



HARASSMENT INVESTIGATION PROTOCOL

Having a process to investigate harassment or other incidents within your organization. Whether you do it internally or have a third-party investigator following the following protocol is key.

Harassment because of sex, race, sexual orientation, ancestry, physical or mental disability, marital status, age or any other protected basis under state and federal law includes, but is not limited to:

- Verbal and written conduct such as epithets, derogatory comments, slurs, notes, memos, faxes, letters, E-Mail, invitations, unwanted sexual advances, or comments;
- Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures;
- Physical conduct such as assault, unwanted touching, blocking normal movement or interfering with work directed at you because of your sex, sexual orientation, race or any other protected basis;
- Threats and demands to submit to sexual requests in order to keep your job or avoid some other loss, and offers of job benefits in return for sexual favors;
- Creating an atmosphere of terror and violence;
- Retaliation for having reported or threatened to report harassment.

Employees may have a claim of harassment even if they have not lost a job or some other economic benefit. The law prohibits any form of protected-basis harassment which impairs an employee's working ability or emotional well-being at work.

If employees believe they are being harassed on the job because of their sex, sexual orientation, race, ancestry or other protected basis, they should use the procedure outlined in this policy to file a complaint and have it investigated.

Complaint

Employees have a right to redress for harassment. In order to secure this right, employees should file a complaint, preferably but not necessarily in writing, to any member of management not involved as soon as possible after any incident they believe to be prohibited harassment. The complaint should include the details of the incident or incidents, the names of the individuals involved and the names of any witnesses.

Investigation

The Company will immediately undertake an effective, thorough and objective investigation of the harassment allegations. The investigation will include interviews with the complainant, witnesses and the alleged harasser. This investigation will be completed and a determination regarding the alleged harassment will be made and communicated to the employee as soon as practical.

Remedy

If the Company determines that harassment has occurred, we will take effective remedial action commensurate with the severity of the offense. Appropriate action will also be taken to deter any future harassment. The complaining employee will be advised as to whether or not action has been taken with respect to the alleged harasser. The Company will not retaliate against employees for filing complaints and will not knowingly permit retaliation by management employees or co-workers.

The Company encourages all employees to report any incidents of harassment immediately so that complaints can be quickly and fairly resolved. This includes all victims and witnesses.

Harassment Investigation Checklist

- Consider the order in which investigation interviews will be conducted.
 - Complainant.
 - 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.

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. At least one of the investigating managers should be thoroughly 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' 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 Company 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.
- Instruct each witness 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.
- Avoid leading questions.
- Ask open ended, non-judgmental questions. Use investigation interview forms where appropriate.
- Explain to all witnesses that retaliation will not be tolerated.
- Avoid the appearance of impropriety or favoritism in conducting interviews.
- Observe and record all physical and verbal reactions of witnesses.
- Do not record conclusions regarding credibility
- Avoid judgmental statements or furthering of myths or stereotypes.
- Explore the effect of alleged harassment on each witness (i.e., psychological, emotional, physical and financial).

- Interview all possible witnesses:
 - Complainant.
 - Alleged harasser.
 - Complainant's supervisor.
 - Alleged harasser's supervisor.
 - Co-workers.
 - Other:

- Review Complainant's personnel file.
- Review alleged harasser's personnel file.

- Discuss investigation results and proposed action with investigation team. This discussion should be limited to those with a need to know the results of the investigation, such as the Complainant's supervisor, the alleged harasser's supervisor, and senior Human Resources Department staff.

- Consider credibility determinations
 - Factors include:
 - Memory.
 - Perception.
 - Veracity (truthfulness).
 - Corroboration or lack of corroboration, and implications of such determination.
 - Bias of witnesses.
 - Consistency of accounts.
 - Prior misconduct or lack thereof, and implications of such misconduct.
 - Plausibility of accounts.

- Review any documentary evidence.

- Consider appropriate remedial action:
 - Document investigation in personnel file.
 - Verbal warning.
 - Written warning.
 - Suspension.
 - Demotion.
 - Termination.

- Factors in determining appropriate remedial action.
 - Credibility determinations.
 - Prior conduct, if any.
 - 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.
 - Political considerations within the organization.
 - Public and employee relations issues.
 - Other:

- Review harassment investigation and findings.
 - Was the Company harassment policy adequate?
 - Were the employees aware of the terms of the harassment policy?
 - Was the harassment complaint procedure adequate?
 - Did the investigator uncover other issues which need to be addressed?
 - Other: Implement changes to harassment policies and procedures where appropriate.

Complainant Interview Form

Name:

Date:

Position:

Supervisor:

Name and position of the alleged harasser:

Date and time of the harassment:

Did the harassment occur more than once?

If so, how often did it occur?

If it occurred more than once, on what dates and at what times did it take place?

For each incident, ascertain and document what occurred. Try to get as many details as possible, even though this may be uncomfortable for the complainant. Use additional pages if necessary. Ask open ended, non-judgmental questions, such as:

- Did the alleged harasser threaten the Complainant in any way?
- If so, what was the threat or threats?
- How long was the incident, for example a few seconds, five minutes? Months or Years?
- Where did the incidents of harassment take place?
- Were there any witnesses to the incidents of harassment? If so, who were the witnesses?
- Does the Complainant know of any others subjected to the same behavior?
- Does the Complainant know motive for harassment?
- How did the Complainant respond to the harassment? Did he or she make any effort to bring it to a halt?

- Did the Complainant tell anyone else about the incidents of harassment: superiors, coworkers, family, friends, government representatives, attorneys? If so, get details concerning who, what, when, where and the response, if any.
- Does the Complainant have any tangible evidence or records of harassment: notes, letters or memos to or from harasser, witnesses; calendar or diary entries, memos, letters, notes etc. by Complainant; tape recordings, surreptitious or otherwise; formal complaint forms to any agencies?
- How did the Complainant feel about the harassment at the time it occurred?
- Does the Complainant feel the same way now? If not, what is different about how the Complainant now feels, and what brought about the difference?
- Does the alleged harasser have control over the compensation, working conditions or future employment of the Complainant?
- Has the alleged harasser made or carried out any threats or promises in connection with the alleged sexual harassment?
- Does the Complainant know or suspect there are other victims of harassment by the same person? If so, who are they?
- To what extent were others in control made aware of the situation?
- What action would the Complainant like to have taken?

Ask the employee to write and sign a detailed description of all events to support the harassment claim.

Interviewer:

Date:

Witness:

Date:

Alleged Harasser Interview Form

Name:

Date:

Position:

Supervisor:

Prepare for the investigation meeting with the alleged harasser. This meeting should take place in private, although the company should have two representatives present. The investigator should outline the allegations in advance to ensure that all subjects are discussed.

Provide the alleged harasser with a copy of the company policy, emphasizing the employer's commitment to enforcing the policy. This step should be followed even if it is suspected that the allegations are not true. Answer the alleged harasser's pre-interview concerns and suspicions about the investigation.

Advise the alleged harasser generally about the investigation and strict policies of confidentiality and avoidance of retaliation.

Ask direct and detailed questions based on information provided by all witnesses, such as:

- Were the alleged harasser and complainant working together on the date(s) complainant says harassment occurred?
- Does the alleged harasser recall any interaction with complainant on those dates? If so, what was the context of the interaction?
- Were there any witnesses present?
- What was the substance of any conversation between the complainant and alleged harasser?

Expect an adamant denial. For each denial, request that the harasser identify corroborating witnesses or evidence, and detail any "alibi."

If the alleged harasser acknowledges any conduct, ascertain and document what occurred. Try to get as many details as possible, even though this may be uncomfortable for the alleged harasser. Use additional pages if necessary.

Ask open ended, non-judgmental questions, such as:

- Was the touching done at the direction of the Complainant or the alleged harasser?
- Did the alleged harasser threaten the Complainant in any way?

- If so, what was the threat or threats?
- Were there any witnesses to the incident? If so, who were the witnesses?
- How did the Complainant respond to the incident? Did he or she make any effort to bring it to a halt?
- How did the alleged harasser feel about the incident at the time it occurred?
- Did the alleged harasser do or say anything that could have been misunderstood or could be intentionally misrepresented?

Ask the alleged harasser about his/her beliefs or suspicions as to why the reports or complaints have been made (i.e., ulterior motives, prior consensual relationships, retaliation by the complaining employee, attempts at job security in the face of poor performance evaluations, etc.).

- Did the Complainant engage in any conduct which the alleged harasser felt was inappropriate or made the alleged harasser feel uncomfortable?
- Has the Complainant ever said or done anything that would lead the alleged harasser or others to believe that the complained-of conduct was not "unwelcome?"
- What is the level of supervision between the alleged harasser and the complainant?
- How frequently do the alleged harasser and the complainant work together?
- Has the alleged harasser been previously accused of harassment?
- If so, what were the circumstances?

Interviewer:

Date:

Witness:

Date:

Co-employee Interview Form

Name:

Date:

Position:

Supervisor:

- Did the co-worker see any alleged harassing incident?
- What happened?
- What was said by the alleged harasser?
- When did all of this happen?
- Who else was present?
- What (if anything) did the Complainant say or do in response to the alleged harasser's conduct?
- Did anyone else say or do anything during the incident?
- Did the co-employee later tell anyone about the incident and if so who did you tell and what was their response?
- Did the co-employee see more than one alleged harassing incident between the alleged harasser and the Complainant? If so, ask questions such as those on the preceding list for each incident.
- Did the Complainant ever discuss the issue of alleged harassment with the co-employee?
- How did the Complainant respond to the harassment?
- Did he or she make any effort to bring it to a halt?
- Did the co-worker notice any appreciable change in the Complainant's behavior?

- Did the Complainant become more or less emotional, upset, or moody at work, specifically with or near the alleged harasser? Please specify.
- Who told the co-employee about the alleged harassment?
- Who was allegedly harassed?
- What was the form of the alleged harassment?
- What happened?
- When did it happen?
- Who else was present?
- What did anyone else allegedly say or do during the incident?
- Whom did the co-employee later tell about the incident and what was the response?
- Is there any reason the co-employee can think of why the alleged harasser would have thought that the conduct in question was welcomed?
- Does the co-employee know any reason why the Complainant would misrepresent allegations?
- Why harasser more-likely-than not committed misconduct?
- Who does the co-employee believe (in cases where harasser denies allegations outright)?
- Why?

Is the co-employee aware of any other incidents of sexual harassment by any other Company employees? If so:

- Describe the incident.
- Who was involved?
- Identify all witnesses.
- When did it occur?
- Was Company management advised about the incident promptly and what was the response?
- If Company management was not made aware of the incident promptly, why not?
- Other:

Interviewer:

Date:

Witness:

Date: