**Key Points to a Successful Workplace Investigation** By Stephen A. DiTullio, DeWitt, Ross & Stevens, S.C..

We are often contacted to provide information to employers about workplace investigations. Regardless of whether the alleged conduct to be investigated is discrimination, harassment, or some other type of misconduct, there are critical points to understand regarding workplace investigations. Adhering to these points not only can be important in keeping a veterinary clinic out of court, but it can also help in the defense if a claim is filed. The following are eight key points to conducting a successful investigation of workplace misconduct:

Point No. 1: Employers have a broad duty to investigate, particularly for harassment and discrimination. Employers must investigate both informal and formal complaints of harassment or discrimination, as well as circumstances where they have constructive knowledge of the discrimination or harassment. Likewise, even if the complaining employee asks the employer to take no action and to keep the matter confidential, the employer should still conduct such an investigation and explain this to the employee.

**Point No. 2:** Conduct a timely investigation. An employer must investigate misconduct complaints in a timely manner. An investigation should not be delayed for any time period, but should commence immediately upon receipt of the complaint or if there is constructive knowledge of any type of misconduct. Furthermore, the investigation must be completed in a timely manner. It is important to note that the courts have held that an employer has a legal duty to take "timely and appropriate action" regarding harassment and discrimination in the workplace.

**Point No. 3:** Selecting the investigator or investigation team is crucial to a successful investigation. Keep in mind that if litigation develops, the investigator will be a witness in litigation. Therefore, careful attention should be given to whether the person would make a good witness at a deposition or trial. Additionally, the investigator should be an individual who is trained in how to conduct an investigation.

Point No. 4: Set the scope of the investigation from the outset. It is

important that an employer provide notice of the investigation's scope to both the complaining employee and the alleged wrongdoer. Both should be provided an opportunity to respond to the other, but only in regard to the issues that are part of the investigation.

Point No. 5: Consider taking interim measures during the investigation. For example, a veterinary practice may decide that while the investigation is pending, the complaining employee should be put on a paid leave, the accused should be put on a paid leave, or the two individuals should be separated.

Point No. 6: Interviewing witnesses lies at the heart of any workplace investigation. As such, the investigator should listen very carefully and take notes during the witness interviews, including the date, start time and end time of interview, and listing of those present. These notes should be accurate and only state the content of the witness interviews as these notes will be discoverable if the matter moves forward to litigation. Additionally, witness interviews should be conducted in the presence of two management officials.

**Point No. 7:** Document the investigation. Without documentation of the investigation. the entire investigation is almost worthless. documentation should include Such interview questions, interview answers, investigator's notes, the complaint (if it is in writing), and the employer's response and conclusions based upon the investigation. Additionally, if appropriate, letters should be sent to both the complaining party and the accused.

