

INVESTIGATING HARASSMENT COMPLAINTS

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As a manager, you may be named personally in a human rights complaint if you knew that one of your staff members was being harassed and you didn't take steps to address the problem. Therefore, it is critical for you to investigate the situation and respond appropriately when someone who reports to you is being harassed. This article outlines the process for investigating a harassment complaint.

Objective of the Investigation

The objective of an investigation is to facilitate the resolution of the conflict that prompted the complaint. If you have a complaint, you have a problem and the investigation can do a great deal to help resolve that, even if a breach of your organization's harassment policy is not ultimately found.

Often, the parties to a complaint must continue working together after the complaint is resolved. In your role as an investigator, you must be cautious in your approach and be sensitive to the needs of everyone involved to avoid placing greater strain on an already damaged relationship.

For an investigation to be successful the process must be:

- credible
- objective
- consultative, and
- sensitive to the parties' process needs (i.e., for things like confidentiality, fairness, non-reprisal).

Attributes of Effective Investigators

An investigator can influence the parties' perception of the overall fairness and credibility of the process and the likelihood that they will accept the result.

Effective investigators:

- are unbiased and non-judgmental
- are available to the parties throughout the process to answer any questions they may have facilitate the prompt and effective resolution of harassment concerns and complaints
- are sensitive to the difficulty complainants have discussing their experiences
- listen, interview and communicate effectively
- are well-versed in their organization's policy and procedures
- speak comfortably and are not embarrassed about sensitive issues

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- resolve conflict effectively
- lead by example and do not harass or condone harassment of others

Pre-Investigation Steps

Preparing an Investigation Plan

Before you start the investigation, you will need to make a plan that covers how you will approach the investigation and what witnesses you will interview. Review the plan throughout the investigation to ensure that you have gathered all of the essential evidence.

Notifying the Parties

You will need to notify the parties that an investigation is being commenced and provide them with information about the process.

It may be useful to meet briefly with the parties involved to explain how the process works and what your role will be. This will help you to establish rapport with both sides, secure their trust and obtain cooperation. Maintaining credibility is critical and should be your goal throughout the investigation.

Documenting the Investigation

It is essential to record the information you obtain during the investigation process.

The best method for doing so is to take notes and have the interviewee read them and sign them after the interview. This can be done by hand or, where possible, by using a laptop and printing out the notes.

When interviewing, make note of any issues or discrepancies that you need to follow up on before completing the interview.

When documenting the investigation, only record facts and not your assumptions or opinions. Be thorough and include as much detail as possible. Otherwise, you might forget an important detail or eliminate something that later becomes critical to the investigation and resolution of the complaint.

Conducting an Effective Interview

Harassment discussions are inherently difficult because of the emotions involved, time pressures, politics, individual personalities, and your own potential stereotypes and biases.

It is easy for even an experienced investigator to not always use effective listening skills and appropriate interviewing methods.

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The following tips will help you conduct an effective interview.

Do's:

- Be a patient, empathetic (not sympathetic) listener
- Get specifics
- Ask open ended questions
- Restate the information in the person's own words

Don'ts:

- Don't state your assumptions or suggest an opinion
- Do not betray confidences
- Do not take sides
- Do not apply moral judgments

Interviewing the Complainant

Keep this in mind:

- Complainants often believe their organization's policy is geared more toward protecting the organization than preventing and responding to harassment.
- It usually takes a lot before a complainant will come forward and he or she may need to vent and express emotional needs.
- The complainant may be unable to speak coherently about the matter. Be patient.
- The complainant may feel traumatized and powerless because of the situation. He or she may also be depressed and extremely stressed.
- Even though the complainant initiated the process, he or she may still be very uncomfortable and may have very real concerns about the repercussions for having raised the matter.
- The complainant may feel uneasy if you spend all your time taking notes. Make eye contact and truly listen.

Steps for the Interview:

- Explain the process and your role. Ask the complainant upfront what questions or concerns he or she may have. This will help you establish trust and avoid problems of miscommunication or confusion.
- Identify the relevant parties.
- Determine the relationship between the parties (e.g., Is there a position of power or authority involved? Is either the complainant or respondent not an employee e.g., a client, supplier, etc.)

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- Identify the allegations being made.
- Determine if the behaviour was unwelcome and how that was communicated to the respondent (e.g., verbally telling the respondent to stop, body language, etc.).
- Determine if the behaviour is related to a protected ground of discrimination (such as sex, race or religion) or whether it is simple bullying.
- Obtain any corroborating evidence, such as notes, time sheets, names of witnesses.

Interviewing the Respondent

The respondent may be very reluctant to participate in the process. He or she may believe that it won't matter what they say because a finding will be made against them in any event. You will need to make reassurances about the fairness and objectivity of the process to help the respondent understand why it is important to participate.

Make sure to remain neutral and avoid cross-examining the respondent or using questions that suggest you believe the respondent is guilty.

Give the respondent sufficient time to provide a full answer to the allegations and provide any information he or she deems relevant or important.

As with the complainant, ask the respondent what corroborating evidence he or she may have, such as witnesses or documentation.

Interviewing Witnesses

The kinds of questions you ask witnesses will depend on whether the interviewee witnessed something directly or experienced similar problems with the respondent. You may also need to question an interviewee to ascertain whether the respondent had the opportunity to engage in the alleged conduct.

Assessing the Evidence

The final step in the investigation process is to make an assessment as to whether or not the behaviour constituted harassment. You may find it easier to make this determination if you list the allegations and corresponding evidence together on a spreadsheet.

Many situations involve one person's word against another. If that is the case, you may also need to make a determination about which person is more credible.

Conclusion

Conducting a harassment investigation is by no means easy. You will need to be objective and fair to both parties. Although you may face some of challenges along the way, through careful preparation you will be able to successfully manage and respond to them.

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Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

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About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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