

Employers have an obligation to take harassment seriously and conduct a prompt, thorough, and objective investigation when made aware of potential harassment. An investigation may not be necessary if the alleged harasser admits to wrongdoing. Every company should have one individual designated as the “point person” in charge of investigations. Typically, this would be the human resources manager or other management representative who is trained to conduct effective workplace investigations and can act as a neutral party. The following steps outline how to conduct an investigation of alleged harassment.

CONDUCTING AN INVESTIGATION

1. PREPARE FOR AN INVESTIGATION.

Determine an initial list of individuals to interview. Prepare for the interviews in advance, anticipating any potential scenarios that may occur during the investigation so you are prepared to respond.

Gather relevant documents and review company policies related to the incident. The investigation interviews should begin as soon as possible. Your presentation should not delay the investigation. Delays may result in the alleged victim seeking recourse through outside legal counsel or a government agency. If too much time elapses between the incident and the investigation, the accessibility to evidence like witnesses and documentation may no longer be available.

Schedule a private location to conduct interviews. The first interview should be with the individual who filed the complaint.

2. PLAN QUESTIONS CAREFULLY.

Prepare and write down your questions in advance, while also allowing for additional questions during the interview as they arise. Ask simple questions that require a response stated in chronologic order, addressing one issue at a time. Avoid accusatory questions that either directly or indirectly state or imply an accusation of wrongdoing. Do not ask leading questions that direct the interviewee on how to respond. Use open-ended questions that will allow interviewees to explain the situation. Always follow up with clarifying questions to ensure you have and understand all the facts.

Be prepared to document the interviewee’s responses. During the planning process, determine if the severity of the allegations should require the complainant and witnesses to sign their statements.

3. INTERVIEW THE COMPLAINANT.

The initial interview, which starts the investigation, should begin as soon as possible. While there is no law that regulates when an investigation must commence, a good rule of thumb in most cases is to begin the investigation no more than two days after the complaint is received. Explain the purpose of the meeting, inform the complainant of company policy, and assure no retaliation. Have the complainant document the incident verbally and on paper. Obtain the names of any witnesses. It is vital that you obtain information about all alleged harassment and all alleged harassers. Assure confidentiality to the extent it is possible. Reemphasize the no-retaliation policy, encouraging the complainant to inform you if he/she encounters any retaliatory actions or continued harassment.

4. INTERVIEW THE ALLEGED HARASSER.

Inform the alleged harasser of the complaint. Allow the alleged harasser the opportunity to explain the situation or occurrence. Document the information provided to you. Ask the alleged harasser if there were any witnesses. Remind the alleged harasser that the matter is to be kept confidential and that retaliatory action against the complainant for filing a complaint is prohibited and may result in disciplinary action.

5. INTERVIEW WITNESSES.

Meet with all witnesses individually and request their knowledge of the situation. Explain the purpose of the interview. Use general terms, but do not lie about the reason behind your questions. Have all witnesses document the incident verbally and on paper. Remind witnesses that the matter is to be kept confidential. Assure the interviewee that retaliation for participating in the investigation is prohibited and their comments will be kept as confidential as possible.

If employees involved in the interviews are covered by a collective bargaining agreement, special considerations must be taken. Check the collective bargaining agreement to see if union representation is required for witnesses participating in an investigation. Union employees are entitled to a union representative during interview(s).

6. GATHER SUPPORTING DOCUMENTATION.

During the interview process, gather any supporting documentation. Documentation is often located in personnel files, supervisor's notes, employee handbook policies, e-mail messages, etc. Maintain all such materials, including notes from the investigation, in a confidential file and separate from the employee's general personnel file.

7. COMPLETE AN INVESTIGATION.

It is a good rule of thumb, in most cases, to complete the investigation within one week, if possible. After completing the interviews and gathering the supporting documentation, analyze the materials and make a judgment as to what you believe has happened. Your analysis should be based on a "preponderance of the evidence." You don't have to be absolutely certain that something occurred or did not occur, but based on the facts, what is most likely true. To assist you with this determination, assess credibility of the witnesses and parties involved, evaluate the accuracy of the information, and consider any biases that may be contributing to the situation. Based on your analysis, make a determination as to what occurred.

8. DRAFT A THOROUGH, OBJECTIVE, AND CONCISE REPORT.

The report should include a summary of the allegations, summary of the interviews and of the findings, an explanation of the conclusions drawn, and recommendations for corrective action. Keep all documentation related to the investigation in a separate, confidential file.

9. IMPOSE DISCIPLINARY ACTION AND FOLLOW UP.

Where allegations are found to be valid, the supervisor should take disciplinary action against the harasser. Discipline may involve a verbal or written warning, job transfer, suspension, or termination. The disciplinary action taken will depend on the severity of the offense, the effect on the complainant, the harasser's previous record, and the nature of discipline imposed for similar violations in the past. Discuss appropriate disciplinary action with your manager. With discipline, keep the following in mind:

- The harassed employee does not need to be informed about the nature of the discipline imposed. Such disclosure may not be appropriate as it is a personnel action that should be kept confidential. However, the employee can be informed of the investigations' status and whether appropriate actions have been taken by the employer to ensure the incident will not recur.
- The harassed employee should be assured that no retaliation will be permitted and to report retaliation or recurrence of similar incidents.

Where allegations appear to be false or inconclusive, notify the complainant that, based on the facts of the investigation, the allegations appear to be false or inconclusive. Do not take disciplinary action against the complainant unless it is determined the complainant intentionally made false allegations. Notify the accused of the determination and remind him or her of the policy against harassment and retaliation.

10. DOCUMENT EACH STEP.

The steps of the investigation process should be documented as it proceeds, include only key facts and witness statements; avoid including irrelevant or immaterial information. Such documentation should be kept in one consolidated file, separate from the employee's personnel file. In the event a thorough investigation reveals an employee was harassed, appropriate documentation, including a description of the incident and corrective action taken, should be placed in the harasser's personnel file.

11. FOLLOW UP.

Schedule time on your calendar to conduct additional follow-up with the complainant/harassed employee (for example, one week, six weeks, and three months following the investigation) to ensure the harassment has ended and no retaliation has been taken against the victim. If you determine the problem has not been resolved, retaliation has occurred, or a new situation has evolved, begin a new investigation.