### **Office of Human Resources**

# Fact Finding Tips and Suggested Format for Supervisors February 2014

Although there are components of fact-findings that exist with larger investigations, fact-findings are primarily conducted when a potential corrective or disciplinary action exists, including something as simple as a written warning. Unlike other investigations, fact-findings often begin and end with visiting with the employee.

# **Benefits of a Fact-Finding**

- To establish the facts around a particular issue, event or set of circumstances
- Get an employee's side of a story
- They are the right thing the fair thing to do
- By developing well-rounded facts, it helps to protect the institution, the department and the supervisor should a disciplinary decision be challenged
- Rounds out documentation necessary for our due diligence responsibilities
- Helps identify areas or steps that the supervisor may have missed or identifies opportunities for process review or future training
- Discipline (suspension, termination) requires us to meet the standard of adequate cause
- Allows us to gauge an employee's honest, credibility and willingness to be forthcoming
- Adds credibility and may make corrective action easier to accept for an employee after the opportunity to share their side of the story

#### How To

- 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, guidelines
  - o Read the prior two performance evaluations
  - Look for proof the employee knew about the rule, expectation or appropriate behavior; did they sign the receipt of 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 HR 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 but take a note-taker

# **During the Fact-Finding**

- Introduce the purpose of the fact-finding; explain that no decisions have been made but there is the possibility of a corrective or disciplinary action and that we want the employee's perspective on the situation (see sample language below)
- Request complete honesty and willingness to be forthcoming (sample below)
- Lay the groundwork discuss the specific policies and expectations that may be involved and seek concurrence of the employee's understanding of them.
- Only ask questions. Answer only the specific question an employee asks you if it will not compromise the fact-finding
- Refrain from explanations, teaching, mitigating statements, talking about other employees or topics not directly related to the fact-finding. Just ask questions. You can teach and correct later
- Ask all the core questions that remain relevant to ask and ask follow up questions as needed; document new questions too
- 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 an employee's version, seek to reconcile the differences. Helps to 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 explanations include medical or disability-related information, take notes, ask clarifying questions but do not comment; contact HR immediately

#### After

- Document, document
- If HR is not already in the room, consult HR Business Partner
- Consider outcomes in the same or similar situations by you, your department and consult HR for the University-wide perspective.
- The employee will be nervous so make the resolution of the fact-finding a top priority item and complete the necessary steps and the delivery of the news as quickly as possible
- HR will consult with General Counsel's office if necessary. Allow HR to that legwork for you and the GC 's office

#### Sample Format

- 1. After the introduction, ask questions to confirm 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 understanding of 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 prompting this fact-finding. Chronological often works best. Start with more open-ended questions asking for their side in general and in broad terms. Ask more specific questions afterwards. The idea is to not ask leading questions and to give employees a chance to explain and tell us what they feel is important.
- 5. Explore discrepancies within their own account or discrepancies with your understanding. Don't interrogate, just seek to better understand and establish the facts and truth.
- 6. Remember to watch body language, mannerisms. Gauge credibility.
- 7. Avoid taking notes while someone is talking, make eye contact.
- 8. Ask probing and follow-up questions, document your questions and the response.
- 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 that that any retaliation against other employees involved will be investigated and if it exists, will not be tolerated. (Sample below)
- 11. Thank them.

## **Sample Language**

# <u>Introducing the Purpose</u>

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 any, could be an appropriate corrective or disciplinary action.

# <u>Honesty</u>

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

### Non-Retaliation

As part of a fact-finding, I need to remind you and everyone involve that retaliation against anyone involved is prohibited and if reported, will be investigated. If retaliation is discovered, the discipline will be severe.