

Investigation Interviews: A Best Practices Guide

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Interview Preparation

Interviews are key to any investigation. For that reason, it's essential that you plan carefully, create a welcoming atmosphere and ask the right questions. In particular, it is important to review the initial complaint and create a list of case-specific questions to be addressed during the interviews. Proper planning ensures that investigation interviews run smoothly and generate useful information.

Before getting down to business and interviewing complainants, subjects and witnesses, consider the following factors:

Interview Location

Choose a location where the interviewee will feel comfortable to speak frankly and honestly. An off-site conference room would be ideal; conversely, a cubicle next to the interviewee's supervisor obviously would not be a good location.

The environment in which the interview is conducted can play a significant role in shaping the outcome of the interview. The right location can help to put the interviewee at his or her ease, thereby increasing the opportunity for candid, forthright responses. Confidentiality may be compromised when interviews take place within the workplace, as other employees may recognize connections among those coming in and out of a particular office. In some cases it may be necessary to choose a different location for each interview in order to ensure the comfort of your interviewees.

Get the Facts

Before you begin planning the interview itself, you should take some time to assemble all available case-related information. Some of this information will come from the initial complaint. You should also be well-versed in all relevant laws, workplace policies and procedures. Familiarity with company policies can make it easier for investigators to explain the need for the investigation to both the complainant and the subject.

Prepare Questions

Once the facts have been collected and reviewed, plan ahead by drafting a series of general questions related to the case at hand. Although every investigation interview is unique, each interview typically includes a number of standard questions. To save time, develop a template that includes these commonly asked questions. You can then refer to the template during each interview.

Thinking about your questions prior to the interview will help to ensure that information is collected the first time, thus eliminating the need for follow-up discussions. Of course, as the interview progresses you will most likely think of additional questions. Hence it is generally unrealistic – if not impossible – to prepare all of your questions prior to the interview.



Documenting the Interview

Once the facts have been collected and reviewed, plan ahead by drafting a series of general questions related to the case at hand. Although every investigation interview is unique, each interview typically includes a number of standard questions. To save time, develop a template that includes these commonly asked questions. You can then refer to the template during each interview.

Cover Basics Before You Begin

Investigators should begin every interview with a brief introduction that explains the reason for the interview and includes all appropriate disclosures. Normally, the investigator will arrange for a witness to be present to take notes and corroborate evidence. This person's role should be explained at the outset to put the interviewee at ease. In your opening remarks, it is important to be honest about the purpose of the interview while at the same time respecting the need for confidentiality. For example, an investigator might begin an interview by explaining that the company is investigating certain complaints about unfair treatment towards minorities.

Inform the interviewee that you will make every effort to protect his or her privacy. Explain that information provided to you during the interview will be shared with others only if absolutely necessary. Interviewees should understand that confidentiality will be virtually impossible to maintain in the event that a lawsuit arises and the case proceeds to court; if that happens, additional parties will require copies of all statements and case-related documents.

It is important to make these statements before commencing the interview, as they will likely answer many of the questions the interviewee has on his or her mind. It is also a good idea to ask complainants, subjects and witnesses if they have any questions of their own. Addressing these issues up front, as opposed to dealing with them at the end of the interview, will encourage greater cooperation, which in turn will improve the quality of the interview and the effectiveness of the overall investigation. Here again, your objective is to create an environment in which the interviewee feels free to speak openly and honestly, providing as much detail as possible in his or her responses.

In your opening remarks, it is important to be honest about the purpose of the interview while at the same time respecting the need for confidentiality.

Introduction to Complainant Interviews

Normally an investigator will interview the complainant first, followed by the subject (the accused) and any witnesses. When interviewing a complainant, investigators must take care to avoid expressing any predetermined conclusions about the incident. Begin with neutral, background questions and ease into incident-specific ones. Pay attention to the complainant's tone and body language. Do not allow the interview to seem like an interrogation. As much as possible, a well-planned, well-executed interview should resemble a conversation about the incident between the investigator and the complainant.

Interviewing the Complainant

In cases involving allegations of harassment, discrimination and possible retaliation, the employer has a duty to protect the safety of the complainant. In all cases involving workplace complaints, employers must focus on their legal obligations while at the same time complying with all applicable corporate policies. Investigators should explain clearly to the complainant that the company intends to conduct a thorough investigation, after which appropriate action will be taken. Explain also that the company recognizes it has a duty to protect the complainant from any form of retaliation.

Questions

The EEOC has compiled an excellent *list of standard questions* to ask when interviewing a complainant. Start the interview with these background questions before gradually digging deeper into issues related specifically to the complaint under investigation.

Pay attention to the interviewee's reactions. By starting with questions unrelated to the incident, you will have an opportunity to gauge the employee's ability (and willingness) to discuss workplace issues and past events. Background questions can help to create a relaxed environment, providing the interviewer with an opportunity to assess the reliability of the complainant's responses.

Background Questions:

- How long have you worked for the company?
- What are some of the responsibilities of your role in the company?
- Was there a particular reason for taking this position within the company?
- How would you describe the company's culture? Is it supportive?

The EEOC suggests incorporating the following questions into the investigation interview:

Standard Incident Related Questions:

- Who committed the alleged harassment?
- What exactly occurred or was said?
- When did the incident occur?
 - Is it still ongoing?
 - Where did it occur?
- Why? Are there any indicators that suggest a source motivation for the subject?
- How often did it occur?
- How did it affect you?
- How did you react?
- Has your job been affected in any way?



- Has anyone been treating you differently?
- Does anyone else have relevant information regarding this incident?
- Was there anyone present when the alleged harassment occurred?
- Did you tell anyone about it?
- Are you aware of any harassment complaints previously made about this person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s) that you could provide us with?
- Is there any additional information pertaining to the incident you would like to discuss?

Interview Wrap – Up

Before ending the interview, take a few minutes to review the interviewee's responses and seek clarification of any points that remain unclear or ambiguous. If you have been keeping a written record of the interview, ask the complainant to sign the document so as to confirm the accuracy of your notes. If you intend to have your notes typed up, or if the interview has been recorded in some other fashion, inform the complainant that he or she will be asked to verify the accuracy of the information when provided with the appropriate documentation. Finally, end the interview by reiterating your commitment to protecting the interviewee's confidentiality to the extent possible.

The subject should also be reminded of the company's legal obligation to investigate.

Introduction to Subject Interviews

When interviewing the subject of an investigation ("the accused"), investigators must take care not to give the impression that he or she is presumed guilty of any wrongdoing. In most cases, the subject will be interviewed only after the complainant has provided a detailed statement of what is alleged to have happened. Under such circumstances, it is natural for the person who has been accused of misconduct to react in a defensive manner. To avoid creating an overly confrontational atmosphere, it is important to reassure the subject of your commitment to fairness, accuracy and due process.

Interviewing the Subject

While avoiding any predetermination of the subject's guilt, the investigator must make it clear that the company takes the complaint seriously and intends to conduct a thorough, impartial investigation. The subject should also be reminded of the company's legal obligation to investigate. The investigator should inform the subject that the company is conducting an investigation with the aim of preventing any harm to the reputations of those involved. At the same time, you can reassure the subject that you intend to uphold confidentiality as much as possible and that you plan to gather all available facts before reaching any conclusions. This is also a good time to review with the subject any applicable corporate policies or zero-tolerance mandates, and to advise the subject that if found guilty of committing the reported offense, he or she could face discipline up to and including immediate termination.

Investigators must avoid becoming focused on a list of predetermined questions to the extent that it discourages interviewees from disclosing other pertinent information. Relevant issues can be explored with the aid of open-ended, non-leading questions. For example, an investigator might ask the accused to describe his or her working relationship with the complainant, or to describe the office environment. An investigator might choose to begin the interview in a non-confrontational manner by asking the accused to answer a series of standard background questions. Be sure to ask the subject about each specific allegation made by the complainant, but do so in a way that makes it clear you have not made up your own mind as to the accuracy of the allegations. Give the subject time to explain his or her side of the story.

Questions

Background questions provide a means for the investigator to gauge the subject's willingness to answer questions as well as the reliability of his or her responses. Background questions help to create a relaxed environment. Asking open-ended background questions before shifting the focus of the interview to incident-specific questions also provides you with an opportunity to demonstrate your neutrality with respect to the investigation.

Background Questions:

- How long have you worked for the company?
- What are some of the responsibilities of your role in the company?
- How would you describe the company's culture? Is it supportive?

Prior to interviewing the subject, prepare a list of incident-specific questions based on the initial complaint and any additional information gathered during the complainant interview. It's usually best to avoid quoting specific statements made by the complainant; instead, use information provided by the complainant as a guide to the areas you wish to explore with the subject. Once all of your background questions have been answered and you have reviewed the initial allegations, it is time to dig deeper into incident-specific questions.

Mandatory questions to ask the subject, as outlined by the EEOC in the "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" publication, consist of the following:

Standard Incident-Related Questions:

- What is the subject's response to the allegations?
- If the subject maintains that the allegations are unfounded, ask what might have motivated the complainant to file a false complaint.
- Are there any other individuals who might have relevant information?
- Can the subject provide (or is the subject aware of) any notes, physical evidence, or other documentation that might corroborate his or her version of the event(s)?
- Is the subject aware of any other information relevant to the investigation?



Interview Wrap-Up

Before ending the interview, take a few minutes to review the subject's responses and seek clarification of any points that remain unclear or ambiguous. If you have been keeping a written record of the interview, ask the subject to sign the document so as to confirm the accuracy of your notes. If you intend to have your notes typed up, or if the interview has been recorded in some other fashion, inform the subject that he or she will be asked to verify the accuracy of the information when provided with the appropriate documentation. Finally, end the interview by reiterating your commitment to protecting the subject's confidentiality to the extent possible.

Introduction to Witness Interviews

Witnesses are typically interviewed only after the complainant and the subject of the investigation. Witness interviews can assist investigators in validating statements made by the complainant and the subject. For that reason, it is important to encourage employees with information relevant to the incident to come forward and share their knowledge of the events under investigation.

Consider carefully the purpose of your meeting with each witness, and tailor your questions to that end.

Interviewing Witnesses

After meeting with the complainant and the subject, the investigator is usually faced with a "he said/she said" situation. The truth often lies somewhere in between. *Other employees* are vital sources of information that can help you to determine the accuracy of the complaint.

The process of interviewing a witness is similar to the process of interviewing the complainant and the accused. Consider carefully the purpose of your meeting with each witness, and tailor your questions to that end. To preserve confidentiality, investigators generally must limit to the degree possible the amount of incident-specific information they share with each witness.

In preparing for each witness interview, it is a good idea to review your preliminary investigation outline, as well as the results of all prior interviews, and consider relevant topics for each subsequent witness. Encourage witnesses to contact you if they subsequently recall, or come across, any other information that might be relevant to the case. Remind the witness of the importance of confidentiality.

Questions

When interviewing witnesses, investigators should begin with some basic background questions concerning the workplace, the company culture and the witness's relationship with the complainant or subject, if any. It is important to be aware of any existing relationships among witnesses and the individuals involved in the investigation, since those relationships could influence the interviewee's responses and account of the incident.

It is also important to explain to each witness that his or her account of the incident is critical to the investigation. Witnesses may be reluctant to share

everything they know, fearing that if they do so they might get someone in trouble. Background questions provide an opportunity to break down any barriers and create a more comfortable environment before the investigator steers the conversation toward incident-specific questions.

Mandatory questions to ask witnesses, as outlined by the *EEOC* in the “*Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*” publication, consist of the following:

- What did you see or hear?
- When did this occur?
- Describe the subject’s behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you?
- When did the complainant tell you this?
- Are you aware of any other information that might be relevant to the case?
- Do you know of any events or reasons that might have prompted the incident?
- Do you know of any other individuals who might have information that is relevant to this case?



Interview Wrap Up

Before ending the interview, take a few minutes to review the witness’s responses and seek clarification of any points that remain unclear or ambiguous. If you have been keeping a written record of the interview, ask the complainant to sign the document so as to confirm the accuracy of your notes. If you intend to have your notes typed up, or if the interview has been recorded in some other fashion, inform the complainant that he or she will be asked to verify the accuracy of the information when provided with the appropriate documentation. Finally, end the interview by reiterating your commitment to protecting the witness’s confidentiality to the extent possible.

Determining Credibility

When conducting an internal investigation, it is important to consider the various relationships within the workplace and any potential factors that might color or shape the evidence provided by employees who are involved in the investigation. Are there reasons why an employee might make false statements? Does the history of the complainant suggest any particular pattern of behavior or motivation that might lead him or her to make unfounded allegations? Determining the credibility of evidence collected during the interview process is rarely easy, but it is an essential part of conducting an accurate, thorough investigation.

The job of an investigator becomes increasingly difficult when the people you interview provide conflicting accounts of the incidents under investigation. The credibility of an investigation may suffer when too few or too many people are interviewed. In cases where the complainant and the subject are the only

people available to be interviewed, it often becomes one person's word against the other. Conversely, in cases where there are a large number of witnesses, it is important to bear in mind that some or all of them may be biased for some reason.

The EEOC recommends weighing the credibility of each person interviewed in order to determine what actually took place during the incident.

Factors to Consider

The EEOC has put together a list of five "*credibility determinations*" to consider when reviewing the information provided to you by complainants, subjects and witnesses. Bear in mind, however, that these factors are by no means the only things you need to consider when weighing the credibility of evidence.

Following are the five EEOC recommendations, together with a description of what to look for when determining the credibility of any statement:

1. Inherent Plausibility

Is the testimony believable on its face? Does it make sense? Look for areas of consistency among the statements provided to you during each interview. Interviewers and investigators may wish to consult workplace materials that provide corroboration for statements made during the interviews, such as security videos. Consider also the whereabouts of the employees in the workplace and the chronological order of incident-related events.

2. Demeanor

Does the person appear to be telling the truth? We have put together a helpful resource titled the "Black Book of Lie Detection," which is available for download. Consult this document to learn more about the various ways an investigator can gauge the accuracy of an interviewee's statements.

3. Motive to Falsify

Does the individual have any particular reason to lie? Does the person feel threatened for any reason? Note that bias and personal preferences can strongly influence a person's ability to recall events or tell the truth. Interviewers must take into consideration any pre-existing connections or relationships between witnesses and the complainant or the subject. Could these connections cause the witness to lie in order to protect his or her co-worker? Does the witness fear retaliation from others for any reason? If so, be sure to address these issues at the outset of the interview. Remind the witness of the company's zero-tolerance policy regarding retaliation, and encourage the employee to come forward in the event that he or she experiences retaliation.

4. Corroboration

Is the party's testimony supported by physical evidence, written documentation or witness accounts? Witnesses can take many forms. An employee might have observed the incident directly (an "eye-witness"). Alternatively, an employee might have seen the complainant (or the subject) soon after the alleged

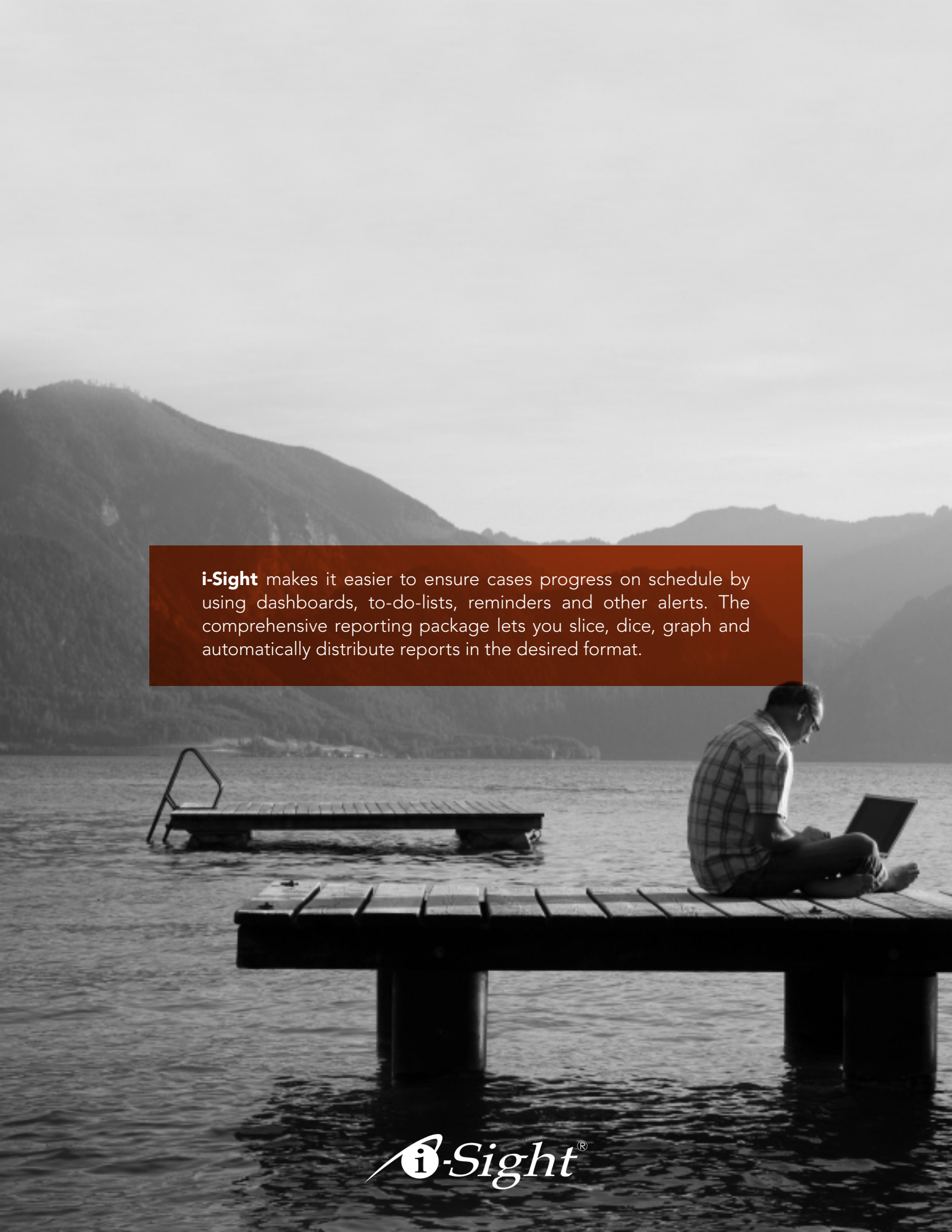
Background questions provide an opportunity to break down any barriers and create a more comfortable environment before the investigator steers the conversation toward incident-specific questions.

incident, or might have discussed the incident with one or the other around the time that the incident is said to have occurred. Information gathered from such individuals must be weighed and considered for accuracy. If witnesses are biased toward or against either individual involved in the incident, chances are their stories will reflect it. Watch for common themes or discrepancies in statements provided by the complainant, the subject and any witnesses in order to get a better picture of what actually took place.

5. Past Record

Does the subject of the investigation have a history of similar behavior? Past behaviour is often – though not always – predictive of future conduct. It's important to be aware of the presence of repeat offenders, and to be able to review the results of any prior investigations that might be relevant to the current situation. Our internal investigation software solution, i-Sight, provides investigators with the ability to identify repeat offenders in the workplace, enabling employers to intervene proactively before the problem gets any worse.





i-Sight makes it easier to ensure cases progress on schedule by using dashboards, to-do-lists, reminders and other alerts. The comprehensive reporting package lets you slice, dice, graph and automatically distribute reports in the desired format.