# Workplace Complaint Investigations Guide

This guide represents a quick reference to help a small business efficiently and effectively conduct investigations as necessary based on a complaint from an employee… or even from one of its customers.

Prompt investigation and appropriate corrective action may be necessary for situations such as:

- An employee or non-employee complains to a manager about alleged harassment or discrimination personally experienced or observed by the individual.
- A manager directly observes employee conduct that violates certain company policies.
- An employer receives a formal EEOC charge even if no employee complaint was made to management prior to the charge.

While the focus of this guide generally leans towards sexual harassment complaints, the information can apply to various types of internal workplace investigations. The following covers fundamental items that you as the employer should and should not do.

## General Guidelines

In general:

- **Respond Immediately.** Promptly start the investigation after receiving a complaint even if it seems to be frivolous. Especially in the case of a harassment claim, employers are obligated to act immediately.
- **Maintain Focus.** If more than one complaint or allegation exists, then handle each one as a separate issue.
- **Confirm the Investigator.** The individual you choose depends on the seriousness of the complaint as well as the parties involved.
- **Prepare to Interview.** Review the complaint details, identify who will be interviewed, and establish a list of critical questions. Interview the complainant first and determine any witnesses.
- **Set Expectations.** Outline to each party involved the entire investigation process (i.e. interviews of witnesses, review of findings, etc.).
- **Keep Confidential.** Emphasize to all those involved in the investigation (i.e. the complainant, the accused, and any witnesses) the requirement to keep discussions strictly on a "need to know" basis. The purpose of the investigation is to get the facts and not to make conclusions.
- **Reinforce No Retaliation.** Make it clear that the company will not or tolerate those who retaliate against individuals participating in the investigations.
- **Document Diligently.** Take comprehensive notes and obtain written testimonials whenever possible. All documentation related to the investigation should be secured in a separate file location.
- **Stay Impartial.** Avoid any sense of bias; otherwise, the interviewees will grow reluctant to share information openly. Also, do not create unnecessary liability by commenting on the character of any party, especially the accused, being interviewed.

- **Consider Preventative Measures.** Upon confirming the basic allegations and issues, decide if any preliminary action items should be taken in order to complete the investigation. For example, to protect the health and safety of your employees, you may suspend the alleged offender, with or without pay.
- **Write the Report.** Prepare a final report of the investigation, including any supporting documentation supporting the findings.
- **Report the Findings.** After completing the investigation, follow up with the parties involved regarding the findings and any relevant action items. Keep in mind that simply communicating to the complainant that the company took appropriate action to resolve the situation should be sufficient.
- **Take Appropriate Action.** If the complaint is founded, determine the appropriate action items to remedy the situation (i.e. transfer, suspension, termination, monetary damages, criminal charges, etc.).

# Interviews

## Complainant

Interview the complainant, keeping in mind the following:

- If possible, obtain a written statement from the complainant.
- Ask basic questions, such as:
    - What happened?
    - Who was involved?
    - When and where did this occur?
    - Who are the witnesses if any?
    - What notes have you kept?
- Get the specific context in which the conduct occurred, including the nature and identification of the work area.
- Determine the effects of the conduct on the complainant.
- Determine the time relationship between the occurrence of the alleged conduct, its effect on the complainant, and the time when the complainant made the report.
- It is very important to find out what the complainant wants in order to resolve the situation.
- Explain to the complainant that the charges are serious, that the company will conduct a thorough investigation before reaching any conclusions and that the employee will not be retaliated against for making the complaint.

## Accused

Interview the accused, keeping in mind the following:

- If possible, obtain a statement from the accused.
- Identify the relationship of the accused to the complainant.
- Determine any prior consensual relationship between the parties.

- If the individual was a supervisor, determine the individual's 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 (for example, hiring, firing, promoting or assignment of duties), or was responsible for the maintenance or administration of the records of others.

## Witness

Interview the witness or witnesses, keeping in mind the following:

- Obtain statements from any witnesses who support or deny any of the complainant's allegations.
- Assure all witnesses that their cooperation is important, that their information is confidential, and that they will not be retaliated against for providing information.

The start of an investigation should not be limited only to those situations in which an employee has personally raised a complaint to management. Since the employer will be held responsible for any harassment or discrimination that is known to a supervisor or should have become known through reasonable diligence, all supervisors should be regarded as the eyes and ears of management.



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