**Investigations** **FAQ**

*A workplace complaint is a serious matter, and employers should strive to conduct an effective and thorough investigation as soon as possible. If a complaint rises to level of harassment or discrimination an effective defense for employers can be proof of a meaningful and prompt investigation, along with a reader friendly and compliant harassment/discrimination policy, and harassment/discrimination training for all employees.*

**What are the features of a proper investigation?**

1. Prompt Response
   1. A good rule of thumb is to respond to the complainant within 24 hours.
2. Careful and Thorough Investigation
   1. All relevant parties should be interviewed, and conclusions/recommended corrective actions should be made based on evidence or objective analysis of the facts presented. Every step should be documented appropriately and retained in a confidential file.
3. Impartial and Fair Investigation
   1. Typically, an HR professional should handle an investigation. If HR is involved in the situation, or if there is not an HR presence at the organization, the company should look into a 3rd party investigator, depending on the severity of the complaint.

**When to investigate?**

Management must start an investigation into a complaint as soon as it is received, or it has reason to believe unfair treatment/harassment/discrimination may be occurring in the workplace.

**Does the complaint need to be in writing?**

No. While it is advisable for a complainant to submit his or her complaint in writing, management’s obligation to investigate is triggered by a verbal complaint. Therefore, management should not require the employee to “put it in writing” before the investigation is initiated.

**Does the complaint need to come from the alleged victim?**

No. While in most cases the complainant will be the alleged victim, this is not always so. Sometimes the complainant is someone coming forward on the victim’s behalf. Regardless of who reports the alleged harassment, management has a duty to investigate once it receives the complaint.

**Does there need to be an investigation if the complainant requests that no action be taken?**

Yes. In some cases, after reporting alleged harassment to management, the complainant asks that no action be taken or attempts to withdraw the complaint. Usually, in these circumstances, the complainants express that they “don’t want anything bad to happen” to the accused due to their complaint or that they just came forward to “get it off their chest.” Regardless of the wishes of the complainant, management has a duty to investigate to avoid possible future liability.

**Does contact between the complainant and accused need to be limited?**

Yes. Once the complaint has been brought to management, it is very important to limit the contact between the complainant and accused. Often, this will require physically separating them. In some cases, this can be achieved by transferring one or both parties to different shifts or offices. If this is not possible, management may need to put one or both parties on administrative leave until the investigation is completed. Under either method of separating the parties, management should clearly explain to the affected employees that it does not constitute disciplinary action and that neither the complainant nor the accused is to communicate with each other during the investigation.

**How do you develop an investigative plan?**

The investigator should determine what information they will need in order to completely understand the allegations. Usually the investigator will want to obtain information and documentation on the following: **(1)** identity of the alleged victim(s); **(2)** identity of the accused; **(3)** nature of the complaint; **(4)** where and when it occurred; **(5)** the context in which the complaint took place; **(6)** whether the instance was a single occurrence or an on-going series or pattern of events; **(7)** identity of any witnesses; and **(8)** whether there is any documentation of the occurrence(s) of harassment.

The investigator will need to conduct interviews to obtain the information. The investigator should interview the accused, alleged victim(s), any witnesses, and any other co-workers with relevant background information on any of the parties. Be mindful of who all you are involving. Interview those with seemingly pertinent knowledge, but don’t just involve people to involve them. The investigator will also need to review the complainant and accused’s personnel files to determine if there is a past history of similar behavior (i.e., harassment by the accused or erroneous charges of harassment by the complainant) or disciplinary action. It is advisable for the investigator to visit the site(s) where the harassment allegedly occurred.

**How do you conduct investigative interviews?**

It is essential that the investigator have strong interviewing skills because the investigative interview is the most important tool to help determine what occurred and whether or not it was inappropriate conduct and/or illegal harassment/discrimination.

Tips for Effective Interviews:

1. Establish Ground Rules
   1. Interviewee is expected to provide complete and truthful information.
   2. Confidentiality –
      1. Make clear to the interviewee that the employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the complainant, accused and potential witnesses. However, pertinent information will be shared only on a need-to-know basis.
      2. Advise interviewee to direct any further questions, comments, or concerns to the investigator.
         1. Employees should be instructed that while they have a right to express and discuss concerns about work, some information should not be discussed as it would interfere with the investigation or feel retaliatory. If the person has questions about what they may/may not share to contact the investigator.
   3. Advise interviewee of relevant policies (e.g., harassment, non-discrimination, and anti-retaliation, etc.)
2. Explain the Nature of the Complaint to the Interviewee
3. Obtain Specific and Factual Information
4. Do Not Limit an Interviewee’s Statement to Matters Solely Within His or Her Personal Knowledge
5. Keep the Interviewee Focused on Relevant Information
6. The Questions Should be Short, Simple and Designed to Elicit Specific Facts
7. Be Sure the Interviewee Answers the Questions Asked
8. Outline Basic Questions to Be Asked Beforehand
9. Listen Carefully to the Interviewee

**How to bring an investigation to a close?**

1. Review the Evidence and Make a Determination
   1. The investigator does not need to be convinced beyond all reasonable doubt in order to substantiate the complaint. The standard the investigator should apply is whether it is more likely than not that the complaint occurred based on all the evidence, also referred to as the “honest belief” rule.
2. Determine the Proper Measure of Disciplinary or Other Action
   1. Per the EEOC, “disciplinary measures should be proportional to the seriousness of the offense. If the harassment was minor, such as a small number of “off-color” remarks by an individual with no prior history of similar misconduct, then counseling and an oral warning might be all that is necessary. On the other hand, if the harassment was severe or persistent, then suspension or discharge may be appropriate.”
3. Communicate the Results to the Complainant and Accused
4. Document Results

**Conclusion**

In order to substantially reduce the risk of liability from workplace harassment/discrimination claims, employers should develop anti-harassment/discrimination policies and complaint procedures. All employers should effectively train their supervisors and employees. When necessary, employers should properly investigate any complaints and document results.