



Defective Internal Employment Investigations Can Create Liability



By Jessi T. Gasbarro, Lozano Smith



Navigating the public school employee discipline landscape under the Education and Labor codes can be tricky business. With limited resources, personnel shortages, and ticking timelines, when an employee issue arises that requires an investigation, it can seem like day-to-day operations come to a halt.

However, it is during these times that a thorough investigation should be viewed not as a hindrance, but as a safeguard from liability. With numerous considerations in mind, many school districts choose to do their own internal investigations. In such circumstances, caution should be taken to ensure the process clearly demonstrates the district took care in its carrying out the investigation.

An exemplar California Court of Appeals case from 2014, *Mendoza v. Western Medical Center Santa Ana*, lays out several key components of a sufficient employment investigation. Unfortunately for the Western Medical Center defendants in the case, the court ultimately held that the defective underlying investigation was, in itself, evidence of a pre-textual, and improper, motive for discipline. The facts at the trial court level established that Mendoza, an employee of Western Medical Center, had brought a complaint of same-sex sexual harassment, claiming that a supervisor, Erdmann, made inappropriate sexual advances and displayed his genitals to him. Erdmann claimed Mendoza consented to the conduct and even initiated it. Human resources initiated an investigation and decided to fire both men. Mendoza sued Western Medical Center for wrongful termination. At the trial court, Mendoza was awarded \$244,000.00 in damages.

The Court of Appeals ultimately reversed the decision due to incorrect jury instructions, but also found that a jury could find, based on the substantial evidence presented at trial, that the Defendant's stated motive for Men-

doza's termination was a pretext, using the deficient investigation as evidence, which would support a finding of liability.

The Court of Appeals raised several issues of deficiency with the investigation process:

- The investigator was not a trained human resources person, but the employees' supervisor;
- There was no preparation of a formal investigation plan;
- The investigator did not take written statements;
- The investigator also did not immediately interview the employees and delayed the investigation;
- Mendoza and Erdmann were interviewed together rather than separately, which impacted the integrity of the record; and
- There were no other interviews taken from anyone other than Mendoza and Erdmann, such as co-workers who might provide insights as to the credibility of the two men.

The Court reprimanded the defendants and the investigation process by saying, "[t]he lack of rigorous investigation is evidence suggesting defendants did not value the discovery of the truth so much as a way to clean up the mess uncovered when Mendoza made his complaint." Ultimately, based on the defective investigation process, the Court held that liability for wrongful termination could be determined based on the improper investigation process alone.

Based on the Mendoza case, when faced with the need for an investigation, school districts should take care to conduct an appropriate internal investigation, or refer the investigation to outside legal counsel in complex situations. The deficiencies noted by the Mendoza court serve as a guideline for key components to a sufficient and legally defensible investigation.

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