Sexual Harassment Investigation Checklist

Obtain a Description of the Incident / Claim:

- Use active listening. Ensure the employee provides full disclosure of the event / incident(s), and engage them in conversation. Avoid comments that deflect the seriousness of the charge.
- Acknowledge the difficulty associated with coming forward, and thank them for their candor.
- Maintain a professional attitude.
- Gather all pertinent facts, and avoid making any judgment.
- Contact your attorney if you think the matter could possibly lead to a claim.
- Obtain a written statement from the claimant.
- Ask who, what, when, where, why, and how. Determine the threat of retaliation, either real or perceived.
- Ask the employee how they would like to see the problem resolved.

Conduct an Investigation Into the Incident / Claim:

- Investigate immediately. Delaying or extending an investigation can cause witness testimony to become increasingly unreliable.
- Tread carefully: The manner in which the investigation is conducted may constitute grounds for a hostile environment claim.
- Diligent documentation of each step is required.
- Treat all claims seriously.
- Maintain confidentiality. Emphasize to those involved that your discussions are not to be shared with any unconcerned parties. Warn of possible disciplinary action associated with the spread of rumors, slander, or hearsay if necessary.
- Limit the number of persons who have access to the information. Communicate strictly on a "need to know" basis.
- The purpose of the investigation is to gather facts, not disseminate allegations. Avoid any leading questions that might compromise the investigation, and focus more on generalities.
- In the event that more than one allegation has been made, handle each one separately.
- To avoid defamation liability, never broadcast the facts of a given situation or the results as an example to others or as a training tool.

Interviewing the Complainant:

- Obtain specific details. Determine complainant wants and needs.
- Determine the existence of a pattern of previous episodes or similar behavior toward another employee, or if it was an isolated incident.
- Identify any contextual information wherein the conduct occurred. Where? What time?
- Determine the long and short-term effects of the conduct on the complainant. These may include economic, non-economic and/or psychological.
- Determine the relationship of time between the occurrence of the incident, its effect on the complainant, and the time when the complainant filed the report.
- Prepare a detailed time-line of events.
- Analyze the possibility that certain events may have triggered the complaint, i.e. , promotion, pay or transfer denial.
- Determine whether or not there are any possible motives on the part of the complainant for filing the complaint.
- Explain the seriousness of a sexual harassment charge, and that you will conduct a thorough investigation before reaching any conclusion.
- Assure the complainant that he or she will not be retaliated against for making the complaint.
- Avoid making any statements about the accused employee's character, job performance, or family life.

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Interview the Accused:

- Obtain a written and oral statement from the accused.
- Identify any existing relationship between the accused and the complainant.
- Determine the existence of any prior consensual relationship between the parties. How long have they known each other? Is there a history of group or individual socializing?
- If the accused individual was a supervisor, indicate their job title, obtain a copy of their job description, and determine their specific duties at the time of the alleged harassment.
- Determine whether the accused directed, or had responsibility for the work of other employees or the complainant, had authority to recommend employment decisions affecting others or was responsible for the maintenance or administration of the records of others.
- The accused individual will likely deny the charges. Carefully observe the reaction, noting any elements of surprise, anger, or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimonies supplied by both parties. If the accused denies the allegations, determine with the background, rationale, and motivation that could possibly have triggered the complaint.

Interviewing Witnesses:

- Obtain statements from any witnesses that either support or deny any of the allegations made.
- Assure all witnesses that their cooperation is important, that their testimony is confidential and that they will not be retaliated against for testifying.

Resolve the Complaint:

- Apologize for the incident occurring (if appropriate).
- If the complainant requires a transfer, obtain their consent and ensure that the transfer position is similar to their prior position, without any new negative aspects, e.g. less desirable location or hours of work. This will help to ensure that the complainant is not being illegally punished for reporting discrimination or harassment.
- The severity, frequency and pervasiveness of the conduct should be taken into consideration when imposing corrective action or discipline on the accused. There are several disciplinary options available, including:

  oral and written warning

  reprimand

  suspension

  probation

  transfer

  demotion

  Termination of employment

- When imposing discipline on the accused, any forms of discipline short of discharge should be accompanied by a warning that any reoccurrence of misconduct may result in immediate discharge. If no discipline is imposed, document the rationale.
- Re-communicate your policy on sexual harassment, and provide counseling and training on sexual harassment, if appropriate.
- Carefully and fully document the investigation, the discipline imposed, and any remedial or preventative steps taken.
- Conduct follow-up interviews with the parties to inform them of the actions taken.

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