

Fact-Finding Tips

Introduction

A fact-finding is a structured conversation with an employee aimed at establishing the facts around a particular issue, event or set of circumstances. Fact-findings are primarily conducted when there is a potential for corrective or disciplinary action, including something as simple as a written warning. Although there are fact-finding components within larger investigations, fact-findings often begin and end with visiting with the employee.

Benefits of a Fact-Finding

There are many benefits to a fact-finding, including the following:

- Establish the facts around a particular issue, event or set of circumstances.
- Get an employee's side of a story, which is the fair thing to do.
- Gauge an employee's honesty, credibility and willingness to be forthcoming.
- Identify factors that the supervisor may have missed, as well as opportunities for process review or future training.
- Add credibility and potentially make corrective action easier for an employee to accept after they have had the opportunity to share their side of the story.
- Develop well-rounded facts to help protect the university, the department and the supervisor should a disciplinary decision be challenged.
- Round out documentation necessary for due diligence responsibilities.
- Meet the standard of adequate cause in cases where discipline (e.g. suspension or termination) is a possibility.

How To Prepare for a Fact-Finding

- Do your homework in advance:
 - Gather as many facts as you can to help develop the fact-finding questions.
 - Read all applicable policies and procedures, including departmental rules, expectations and guidelines.
 - Read the employee's last two performance evaluations, if applicable.
 - Look for proof the employee knew about the rule, expectation or appropriate behavior involved in the potential disciplinary action. For example, did they sign an agreement to the rule or expectation? Was it covered in a staff meeting or orientation?
 - Develop the core fact-finding questions in advance.
 - Consult HR in advance and include an HR representative in the room unless you are extremely comfortable with fact-findings.
- Pick a neutral location away from prying eyes and ears.

- Include HR as a note taker or extra fact-finder, especially if the potential for discipline exists.
- Be cognizant about how many management staff are in the room and ask them to take notes.

During the Fact-Finding

- Introduce the purpose of the fact-finding. Explain that no decisions have been made, but there is the possibility of corrective or disciplinary action and you want the employee's perspective on the situation (see sample language below).
- Request complete honesty and willingness to be forthcoming (see sample language below).
- Lay the groundwork. Discuss the specific policies and expectations that may be involved and seek confirmation that the employee understands them.
- Only ask questions. Refrain from explanations, teaching, mitigating statements, and talking about other employees or topics not directly related to the fact-finding – these items can be discussed later. Briefly answer any specific questions the employee asks only if it will not compromise the fact-finding.
- Ask all prepared questions that remain relevant during the conversation and ask follow-up questions as needed.
- Use the power of a pause if an answer does not feel complete or honest. People will usually fill silences with interesting information.
- Watch for credibility and honesty. If your pre-established facts do not coincide with the employee's version, seek to reconcile the differences. This will help you gauge credibility and establish true facts.
- Be open to learning new things, even things that may not be flattering to you or the department.
- If the discussion or explanation includes medical or disability-related information, take notes and ask clarifying questions but do not comment. Contact HR immediately.

After the Fact-Finding

- Carefully document the fact-finding.
- Consult your HR Business Partner (if they were not present at the fact-finding).
- Consider how you and your department have responded in the past to the same or similar situations. HR can provide a university-wide perspective.
- HR will consult with the Office of the General Counsel if necessary.
- The employee will be nervous, so make the resolution of the fact-finding a top priority. Complete the necessary steps and deliver the news about the results as quickly as possible.

Sample Format

1. After the introduction, ask questions to confirm the employee's job title and basic duties, time in the job and time with the university. This is mostly for future readers of your documentation.
2. Seek to confirm that the employee understands the rule/policy/expectation that may have been violated.
3. If appropriate, briefly discuss prior warnings/letters related to the situation and the employee's understanding of the meaning and outcome of those warnings.
4. Ask about the issues/events that prompted the fact-finding. A chronological approach often works best. Begin with open-ended questions that ask for the employee's side of the story in broad terms. Ask more specific questions afterwards. The goal is to avoid leading questions and give the employee a chance to tell you what they feel is important.
5. Ask follow-up questions to explore any discrepancies within the employee's own account or with your current understanding of the facts. Avoid interrogating the employee, but do seek to better understand and establish the facts.
6. Remember to watch body language and mannerisms. Gauge credibility.
7. Avoid taking notes while the employee is talking. It's best to have an HR Business Partner or another person from the reporting line in the room as a notetaker.
8. Document your questions and the employee's responses.
9. Close by giving the employee an overview of the next steps and the approximate time until you will get them more information.
10. If appropriate, remind them that any retaliation against other employees involved will be referred to the Office of Civil Rights and Investigations (OCRI) for investigation.
11. Thank the employee for their time.

Sample Language

Introducing the Purpose

Our purpose today is to conduct a fact-finding to discuss with you (e.g. recent work performance issues; the events that transpired about X). We do this to gather information and your perspective. It helps the department and the university to determine what, if anything, could be an appropriate corrective or disciplinary action.

Honesty

My expectation is that you will be completely forthcoming and honest. Do you have any questions before we begin?

Non-Retaliation

As part of a fact-finding, I need to remind you and everyone involved that retaliation against anyone involved is prohibited. Any reports of retaliation must be referred to the Office of Civil Rights and Investigations.