

Handling Post-Pandemic Harassment and Discrimination Claims

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Agenda for Today

How to Handle Harassment and Discrimination Claims

- First steps for responding to a complaint
- Interviews and document review
- Third-party complaints
- Determination and remedial action
- Common pitfalls

First Steps After Receiving a Complaint

- Duty to investigate
- Investigation team
- Notice to involved parties
- Confidentiality
- No retaliation
- Document preservation

Fact Development

- Policy review
- Document/ESI collection and review
- Witnesses
- Comparable employees

Fact Development – Interviews

- Complainant interview
 - Instructions
- Interviews of other parties
 - Instructions to witnesses
 - Witness statements/affidavits
 - Accused party
- Interview notes

Third-Party Complaints

- Non-employee harasser/misconduct
- Complaint from non-employee

Call It – Is the Claim Substantiated?

- You must decide: substantiated or not?
- Factors to consider – D.R.I.P.
 - Duration
 - Repetition
 - Intensity
 - Physical (vs. verbal/written)
- Reduce decision to writing
- Decision-maker approval

Claim Substantiated

- Remedial action
 - Zero tolerance?
 - Goal of remedial action
 - Level of discipline = Make it stop
- Notice to parties
- No retaliation!

Claim Not Substantiated

- Notice to parties
- No retaliation!
- Root cause analysis
 - Policy review
 - Training protocols

Problem Areas

- Requests for confidentiality
- Stale complaints
- Illegal behavior – law enforcement
- Reference requests



Questions?



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