

Checklist for Conducting a Sexual Harassment Investigation

PRE-INVESTIGATION

- I. Initiate an investigation immediately upon receiving even informal knowledge that sexual harassment may have occurred-don't wait for a formal complaint.
- II. Consider performing a mini-investigation to determine whether to:
 - A. Place accused on leave immediately;
 - B. Transfer employees to other positions temporarily;
 - C. Change the responsibilities of the supervisor; or
 - D. Take action to alleviate a safety problem.
- III. Identify potential witnesses.
- IV. Complete an investigation into available records.
 - A. Search for documents reporting similar activity.
 - B. Thoroughly analyze the personnel records of both the complainant and the accused.
 1. Have there been any other complaints?
 2. Does the complainant have any motivation to make unjustified accusations?
 - C. Speak with current and past supervisors of both.
- V. Create a strategy for the investigation.
 - A. Make a time line.
 - B. Prepare a schedule of witnesses to be interviewed.

**Make sure to schedule enough time in between interviews to complete your notes from the interview.
- VI. Draft a list of questions to be asked of all parties involved.

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VII. Research company policy and other agreements for procedures or limitations in regard to the investigation.

VIII. **When appropriate, consult with an attorney.**

INVESTIGATION

I. Choose an investigator.

- A. Consider someone outside the relevant work group.
- B. Consider a male/female investigation team.
- C. Choose someone **trustworthy**.

II. Include a witness in all interviews.

III. Contemporaneous notes should be kept for all interviews.

IV. In regard to the interview of the complainant:

- A. The location should be safe and private.
- B. Ask the complainant if she/he has experienced retaliation for making the claim of harassment.
- C. Confirm the Company's interest in remaining neutral throughout the investigation process.
- D. Do **not** promise confidentiality.
- E. Try to ask open-ended questions.
- F. Ask the complainant if she/he knows of others who may be helpful to the investigation.
- G. Be observant about body language and other non-verbal means of communication.
- H. Consider other creative ways of investigating the situation.
- I. Determine whether the accused was told that his/her behavior or language was unwelcome.
- J. Do **not** make any guarantees to the complainant that the outcome will be what she/he hopes for.
- K. Repeat the story to clear up any misunderstandings.
- L. Contemporaneous notes should reflect only the facts.

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- M. All notes should be kept in a confidential file separate from personnel records.

V. In regard to the interview of witnesses:

- A. Advise witnesses of the nature of the complaint.
- B. Go over the company's sexual harassment policy with the witness.
- C. Tell witnesses that no decisions have yet been made by management in regard to the complaint.
- D. Do **not** promise confidentiality.
- E. Consider keeping the complainant's name confidential.
- F. Ask open-ended questions.
- G. If the witness appears to be lying or rambles, use short, fact-based questions to keep the interview on track.
- H. Advise witnesses not to discuss the interview with others.
- I. Stress that retaliation is prohibited.

VI. In regard to the interview of the alleged harasser:

- A. Advise the alleged harasser of the nature of the complaint.
- B. Go over the company's sexual harassment policy with the accused.
- C. Tell the accused that no decisions have yet been made by management in regard to the complaint.
- D. Allow time to pass if the accused becomes angry over the accusations.
- E. Thoroughly address each accusation, giving the accused time to carefully respond.
- F. If the accused appears to be lying or rambles, use short, fact-based questions to keep the interview on track.
- G. Ask the accused if she/he knows of others who may be helpful to the investigation.
- H. Stress that retaliation is prohibited.

CLOSING THE INVESTIGATION

- I. Analyze the results of the investigation. In reviewing the notes from each interview, determine:
 - A. Whether each witness was credible.

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- B. Whether you feel as though you know what happened.
- C. Whether you believe that employer policies were violated.

II. Determine what action to take.

- A. If a policy violation occurred:
 - 1. Analyze its severity.
 - 2. Communicate strong disapproval.
 - 3. Adhere to company policy and other agreements.
 - 4. In regard to discipline, be consistent with past similar situations.
 - 5. Document what you've done.
 - 6. Speak with the victim again for purposes of closure.
- B. If a policy violation did not occur:
 - 1. Inform both parties that the investigation did not reveal facts that substantiate the complaint.
 - 2. Stress company policy on sexual harassment.
 - 3. Remind both that retaliation is prohibited.
 - 4. Reiterate that the company encourages the reporting of sexual harassment.
- C. If it is still unclear whether a policy violation occurred:
 - 1. Stress company policy on sexual harassment, especially the legal definition of sexual harassment
 - 2. Continue to monitor the workplace.
 - 3. Reiterate that the company encourages the reporting of sexual harassment.

AFTER THE INVESTIGATION

- A. Document the results of the investigation.
- B. Contemplate giving all employees an additional copy of the company's sexual harassment policy.
- C. Discuss the possibility of sexual harassment training.

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- D. Advise the complainant in advance if the accused will be returning to work.
- E. Document any subsequent activity.

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