



# CHECKLIST FOR INVESTIGATING COMPLAINTS OF HARASSMENT OR DISCRIMINATION

Edition: 01.0415

# CHECKLIST FOR INVESTIGATING COMPLAINTS OF HARASSMENT OR DISCRIMINATION

The law requires a company to promptly and thoroughly investigate claims of harassment or discrimination. Remember that if a lawsuit is filed, many courts will require you to fully disclose your investigation so we encourage you to be prompt and thorough. Depending on the individual situation, most or all of the following should be considered during an investigation:

- Remember your focus is to gather facts and commit to legal compliance.
- Be sure to understand that harassment and discrimination are very often about *power, ignorance and fear*.
- Address the *psychological needs* of those involved (i.e. the need to be understood, prior psychological history, etc.). Don't begin by telling the claimant they have no claim.
- Keep matters confidential but *don't promise absolute confidentiality* because of your need to investigate, communicate, discipline and terminate. Also understand the employee has the right to communicate their concerns to others.
- Contact your attorney* if you think the matter could possibly lead to a claim.
- Get the **complete** story from the claimant in writing, preferably done in your office.
- Keep all interview notes, forms, etc. in a separate file, not part of the personnel file and limit access on a need to know basis only. Mark all documents "CONFIDENTIAL."
- Don't spread rumors* about the employee or the complaint. Resist the temptation to gossip about these matters. Share any information on a need to know basis only.
- Don't leap to conclusions! Perform a **complete** investigation. Interview the employee complaining), the person accused and any witnesses named by either.
- Take good notes. Make sure to ask for all *facts, documents and witnesses* supporting any claims made.
- Take detailed notes and consider preparing *written statements* for signature by the employee, harasser and witnesses signed under the penalty of perjury.
- This is serious business. If you feel uncomfortable performing the investigation, hire an *outside investigator, consultant or attorney* to do it for you. Check their experience and qualifications.
- Consider using a third party mediator with an organizational psychology background to help resolve differences between two or more employees.
- Look for the motive* behind the allegations and defenses. Things are seldom what they appear to be. Evaluate the credibility and weight of the evidence.
- Do your best to *follow company policies and procedures* that apply to grievances, discipline, privacy, etc. Treat all employees equally.

Edition: 01.0415

# CHECKLIST FOR INVESTIGATING COMPLAINTS OF HARASSMENT OR DISCRIMINATION

- Assure the complaining party* that you have completed your investigation, inform them of the facts you gathered without divulging your sources. Offer claimants the opportunity to address your final factual determinations before taking appropriate action. Do the same with the accused.
- If warranted, engage in *appropriate discipline* ranging from a warning to leave without pay, transfer, demotion or termination. Document the discipline. Make sure the discipline does not violate any contract or procedure. Seriously consider a neutral evaluation before termination and give the accused the right to appeal any decision.
- Make sure to *warn* and *monitor* the parties to avoid repeated claims or possible retaliation.
- Change any part of your personnel system* that needs changing to avoid repeat scenarios.