counsel far outweigh any perceived benefit of handling the situation internally.

WHEN IS AN EMPLOYMENT INVESTIGATION NECESSARY?

Under state and federal law, employers have a duty to investigate and take prompt action when (1) complaints of discrimination or harassment are raised, or (2) employers should have known that discrimination or harassment was taking place. If one of these situations occurs, and

the employer does nothing in response, the risk of potential liability increases.

Common examples of when employers should initiate an employment investigation include:

- An employee has suggested that they are experiencing workplace discrimination or harassment;
- An employee has affirmatively stated that they are experiencing workplace discrimination or harassment;
- An employee has retained an attorney in connection with a workplace dispute; or
- An employee has filed a lawsuit against their employer.

Law firms are not exempt from employment issues. Perhaps a legal assistant feels he is being harassed by his peers. Perhaps an associate is experiencing unwanted advances from a shareholder. When one of the above scenarios takes place, a law firm is confronted with the same question as any other employer – do we handle this ourselves, or do we hire someone else?

WHO HAS THE KNOWLEDGE AND EXPERIENCE?

Let’s face it. Lawyers are not knowledgeable in every area of the law.

Sure, we all went to law school, we were all educated on a wide variety of legal topics, and we all studied tirelessly for the bar exam. But once we began working and established our practice areas, how much of the other knowledge actually stuck around? If you are a seasoned criminal defense attorney and you can still recite the rule against perpetuities, that is quite impressive.

Just because someone is an attorney does not mean they are qualified to conduct an employment investigation. Employment law, like any other area of the law, is nuanced and complex. Lawyers and law firms should want someone who is knowledgeable and experienced in these nuances and complexities to conduct their employment investigations.

WHO WILL BE UNBIASED?

Even if a lawyer has experience in employment law, or the law firm has an employment law attorney, it is still advisable to have outside counsel conduct an employment investigation. Having knowledge and experience is only one piece of the employment investigation puzzle. Another important piece is being able to remain unbiased.

Employment investigations are aimed at answering many questions, one of which is often: did the employ-

er do anything wrong? If an employer is conducting the investigation for themselves, the question turns to: did *I* do anything wrong? While we would all like to believe we can remain unbiased, it can be difficult not to get defensive when it is our own business on the line.

If a lawyer or law firm can truly remain unbiased, that is fantastic. However, it is also important to remove any *appearance* of bias. Employment investigations can be delicate. If lawyers or law firms can uncover the necessary information, but are then accused of being biased, they can wave goodbye to any credibility they may have had.

WHO WILL SAVE YOU TIME?

Another factor to consider when faced with an employment investigation is time. Employment investigations can be extremely time consuming. Oftentimes, there are many parties to be interviewed, many details to be discussed, and many unexpected twists and turns. When a law firm conducts its own employment investigation, it is using valuable time that could be spent on keeping the business running and working with clients.

If a lawyer or law firm is attempting to conduct an employment investigation while also continuing its normal representation of clients, it may end up with a low-quality employment investigation and a low-quality representation of clients. When there is low quality representation of clients, a

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legal ethics investigation could come next. At that point, the law firm would have two problems to deal with when one of them was reasonably avoidable.

Lawyers cannot outsource the representation of their clients (as much as we may sometimes wish), but they can outsource their employment investigations.

WHO WILL SAVE YOU MONEY?

If you are not already dissuaded from conducting your own employment investigation, wait until you hear this next part. Hiring an outside employment investigator can actually save lawyers and law firms money. You may be wondering how spending money can save money. Let's break it down.

Regardless of whether lawyers bill their time by the minute, charge a flat fee, or take a portion of a settlement, lawyers and law firms make money by representing their clients.

If lawyers are spending their time conducting an internal employment investigation, this leaves less time to represent clients. With less time to represent clients comes less money. Hiring an outside employment investigator is one of the few times in life where spending money can save money.

FINAL THOUGHTS

Lawyers are smart. Many lawyers are capable of conducting their own employment investigations. However, just because someone can do something does not mean they should do something. The benefits of hiring outside counsel far outweigh any perceived benefit of handling the situation internally. Next time you or your law firm is faced with a potential employment investigation, take a moment to think about who you are going to call. (Hint: It's not *Ghostbusters*).

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