

[Employer name] Sexual Harassment Investigation Procedures

Introduction

These procedures shall be used by anyone who is responsible for receiving harassment complaints. These procedures should be used in combination with the Sexual Harassment Policy and Reporting Procedure. Please review that Policy and definition of sexual harassment found within it. All references to “sexual harassment” in this document are based on that definition.

The Investigation Procedures covers employees, applicants for employment, executives, owners, interns and volunteers (whether paid or unpaid), contractors, vendors, customers and all persons conducting business with [Employer name]. All references to “covered persons” in this Procedure refers to this collective group. “Policy” refers to [Employer name’s] Sexual Harassment Policy.

Receiving a Complaint

1. Any Owner, Executive, Manager, or Supervisor can receive a complaint of sexual harassment.
2. When an individual receives a complaint of sexual harassment, that complaint must be taken seriously, and the reporting party treated with respect.
3. In situations in which the victim alleges sexual or physical assault, the victim and alleged harasser should be separated, and the employer should consider putting the alleged harasser on administrative leave. If the victim indicates that they feel unsafe or that they are unable to do their work with the harasser present, the complaining party and the alleged harasser should be separated, and the employer should consider issuing a workplace no-contact order; they should be put on different shifts, in different locations, or on a paid administrative leave for the duration of the investigation. However, the complaining party should never be the one moved or put on leave; to avoid the appearance of retaliation, the alleged harasser should be the individual moved, put on a different shift, or put on leave, unless the alleged victim specifically requests a move or to be put on leave. This request should be documented.
4. The individual receiving the complaint shall make a brief written record of the name of the complaining party, the nature of the allegations, and the date. The alleged victim should have the opportunity to review and revise this record. The individual receiving the complaint shall then forward this information, any written complaint, and any related information to [the appropriate person or entity who receives and investigates complaints].
5. The individual who initially receives the complaint, unless it is [the appropriate person or entity who receives and investigates complaints], shall not make their own determination about whether or not the alleged conduct is a violation of the Policy.

Responsibilities of [the appropriate person or entity who receives and investigates complaints]

General Responsibilities

1. [The appropriate person or entity who receives and investigates complaints] must ensure that all parties to the complaint are physically safe, and that the alleged victim receives information about supportive resources.
2. [The appropriate person or entity who receives and investigates complaints] shall either investigate the complaint themselves or delegate the investigation to appropriately trained staff or an outside investigator.
3. The investigator must remain neutral. If for whatever reason, the investigator cannot remain neutral, or has a conflict of interest, the investigator must recuse themselves as the investigator.
4. The investigator shall not assume that the person making the complaint is not telling the truth or is mistaken or overreacting. The investigator shall not presume that the alleged harasser is guilty.
5. The investigator shall inform all parties and witnesses that the complaint and investigation will be kept confidential to the fullest extent possible, but that depending on what is found and what happens with the complaint, this might not always be possible.
6. The investigator should use a neutral interpreter when the complaining party, the accused, or a witness does not speak English or is more comfortable speaking in another language. Whenever possible, the interpreter should be a professional interpreter. When appropriate, an American Sign Language interpreter should be used.
7. The investigator shall thoroughly document the investigation in a manner that is intended for review by a third party.
8. The investigation of harassment will proceed even when the person making the complaint does not wish to pursue the complaint or withdraws the complaint; if the person making the complaint is no longer an employee; or when the alleged harasser is no longer an employee.
9. The investigation will begin within [a reasonable amount of time for this organization, preferably within a couple of days] after the complaint is received.

Investigation Process and Procedures

1. The investigator should promptly begin the investigation by interviewing the complaining party. The complaining party should be allowed to have a person of their choosing in the interview with them. The interview will include the following:
 - An assurance that the complaint is being taken seriously and will be investigated.
 - An explanation of retaliation that includes: (1) assuring the complaining party that retaliation is prohibited, (2) providing examples of common retaliatory conduct, and (3) encouraging the complaining party to report retaliation in the same manner as violations of the Sexual Harassment Policy.
 - A summary of the general investigation process and a review of possible outcomes from the investigation, and a timeframe in which other parties will be interviewed.
 - An interview focused on the alleged conduct using the following guidelines:
 - The interview uses open-ended questions beginning with “Who, What, Where, When, How”;
 - Ask follow up questions to develop key events and clarify details;
 - All details can be relevant during this interview; details that seem unimportant might be important later;
 - Be sure to gather details about the alleged conduct, including timing and specifically what was done or said – this can be done by having the victim write out a statement, or by documenting what the victim says, and having the victim review and revise it;
 - Identify likely witnesses to include both eyewitnesses and witnesses that the interviewee spoke to shortly after the incident regarding the alleged conduct; and
 - Identify corroborating documentation (i.e. emails, texts, social media posts, etc.).
 - End the interview by asking the complaining party what they want to have happen to address the alleged conduct, while making clear this is not a promise that that or any action will be taken.
 - Thank the complaining party for coming forward.
2. After the initial interview, the investigator can decide whether it would be more appropriate to next interview either the alleged harasser or witnesses. If witnesses are likely to add information needed for the alleged harasser’s interview, then they can be interviewed next.

The interview of the alleged harasser should include the following:

- Information that they have been accused of harassment;
- Inform the interviewee that the complaint is being taken seriously and will be investigated;
- An assurance that they are entitled to a fair investigation;
- An explanation of the general investigation process and a review of possible outcomes of the investigation;

- An interview focused on the alleged conduct using the following guidelines:
 - Use open-ended questions, if possible (Who, What, Where, When, Why, How);
 - Use more specific questions to obtain key information or if the interviewee is reluctant to provide information or to give direct answers; and,
 - Ask follow up questions to develop key events and clarify details.
 - Identify likely witnesses to include both eyewitnesses and witnesses that the interviewee spoke to shortly after the incident regarding the alleged conduct.
 - Identify corroborating documentation (i.e. emails, texts, social media posts, etc.).
 - An explanation of retaliation that includes: (1) explaining that retaliation is prohibited, (2) providing examples of common retaliatory conduct, and (3) emphasizing that retaliation is prohibited and will be subject to corrective action.
 - End interview with opportunity and for the interviewee to provide any additional information they believe is relevant.
3. Witness interviews should include any witnesses or any other individuals known to have relevant information, or who are likely to have relevant information.
- Each interview will include the following:
 - Inform the interviewee that the complaint is being taken seriously and will be investigated;
 - Inform the interviewee that a final determination about whether or not harassment took place will not be made until the investigation is complete;
 - An explanation of retaliation that includes: (1) explaining that retaliation is prohibited, (2) providing examples of common retaliatory conduct, and (3) encouraging the interviewee to report retaliation in the same manner as violations of the Sexual Harassment Policy;
 - An interview focused on the alleged conduct;
 - Use open-ended questions, if possible (Who, What, Where, When, Why, How);
 - Can use more specific questions to obtain key information or if the interviewee is reluctant to provide information or to give direct answers; and
 - Ask follow up questions to develop key events and clarify details.
 - End interview with opportunity and offer for interviewee to provide any additional information they believe is relevant.
4. If any exist, the investigator should then collect relevant documents or evidence (i.e. pictures, text messages, emails, screen shots, etc.).
5. As needed, the investigator should conduct follow up interviews with parties and witnesses. The follow up will include obtaining any newly identified documents or evidence.

6. At the end of the investigation, the investigator should draft a summary report that: documents and summarizes the relevant witness testimony and other evidence from the investigation; explains any credibility assessments (negative or positive) that have been made about either party or witnesses; details all efforts made to gather information; and sets forth the investigator's conclusion of whether the Sexual Harassment Policy was violated. The summary should be written in a manner that is intended to be reviewed by a third party.
7. The investigation should conclude in a timely manner, and as soon as practical, within [a reasonable amount of time for this organization, preferably a few weeks] from the date of the complaint.
8. The investigator should forward the summary report to the appropriate decision maker for any corrective action.

Post-Investigation and Corrective Action

1. Meet with the parties separately to explain the outcome of the investigation.
2. Follow any laws, union contracts and internal policies governing confidentiality of employee information.
3. Inform the parties what steps were completed during the investigation.
4. Explain the outcome of the investigation, and why that decision was reached.
5. If the alleged harasser will be given corrective action, inform the complaining party that corrective action was or will be taken regarding the allegations.
6. Remind the parties that retaliation by anyone against the complaining party for bringing this complaint forward, or against witnesses for participating in the investigation, is prohibited. Encourage the complaining party to report any retaliation.
7. Thank the complaining party for coming forward.
8. Take corrective action as decided upon, if applicable. The purpose of corrective action is to end the harassment and to deter future harassment. The type of corrective action taken depends upon the severity of the harassment, the length of time the harassing behavior has been going on, the number of victims involved, and the harasser's history of past similar behavior. The following list of violations and corrective actions is not exhaustive, but types of corrective action can range from a verbal coaching and training for a first-time use of offensive sexual language, to a written warning for a series of derogatory comments or jokes, to suspension without pay for someone who has already been given corrective action once for offensive verbal behavior, to termination for a physical assault. [Employer's name] does not need to take all of the steps in a corrective action process before reaching the more severe types of corrective action.

9. All documents related to the investigation should be preserved in a secure and confidential location.

Investigations of Anonymous Complaints

1. Covered persons may make anonymous sexual harassment complaints, including from [800 #, on line, phone app, or drop box].
2. When [Employer name] receives an anonymous complaint, it will be investigated to the extent made practical by the information provided in the complaint.
3. If the alleged perpetrator is named, interviews will be conducted of that individual's co-workers and supervisor, and in that individual's department to determine if there is evidence of a harassment issue.
4. Any other facts or information in the anonymous complaint will be followed-up on.
5. If evidence of harassment is uncovered, the perpetrator should be interviewed.
6. A summary report will be written detailing any interviews, the efforts made to gather information from complaint, and the conclusion reached by the investigation.
7. If the investigation determines that harassment occurred, the perpetrator will be subject to corrective action.

Retaliation

1. All owners, executives, managers, supervisors and employees shall review and be familiar with the section of the Sexual Harassment Policy that prohibits retaliation.
2. Any violation of the retaliation policy will not be tolerated.
3. Any complaining party or witness who believes that they are being retaliated against is encouraged to follow the procedures set forth in this document to make a complaint.
4. Any complaint of retaliation will be investigated in the same manner as set forth in this document.
5. Any individual found to have retaliated against a complaining party or witness will be subject to corrective action, up to and including termination from employment.