

Investigating workplace harassment: 10 steps to success

When complaints of workplace harassment arise, as they inevitably do, managers and HR directors are called upon to respond. Doing this right is a high-stakes venture. Here are 10 steps to performing an appropriate investigation:

1. Investigate (almost) every complaint. An investigation will be necessary in most circumstances. However, if the allegations are quite minor (a relatively innocuous and isolated joke not aimed at anyone) or the person accused of the behavior admits it, you can skip the investigation and take appropriate disciplinary action.

2. Chose the right investigator. The investigator should be neutral and experienced. Don't have a supervisor with less authority than the accused person do the investigation. If a high-ranking employee is implicated, consult with an attorney or bring in an outside investigator.

Don't go forward with an investigation yourself unless you can be truly unbiased and are confident in your own abilities. Instead, find someone else with the appropriate background, even if it means hiring an outsider.

3. Act right away. Respond immediately to complaints, which usually means within a week of the allegations. In fact, if an employee complains that harassment is based on a protected category (e.g., sex, race, age, ethnic origin, religion, etc.), the law requires companies to take swift and appropriate action.

If you hire an outside investigator, the process may take a bit longer. Once the investigation begins, it should continue until completed and not be put on hold. You may need to put the accused person on paid administrative leave until after the investigation is over. Try to have the whole thing finished within two weeks of receiving the complaint (a month if an outside investigator is used).

Free report:

Solve 'He said-she said' dilemma in investigations

To help you determine who's telling the truth during harassment investigations, get a free copy of our three-page report, *Investigating Harassment: How to Determine Credibility*. To have the report e-mailed to you, send an e-mail request to YATLreport@nibm.net and put "Credibility" in the subject line.



4. Document everything. Start your documentation right away and document objective facts—not conclusions or opinions. Assume that your notes will be scrutinized. The complainant, respondent and witnesses should sign statements or the investigator's notes so it's clear that the investigator has obtained their version.

5. Question all witnesses. First interview the employee who's making the complaint. Make sure you have a thorough understanding of the complaint before going forward. Next, interview the respondent. If he/she admits the behavior, you may have to go no further. In most cases, you'll need to interview witnesses who have information directly relevant to the complaint. At the same time, gather any pertinent documentation.

6. Come to a determination supported by evidence. After gathering evidence, you will need to decide what happened. Don't try to avoid this by concluding you can't tell who is being truthful. It is up to the investigator to weigh credibility and decide which version of the facts is more likely. (For specific tips, see special report offer above.)

Key point: Employees claiming harassment don't need to prove the harassment occurred "beyond a rea-

sonable doubt." The burden of proof in workplace investigations, as in civil cases, is lower. They must only meet a "preponderance of the evidence," which means that it's more likely than not that the allegations occurred.

7. Prepare a written report. Explain the complaint and your conclusions. This will let you explain your methods and why you concluded which party was more believable.

8. Communicate with both sides. Throughout the investigation, be in touch with both parties on a regular basis. Let them know when you will wrap up the investigation. When it is completed, communicate the findings. For privacy reasons, most employers won't want to reveal the specific disciplinary action taken. But the person making the complaint should be told if action is taken.

9. Administer appropriate discipline. If you conclude that company rules were broken, take disciplinary action. Often someone other than the investigator decides the punishment. The discipline should reflect the seriousness of the offense and should be consistent with discipline administered for similar infractions.

10. Follow up to make sure there is no retaliation. Your job isn't over once the investigation is complete. People who complain about harassment often find their work environments become frosty. Make sure this doesn't happen. Monitor the workplace and check in with both parties.



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