Virtual workplace investigations: The “next normal” – Best practices

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This is the second part of a three-part series

In the first part of our series on Virtual Workplace Investigations, we discussed how the COVID-19 pandemic has impacted workplace investigations, and why proceeding virtually can be an attractive option.

In this Part II, we take a closer look at virtual investigation best practices. While traditional principles generally still apply, the well-informed e-investigator will keep the following guidelines in mind.

Part II – Best practices

Knowing your tools

The investigator must be comfortable with the chosen virtual platform before meeting with their first witness.[1] Notably, they should ensure proper understanding of the video and mute functions, and be ready to provide technical assistance to their witness. Indeed, tech challenges may jeopardize the rhythm of the interview, and investigators should avoid this by familiarizing themselves with the technology ahead of time.

The investigator should also have a plan for gathering documentary evidence electronically in an efficient and secure manner, and be ready to explain the process to the witness.

Establishing a connection, face to "FaceTime"

The investigator should make a conscious effort to understand the circumstances and state-of-mind of their witness, as it may influence the meeting. Notably, the investigator should consider the following:

- Did the witness have to make childcare arrangements to attend the interview that is restricting their time with the investigator?

- Is the witness being interviewed during their work hours?
- Is the witness uncomfortable with the technological aspect of the meeting?
- Does the witness have any visual, hearing, or other impairment, which can create a challenge in the communication?
- Is the investigator's appearance, background and physical positioning welcoming, non-distracting and non-threatening?

If the witness feels the investigator has strived to make them comfortable, it may help in creating a positive virtual connection. While such a connection may be more difficult to create and maintain across computer screens, it is important to foster connection, as it will generally promote a more open disclosure and fruitful meeting.

Knowing when to use the phone

While a visual interview is typically preferable, it is not always required. A phone interview may be appropriate and justifiable in some circumstances, such as the following:

- The witness is only relevant for specific and limited corroboration;
- The scope of the questions is very narrow (one or two secondary allegations);
- The witness refuses a virtual interview and cannot be compelled (e.g., they are not an employee of the company).

Notwithstanding the above, a phone interview is generally not recommended for complainants and respondents. Indeed, as these are the main actors in relation to the complaint, the investigator should gather as much information as possible on them and their version of events, including visual information such as visual cues, body language and demeanour.[2]

If there is a necessity to interview the respondent or complainant over the phone (e.g., if the alternative is no interview at all), then certain precautions should be taken. Notably, the investigator should obtain a written statement from the party, stating that the interview will be conducted over the phone at their express request. In addition, the investigation report should make the appropriate distinctions, mentioning how each witness was interviewed and why.

Confidentiality and integrity

The investigator in a virtual interview does not control the environment of the witness, which can create challenges.

First, the investigator should confirm with the witness that they are not recording the interview and that no one else is in the room. Before the interview, the investigator should also find out if another company employee lives with the witness (or is present in the witness's location). This is to avoid unintentional confidentiality breaches.

In any event, the witness should be alone during their interview, to ensure that their testimony is not being influenced or even coached. If the witness has legal counsel involved, then generally the witness should be required to abstain from emailing or

otherwise communicating with their counsel (or any other third party) during the interview.

If it is appropriate to ask the witness to sign a confidentiality agreement before the start of the interview, then the investigator should have this document ready to send right at the start of the meeting. An e-mail format is preferable as it can be quickly filled out, without the need for the witness to manipulate a physical document.

Final word

In conclusion, the virtual setting requires the investigator to be nimble and vigilant, and to adapt their methods to circumstances, which are not fully under their control. The main challenge will continue to be striking the right balance between pragmatism and rigour, in the ever-changing landscape of the “new normal”.

Next in this series

Part 1 - Postponing the investigation vs. proceeding by virtual means

Part III – Are we effective lie detectors? (Credibility assessment in virtual settings)

[1] The term “witness” as used herein refers to any person who may need to be interviewed in connection with a complaint, including the respondent and complainant.

[2] Please see Part III of this series for our comments on the assessment of witness credibility in the context of virtual investigations.

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