



*This article presents general guidelines for Georgia non-profit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## Investigating Employee Complaints

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A primary goal for non-profit organizations, particularly organizations with limited budgets, is to ensure that they have sufficient funding to execute their missions, and to ensure that maximum funding is used toward activities that elevate the organization's mission. If a non-profit is sued, litigation could certainly deplete the organization's assets and divert focus and time away from the work of the non-profit. If a non-profit has employees, one sure source of potential litigation is the complaints of employees and former employees alleging that an employer failed to conduct any or an effective investigation into employee complaints. Often, non-profits overlook the importance of timely, properly and thoroughly investigating employee complaints. However, a non-profit's effective response to a complaint may limit the organization's liability in a lawsuit. Accordingly, non-profit organizations must ensure that they understand the requirement and necessity to investigate employee complaints and that they have effective mechanisms in place to investigate and resolve employee complaints.

Anytime an employee complains about actions or behavior which may constitute illegal treatment; workplace misconduct; violations of various laws, including anti-discrimination, anti-harassment and retaliation laws; and violations of employer policies, an employer must take some action. Once an employer receives information, formally or informally, which may sound like a complaint, the employer should investigate promptly and thoroughly.<sup>1</sup>

As a first step, it is important that non-profits train key employees, typically managers and supervisors, to recognize complaints, how to identify conduct that may constitute violations of laws and policies, and how to respond to those issues when they are observed or reported. An initial complaint may not always be presented clearly or in writing. In fact, it is not uncommon for an employee to mention a concern about workplace misconduct in passing or in general conversation. Further, the employee may ask that the organization not investigate, and suggest that the concern is not a big deal. In these cases, a non-profit still has a duty to investigate and take corrective action, if warranted. Absent appropriate training, such a complaint may either never be

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<sup>1</sup> While the best practice is almost always to investigate, please be aware that an investigation may not be required if the misconduct or violation is clear and unequivocal, and if the alleged wrongdoer has admitted to the misconduct.

recognized as a complaint, or in fact, never be followed up on by the non-profit. This failure to take action could expose the non-profit to significant liability if a lawsuit ensues.

Once a complaint or concern has been reported to, or observed by a manager or supervisor, the information should immediately be reported by that person to the individual designated by the non-profit to receive employee complaints. The following practices are recommended to be followed by non-profits when investigating complaints:

- Investigate timely.
- Ensure that complaints provide enough details to allow a thorough investigation to be conducted. The non-profit should use a written complaint form to gather essential facts underlying the complaint.
- If the complaint is related to harassment, if possible, separate the complainant from the alleged harasser to minimize the potential for continued harm.
- Ensure that the investigation is conducted by an objective and qualified person. This may be an internal employee, but may also involve including outside legal counsel or other qualified persons outside of the organization to facilitate and conduct the investigation.
- Gather information relevant to the investigation to include, but not limited to, document review, policy and handbook reviews, and interviews of complainant, alleged wrongdoer and any witnesses.
- Ensure that investigative notes and reports record verified factual information only, and does not include mental impressions, conclusions or speculation, particularly those suggesting fault or liability.
- Ensure employees know that there will be no retaliation for participation in an investigation.
- Based on the results of the investigation, take appropriate corrective action.
- Document actions taken related to receipt of the complaint, the investigation, the conclusion or response to the complaint and the basis for the organization's action.
- All documentation related to the complaint and the investigation should be maintained in an investigative file that is separate from employee personnel files.

Incorporating the above practices in your organization's investigation of employee concerns is a significant first step in minimizing or eliminating potential liability of the non-profit from employee lawsuits. In addition, it will foster an environment wherein internal complaints are quickly and effectively investigated and resolved, which should send a positive message to your employees about your workplace culture.

If you have questions about a complaint you may have received or about how to conduct an internal investigation, contact your PBPA attorney.