

THE RISK OBSERVER

SEXUAL HARASSMENT - INVESTIGATING COMPLAINTS

First, every complaint of sexual harassment should be taken seriously. Investigate every complaint impartially and thoroughly. If a complaint goes to court, the court will examine your internal investigation to determine whether it was conducted in such a fashion. If the district fails this test, chances of liability will greatly increase.

Second, obtain legal advice, even if the district employs highly trained investigators/hearing officers. Select an investigator, who is impartial, has had no past dealings with either the claimant or the alleged perpetrator, who is thoroughly trained, and who has a thorough knowledge of the district sexual harassment policy.

It is a good idea to **assign two investigators to internal investigations;** a male/female team provides an option, which will make some interviewees more comfortable, and the investigators can support each other throughout the process.

Third, inform your insurance carrier, and cooperate with its investigation.

The investigation should begin with the collection and review of pertinent documents for possible bearing on the case. Examples: the claimant's personnel file and job description; the alleged harasser's personnel file and job description; attendance records, payroll records, transfer requests, the organization chart; board policies on discipline and sexual harassment; staff and student handbooks; posted notices; reports of other relevant investigations, prior complaints of either party and prior discipline records.

INTERVIEW THE COMPLAINANT

Before beginning the questioning, provide the complainant with a copy of the sexual harassment policy. Have the complaint reduced to writing, and explain that the complaint will be fully investigated.

Describe the investigation process, and the possible outcomes. Advise the complainant that confidentiality will be practiced as far as possible, but cannot be guaranteed.

QUESTION COMPLAINANT

- What the alleged harasser said?
- The claimant's response.
- What physical acts occurred?
- Where the events took place?
- Who else was present?
- Who the claimant spoke to about the events?



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- What the claimant told those people?
- When the claimant told those people?
- The impact or perceived impact on the claimant of the events.
- If the behavior occurred over a period of time, was a record or diary kept?
- Identification of other victims of sexual harassment.

QUESTION ALLEGED HARASSER

First, explain to the alleged harasser that you are investigating a complaint of sexual harassment against him/her. Assure the person that you want to hear her/his side of the story and that you have made no pre-judgment. **Warn the alleged harasser against retaliation in any form.** Tell the alleged harasser that he/she should not discuss the matter with co-workers or the victim.

- Describe your relationship with the complainant.
- Have you done anything that might have offended him/her?
- To what degree do you use sexual language, jokes, or innuendo in the work place?
- Does the claimant have any reason to lie, or other reason to motivate the claim?

SEEK CORROBORATIVE EVIDENCE

Ask others who work with the complainant if they know anything about the allegations or if they noticed a change in the complainant's demeanor or productivity after the alleged incident(s). Interview witnesses first obtaining identification information. See written statements which adequately describe events, dates, times, and witnesses. Identify source of second-hand information. Advise all interviewees that retaliation against either the complainant or the alleged harasser is not permitted.

- What have you observed between the complainant and the alleged harasser?
- Is the harasser bothering the complainant?
- What is the complainant's reaction to the harasser's behavior?
- Are there other people who might know about the interaction between the complainant and the alleged harasser?
- Did the complainant ever complain to you about the alleged harasser?

DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED

- Determine which facts are uncontested and which facts are contested.
- Weigh the credibility of complainant, alleged harasser, and witnesses:
- Is it first-hand knowledge or hearsay?
- Is there any obvious bias or motivation to be dishonest?
- Is the story internally consistent?



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- What do truly disinterested people say?
- Are there details reported which would only be known if the conduct had occurred as alleged?
- Evaluate the duration of the harassment, its pervasiveness, severity, and whether it was welcomed.
- What impact did the conduct have on the work/learning environment?
- What was the impact on terms, conditions or benefits of employment?

REPORT YOUR FINDINGS

Describe the entire investigative process, beginning with the time and method by which the administration first learned of the complaint. Provide exact details of the complaint; describe your review of documents, and interviews with all involved parties. Identify conflicting evidence, and hearsay vs. direct evidence. State your conclusion as to whether sexual harassment occurred and provide justification for that conclusion. Advise the complainant and the alleged harasser orally and in writing of your findings and recommended action.

IF YOU DETERMINE THAT SEXUAL HARASSMENT HAS TAKEN PLACE

- Impose an appropriate penalty. You may wish to discuss the proposed penalty with the complainant. Ask what is desired. An apology or some other indication on the part of the alleged harasser that behavior will change may be acceptable.
- Make the victim whole by restoring any lost employment benefits or opportunities.
- Direct the harasser to cease and desist from all harassing behavior, and take no retaliatory action.
- Consider transfer, demotion, or termination of the harasser, depending upon the severity of the incident.
- Be sure to follow up to determine that there were no reprisals.

IF YOU DETERMINE THAT HARASSMENT HAS NOT TAKEN PLACE

- Advise the complainant of the results of the investigation.
- Advise complainant that he or she may provide any additional information to support the accusation. Investigate any further evidence and alter the initial conclusion if appropriate.
- If appropriate, take corrective action against the complainant.
- Consider a transfer of one of the employees involved.
- Advise alleged harasser of the outcome.
- Advise alleged harasser of need to keep matter confidential, and to refrain from any retaliatory action.

IF YOU DETERMINE THAT THE RESULTS OF THE INVESTIGATION ARE INCONCLUSIVE

- Inform both parties.
- Review the sexual harassment policy with the accused, and advise the complainant.
- Depending upon severity of charges, consider counseling, training or a leave of absence.



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