

HR QUESTION ? of the month



Should you share investigation files with suspended employees?

Question: I have an employee who was suspended for insubordination. He has requested that we interview the witness, which I had already done, and he would like to review. Am I required to share the statements/documentation with him?

Response: The employee in question is not entitled to review the employer's investigation file, including any witness statements, notes, or other documents that were relevant to, and made part of, the investigation and we do not recommend that the employer disclose the same. The investigative file should be kept separate from the personnel file and documentation and information contained therein is the property of the employer; absent a contract that entitles employees otherwise, it should not be subject to disclosure to the employee who was under investigation.

Certainly the employer can and should let an employee who has been the subject of an investigation know what the outcome of such investigation was, particularly if the outcome results in disciplinary action as to the employee in question (you indicate here that the employee was suspended so presumably he was already notified of the employer's action). To the extent the employee in question asked the employer to include in its investigation an interview of a witness or co-worker who may have had additional information and the employer did so (and employers generally should meet with individuals identified as having relevant knowledge in any investigation), the employer is not required to let the employee know what transpired during that conversation (nor must the employer disclose any written witness statement or similar document).

If the employer's subsequent investigation caused it to revisit its disciplinary decision (suspension), of course it can and should let the employee know and then take whatever steps are necessary to rectify the matter (i.e., if the suspension was unpaid and the employer determined subsequently that such disciplinary suspension was inappropriately issued, it can always issue back pay to make the employee whole). On the other hand, if the employer did not learn anything from the witness who was interviewed that gave it any reason to revisit its decision, the employer is not required to do so, and can simply let the employee know that it has investigated the matter and that its original disciplinary decision stands. Beyond this, he is not entitled to know or see more relative to the employer's investigation, including meetings with and statements taken from witnesses.

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