



Responding to Complaints of Harassment: How to Conduct an Effective Internal Investigation



Jennifer G. Prozinski

Partner 703.760.1973 JGProzinski@Venable.com

Hayley F. Degnan

Associate 703.905.1504 HFDegnan@Venable.com

VENABLE LLP



Why Do We Need to Investigate?

Why? It's the Law.

- Federal Employment Discrimination Laws
- State and Local Employment Discrimination Laws
 - Additional Protected Categories/Characteristics

Legal Definition of Harassment

- Harassment is a form of discrimination and is unlawful
- Elements of harassment

Types of Unlawful Harassment

- Quid pro quo
- Hostile work environment

The Equal Employment Opportunity Commission

- Enforces federal employment discrimination laws
- EEOC's position



What Policies and Processes Should We Have in Place?

Maintain an Anti-Discrimination and Harassment Policy

- The policy should, at a minimum, be in writing, be circulated to and acknowledged by all employees, and:
 - Include all forms of harassment under applicable federal, state, and local law
 - Outline the complaint procedure
 - Provide that harassers will be disciplined, up to and including termination
 - Prohibit retaliation
 - Include any other information required by applicable law

Maintain an Internal Process for Handling Complaints

- Establish a general investigation process
 - Identify investigator(s)
 - Identify decision makers

Understand What a Harassment Complaint Is

- Sometimes it is difficult to identify whether an individual is making a complaint about harassment
 - No “magic words”
 - The individual may not realize that they are making a complaint

Is This a Harassment Complaint?

- “I want to file a complaint that Alex violated Title VII of the Civil Rights Act, by harassing me because of my sex.”
- “Sam treats women differently than men.”
- “Alex doesn’t treat me fairly.”
- “There is a real personality conflict between me and Sam.”
- “I can’t take it anymore. I need to be moved to a position in another department.”

Is This a Harassment Complaint?

- “I don’t want to make a *formal* complaint, but . . .”
- “I don’t want you to do anything, but . . .”
- “I’m telling you this in confidence.”
- “I heard that Alex has been harassing Sam.”



The Investigation

Who Is Your Potential Audience?

- The complainant and their attorney
- The accused and their attorney
- Other employees
- EEOC
- The public
- The judge
- The jury

What Are the Goals of the Investigation?

- Fair and impartial resolution of complaints
- Protecting employee morale and productivity
- Protecting the company's reputation
- Protecting the company from legal liability
- Encourage reporting
- Deterring false reports



The Investigative Process

General Investigation Steps

- One size does not fit all
- Tailor the steps of the investigation as necessary

Step One: Complaint Intake

- Form of the complaint
- The person reporting the complaint
 - Complainant
 - Manager
 - Witness

Step Two: Prepare for the Investigation

- Review applicable policies
- Review relevant documents
- Identify witnesses
- Draft an outline

General Interviewing Tips

- Set the interviewees at ease
- Ask broad and specific questions
- Ask for relevant documents
- Document the interviews
- Consider having a second organization representative present for the interviews

Step Three: Interview the Complainant

- Discuss each allegation
- Establish a chronology of events
- Ask for potential witnesses and their knowledge

Step Four: Interview Witnesses

- Allows you to obtain additional information before speaking with the accused
- Can ask broad and/or specific questions, depending on their level of knowledge

Step Five: Interview the Accused

- Allow the accused to:
 - Admit or deny each allegation that has been made
 - Submit any additional information
- Retaliation reminder

Step Six: Review the Evidence

- Review the information collected during the investigation
 - Inconsistencies and open issues
 - Further investigation

Step Seven: Formulate Findings and Conclusions

- Witness credibility
- Determination of whether a violation of policy and/or unlawful conduct occurred
- Legal review

Step Eight: Determine Responsive Action

- If there was a violation of policy, determine appropriate corrective action
 - Types of corrective actions
 - Ensure consistency
- Standard for evaluating appropriateness of corrective action

Step Nine: Communicate the Outcome

- Communicate investigation findings separately to complainant and accused
- Follow up

Step Ten: Preserve the Investigation File

- Keep the investigation file stored in a secure location
 - Consider document retention policies

Specific Areas of Concern: Conflicts of Interest

- Examples where actual or perceived conflicts of interest may arise:
 - Supervisor of investigator is the accused
 - Accused is a long-term, “perfect” employee
 - Investigator witnessed the alleged misconduct

Specific Areas of Concern: **Interim Relief**

- Consider whether interim relief during the investigation is needed
 - **Contact between complainant and accused**

Specific Areas of Concern: **Timing**

- Promptness is critical
- Uncooperative witnesses



Questions?

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