

# Harassment Investigation Checklist & Process

*Note: This is intended to be a guideline only and you are encouraged to consult with an employment law attorney or human resources professional.*

## **I. When a complaint of harassment is received:**

- First ensure complainant and any other alleged victims are safe and free from further harassment during course of investigation (until permanent resolution is decided).
- If alleged harasser is a Company employee, remove alleged harasser from same working vicinity as complainant (if appropriate) for duration of investigation (assign to another location or suspend pending outcome of investigation, as appropriate).
- Determine who should be involved in investigation (names of complainant(s), alleged harasser(s), witnesses, etc.). Limit discussion of incident to these individuals.

### **Consider the order in which the investigation will be conducted:**

- Complainant(s)
- Alleged harasser
- Co-workers and other witnesses
- Second interview of the complainant to discuss any factual questions as a result of the investigation
- Second interview with the alleged harasser to discuss any factual questions as a result of the investigation

## **II. Begin Interview Process:**

- Interview each witness separately in an office or room where the discussion will not be overheard by other witnesses, the alleged harasser, or any other unauthorized persons.
- Two managers should participate in the interview process if possible. At least one of the investigating managers should be familiar with sexual harassment law and the Company's harassment policies and procedures. One manager should be designated as the interviewer, and the other should act primarily as a witness and take notes of the discussion.
- Before beginning the interview, explain the purpose of the interview by referring generally to recent complaints about the relationship between the Complainant and the alleged harasser. Do not necessarily discuss the issue of sexual harassment so that you do not taint the witness's recollection of the events.
- Emphasize that the Company takes these charges very seriously and that the Company is investigating these charges by interviewing all potential witnesses in compliance with our policy.
- Explain that upon completion of the investigation, the Company will attempt to determine what occurred, and will take appropriate action based on its determination.

- Both the alleged victim and the alleged harasser should be advised that each will be apprised of the results of the investigation and any action taken at the conclusion.
- Instruct any witnesses interviewed not to discuss the matters covered during the interview with any co-employee or the alleged harasser.
- Explain to the witness that confidentiality is necessary to protect the integrity of the investigation and to ensure that the Company receives trustworthy information in an atmosphere free from coercion. To the best of our ability we will maintain each person's confidentiality throughout the investigation.
- Explain to all witnesses that retaliation will not be tolerated by anyone. If someone attempts to retaliate against them for participating in this investigation, advise the witness to contact you immediately to report such conduct.

**III. Documenting the Interviews:**

- Ask open ended, non-judgmental questions. Avoid asking leading questions or those with a simple "yes" or "no" answer.
- Use investigation interview forms where appropriate.
- Avoid the appearance of impropriety or favoritism in conducting interviews.
- Observe and record all physical and verbal reactions of the witnesses during the interviews.
- DO NOT** record conclusions or opinions regarding credibility about witnesses.
- Upon completion of each interview, ask the interviewee to prepare their own written statement documenting in their own words what occurred (or what they witnessed, heard, etc.). Attempt to get a written and signed statement from each person interviewed. If a witness is unwilling to provide a written statement, ask them to read your interview notes and sign at the bottom, acknowledging that this is an accurate record of what they communicated to you.

**IV. After the interviews are completed, the manager should:**

- Discuss investigation results and proposed action with the investigation team and/or Human Resources. This discussion should be limited to those with a need to know the results of the investigation.
- Consider credibility determinations, if applicable. Factors include:
  - memory
  - perception
  - truthfulness
  - corroboration or lack thereof
  - bias of witnesses
  - consistency of accounts
  - prior misconduct or lack thereof, and implications of such conduct
  - plausibility of accounts

- Review any relevant documentary evidence (records, video tapes, timecards, etc.)
- Consider appropriate remedial action:
  - document investigation in personnel file
  - verbal warning
  - written warning
  - suspension
  - demotion
  - termination
- Factors in determining appropriate remedial action to take include:
  - credibility of alleged harasser, complainants and witnesses
  - prior conduct, if any (positive or negative)
  - prior discipline of alleged harasser
  - level of harassment, including type and frequency of conduct
  - alleged harasser's knowledge of Company rules of conduct
  - prior disciplinary "precedent" for identical, similar or analogous misconduct
  - public and employee relations issues

**V. Communication of Findings and Finalization of Investigation**

- Communicate findings, determination and actions to be taken to the alleged harasser, reminding him/her not to discuss situation with others and policy against retaliation.
- Communicate findings, determination and actions taken to the complainant, reminding complainant not to discuss situation and to report any issues of retaliation.
- Finalize documentation of investigation and place in confidential harassment investigation file.
- Determine if Company harassment policy was properly communicated, employees were aware of policy and how to report, and any other related issues. Take action to correct any deficiencies.