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Leverage The 'Honest Belief Rule' When Conducting Workplace Investigations

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Conducting investigations of disputed workplace events is a routine responsibility for HR leaders. Faced with disputed facts, employers can make reasonable fact determinations based on a diligent investigation and still obtain summary dismissal of a discrimination claim. A recent U.S. Court of Appeals for the Sixth Circuit decision confirms how employers can best assure that the results of their investigations are respected and upheld.

In *Rafee v. Volvo Group North America, LLC*, Case No. 21-5891 (June 3, 2022), the plaintiff supervisor was terminated for directing combative behavior and profane language to a direct report for failing to complete a task assigned to him. During the investigation, the employee who was yelled at neither confirmed nor denied the allegations, but instead was dismissive of them. The supervisor completely denied the incident occurred and claimed he would never use profanity with a subordinate coworker.

However, three uninvolved bystander witnesses provided consistent accounts of what transpired in separate interviews. Each confirmed that the supervisor yelled at his team member in a combative manner using profanity.

The Sixth Circuit upheld the trial court's summary dismissal of the 66-year-old supervisor's age discrimination claim based on the results of the investigation. The court relied on the "honest belief rule" to rebut the supervisor's statement that the alleged reason for ending his employment had no basis in fact. Instead, the court concluded that the employer had

made a reasonably informed and considered decision before deciding to end the plaintiff's employment, including providing the employee with an opportunity to produce proof to the contrary. Based on its investigation, the HR leader and manager involved concluded the supervisor was downplaying the incident and decided that the account of the three uninvolved witnesses was more credible and explained why. The record supported the employer's honest belief.

Here are four key takeaways from this decision for HR leaders conducting investigations with conflicting evidence:

1. Make sure your investigation is "reasonably informed and considered."
2. Interview all witnesses and consider all evidence – don't leave obvious gaps in collecting the facts.
3. Always provide the employee an opportunity to respond to what you have learned from your investigation before making the decision to take corrective action or discharge the employee.
4. Explain in a short but detailed investigation report the facts you determined and how you made credibility decisions and the reasonable basis for them. Many investigation reports do not include this analysis. Investigation reports often simply summarize the witness interviews and don't explain the rationale for their conclusions in a way that has standalone meaning.

If the factual determinations are based on a sufficiently diligent investigation and analysis, as the Sixth Circuit concluded, that ". . . the plaintiff or the court might come to a different conclusion if they had conducted the investigation is immaterial."