

Cont'd | *Making the Most of Your Twenty Minutes*

15. If you cite to a new case during argument, provide a cite letter.

Sometimes in preparation for argument you discover a new case, or maybe a case you just didn't find in preparing the brief. If you are going to refer to it during argument, provide the court with a cite letter either before or after the argument. And a cite letter is just that – a letter stating that you plan to or did refer to this case during argument. Do not add additional argument.

Hopefully, these tips will make your argument preparation easier and your argument more effective and enjoyable.

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Legal Mojo | *Investigating an Employment Complaint*

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What if an employee of a business makes a complaint (internally or publicly) about workplace misconduct? What should the business do?

It depends on many things, but one important decision is whether or not the business needs to investigate the complaint at all. For example, would a lower-level review of the complaint be sufficient? How serious is the complaint? Does it allege a violation of company policy? Does a company policy specify particular steps for addressing it?

Suppose an investigation is needed. A *successful* investigation clarifies the objective facts, and then resolves the complaint and improves the workplace so that everyone can get back to business. Here are some possible steps to take in investigating an employment complaint.

1. Decide preliminary issues.

First, decide preliminary issues. For example, what should be the goal(s) of the investigation? Some possible goals are to (a) figure out whether misconduct has occurred, (b) stop the misconduct and determine how to prevent it in the future, and (c) lay the groundwork for taking appropriate action.

What status should an accused employee have during the investigation? The goal is to balance the need to prevent further damage to the complainant and the business with the need to minimize adverse action against an employee who later could be exonerated. Some possibilities are to (a) give the employee paid time off until the end of the investigation, (b) transfer the employee, (c) suspend the employee, and (d) leave the employee's status unchanged. Depending on the type and seriousness of the allegations, the complainant may need to have the accused employee moved to a different area of responsibility, or moved out of the chain of command.

And one cardinal rule – no retaliation against the complainant, even if the complaint is later deemed unfounded.

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2. Select an investigator, and make a plan.

Second, select an investigator, and make a plan. Possible investigators include lawyers, human resource employees, and high-level managers. Optimally, an investigator lends credibility to the investigation, communicates diplomatically, and is discreet. The investigator should be ready for the unexpected, particularly when interviewing witnesses. It also is helpful for an investigator to be knowledgeable about employment laws. A benefit to having a lawyer conduct an investigation is that the business may be able to protect some communications from disclosure based on attorney-client privilege rules, if done properly.

Business leaders and the investigator should make a plan. The plan should (a) identify witnesses and include an interview schedule, (b) include a list of common questions to ask all witnesses, (c) identify documents that need to be located and secured quickly, (d) establish a process to unearth facts that are material, and (e) proceed to reach a fair and reasonable conclusion.

3. Investigate, and make a report.

Third, investigate, and make a report. Conducting the investigation may involve interviewing witnesses, reviewing documents, and searching employees' work areas and computers, if necessary. An investigation should be conducted legally and discreetly so as to minimize the risk of potential claims of defamation, retaliation, invasion of privacy, and malicious prosecution. During the investigation, witnesses and others should be given assurances that there will be no retaliation permitted with respect to the complaint.

The investigator should prepare a private report – written or oral – that focuses on meeting the goal(s) of the investigation identified at the outset. The report may contain purely factual findings, or it can include recommendations for certain actions to be taken as well.

4. Act on the results.

Fourth, act on the results. Once the report has been delivered, some hard decisions may be required. The business should act on the report – in a fair and reasonable way – to deal with the root cause of the complaint, including taking appropriate disciplinary actions. For example, the business may take action against an accused employee, or clear the employee of wrongdoing. It also may implement stronger workplace controls or rewrite policies. Taking these steps requires balancing important considerations, and avoiding the creation of potential claims by one or more affected parties. Fairness in both approach and consequence will go a long way toward protecting the business and the employment setting.

In conclusion, with these steps in mind, the businesses you help to protect may be better prepared to make investigatory decisions in the event of an employment complaint.

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