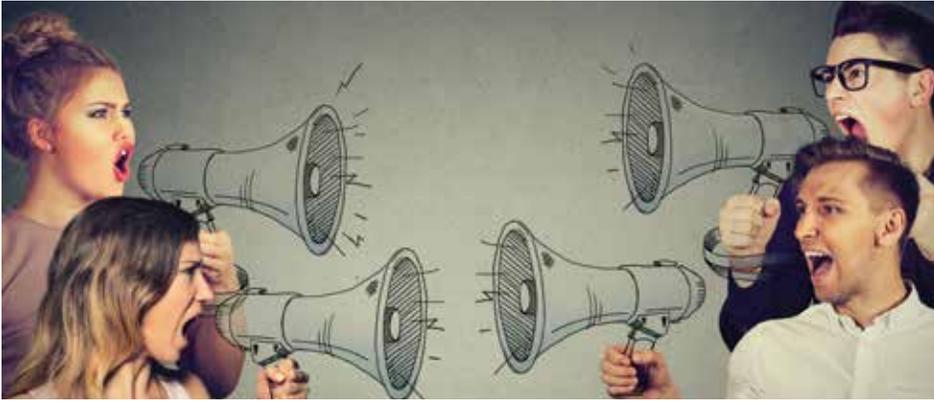


# What Urban Meyer Can Teach You about HR Investigations

BY JUSTIN M. HARRISON AND BENJAMIN J. WILSON, JACKSON KELLY PLLC



Urban Meyer, head coach for the Ohio State University Buckeyes football team, was recently suspended after a two-week investigation into allegations that he mishandled accusations of domestic violence made against a former assistant coach. OSU was unable to conclude what Meyer knew regarding the three-year-old incident and when he knew it. Allegedly, the assistant's wife had shared pictures and text messages with Meyer's wife, which Meyer himself denied knowing about. On the same day the scandal broke, however, Meyer had a conversation with the team's director of operations on how to delete messages from his phone, indicating that Meyer had ignored the complaints and worked to cover up the incident. As we write this, news reports suggest that Meyer's conduct may have been more egregious and that the investigation was rushed.

From an HR perspective, the Urban Meyer situation provides guidance for conducting investigations, and some takeaways for community bankers. OSU has far-reaching influence due to its size and visibility; however, a lower profile scandal could be just as damaging for a community bank given the unique role in the communities they serve. Several lessons can be gleaned from the OSU episode regarding complaints and investigations.

First, do not ignore complaints. Remember, the law does not recognize a distinction between an informal complaint and a formal complaint. As we saw at OSU, rumors and speculation can spread like wildfires, and this is especially true in smaller communities. The potential damage to reputation can

be devastating. If an employer knows or has reason to know an employee is subject to harassment, discrimination, or other wrongful conduct, it is obliged to investigate.

Second, the investigation must be objective and neutral. Once you become aware of a complaint, it is very important to make sure that the complaint is referred to a management-level employee who has the experience or training to investigate a human resources complaint. Typically, this will be the head of your HR department or their designee. In any event, care must be taken to make sure that the person leading the investigation can be a neutral fact-finder. Make sure the investigator does not have conflicts of interest or close relationships with any of the parties. If a neutral fact-finder is not available internally, you may need to consider engaging a third party to lead the investigation.

Third, develop a preliminary roadmap at the beginning of the investigation. What are you investigating? Does the allegation or complaint involve a violation of bank policy? Who do you need to interview and why? What questions do you want to ask? What information do you need to refute or confirm the complaint?

Fourth, document your investigation! Recording the steps taken during an investigation can help an employer in the long run should the alleged incident ever lead to litigation. Include factual written summaries, memoranda, work documents, notes, interviews, and witness statements. A little time invested in documenting the investigation file can help avoid confusion and misunderstanding, and it should

help explain why certain actions were taken (or not taken).

There may be a "he said, she said" problem. As an investigator, you can and should make credibility determinations if you have an appropriate basis to do so. Assessing a witness's credibility can involve a number of factors, including the plausibility of events, the witness's demeanor, any underlying motives, corroboration from other evidence, and the past record of the witness. Moreover, having a plan ahead of time and gathering evidence will help reveal the facts and inconsistencies in a witness's statement.

Many investigations are flawed because they fail to provide conclusions regarding the merits of the complaint. It is insufficient for an investigator to simply recite various sets of competing allegations. If there is sufficient evidence, then reasonable conclusions should be made. What's reasonable? Something that can survive scrutiny by a jury or the West Virginia Human Rights Commission.

HR investigations involve two competing goals: (1) expeditiousness; and (2) thoroughness. You want to move quickly to make sure inappropriate conduct is addressed and remedied as soon as possible, but the Urban Meyer situation illustrates the pitfalls of rushing an investigation. Other facts may come to light that could (or should) alter the outcome.

Investigators should finalize the results of their investigation with a written report. The report should include the incident being investigated, individuals involved, key factual findings, credibility determinations (if any), witness statements, the final decision, and any actions taken by the employer.

Investigating complaints, even informal complaints, thoroughly and properly can minimize litigation risks, improve culture and morale, and minimize negative publicity and speculation in the community. In this day and age, mishandling complaints—or worse, ignoring them—can have devastating effects. [UNTY](#)

*Justin M. Harrison and Benjamin J. Wilson are labor & employment lawyers at Jackson Kelly PLLC. Justin and Ben routinely advise community banks throughout West Virginia. Justin can be reached at (304) 340-1358, and Ben can be reached at (304) 340-1170.*