

How To Handle A Harassment Complaint

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Most employers are anxious when faced with discrimination and harassment complaints. And with good reason: Such complaints can lead to workplace tension, government investigations, and even costly legal battles. If the complaint is mishandled, even unintentionally, an employer may unwittingly put itself out of business.

An employee's mental health plays a vital role with regards to his/her productivity and engagement, thus determining whether he/she contributes positively to attaining the objectives of the organization. Harassment has a significant impact on one's emotions/mental health. Therefore, organizations must take care of their employees' emotional well-being and provide a workplace free of discrimination and harassment.

In this article, we will cover as to how to conduct a workplace investigation when a complaint is received, as no investigations or flawed investigations could lead to costly and time-consuming legal process and would have a detrimental effect on the reputation/brand of the organization. Also, please be aware that when such harassment happens during official trips, company parties/meetings outside the regular workplace, it will still be construed as an "extended workplace" under the judicial lens and hence, would call for a proper investigation.

Some complaints could be anonymous. Such complaints are a bit difficult to handle in the sense that we'll not be able to clarify some details with the complainant nor be able to assess the credibility of the complainant or ascertain the motive behind the complaint. Nevertheless, we cannot ignore a complaint just because it's anonymous. When a complaint is raised, the onus is on the employer to ensure that a fair investigation is conducted.

Also, sexual harassment complaints normally will not have any witnesses, as such acts would be performed in the absence of a third person. In such complaints, it usually would boil down to one person's words against another's. In such cases, the easier way might be to dismiss the complaint stating lack of proper evidence or lack of witnesses or concluding that it is a matter of "he said, she said" and it's difficult to substantiate. However, we need to understand that only in criminal cases, we need to prove beyond a reasonable doubt that the alleged incident happened. In civil cases, all we are looking for is whose version is more likely to be true than not (50% + 1) on a balance of probabilities. The more serious the offence, the more convincing evidence is required.

Once a complaint is received, the first step is to assign an investigator. The investigator needs to be a neutral party and should approach the case without any preconceived notion or favour. The organization needs to decide whether it is going to appoint an internal investigator or an external investigator. Internal investigators could be assigned to less serious complaints or one-off incident whereas if the complaint is serious enough and involves senior management and could turn out to be a Public Relations

disaster, it would be advisable to go for an external investigator. There are many HR law firms, who are specialized in such investigations.

As soon as a complaint is received and reviewed, we need to ensure that the complainant and the respondent do not work together until the investigation is completed. If possible, they need to be assigned to work in different departments or shifts. If not, the organization needs to ensure that at least one of them is sent on a leave of absence with pay. It is very important to ensure that the leave of absence is with pay. If we send anybody on leave of absence without pay, it would appear as if we have already made the judgment even before the investigation and that employee could file for wrongful dismissal or constructive dismissal.

During the investigation, some of the factors to consider are the reporting structures between the complainant and the respondent, whether any power dynamics could be at play, and to look for any biases. Generally, people tend to believe that those who occupy senior positions would tend to speak the truth/be genuine in what they say, which may not be the case. We need to look out for physical evidence like emails, text messages that could confirm/contradict one's position. We also need to consider whether the parties involved have any history of such behaviours or complaints raised against them.

When the investigator meets with the parties involved, it is highly recommended to use interview techniques and not interrogation techniques. An interrogation is intended to elicit the truth; however, typically, the interrogator approaches the respondent with an assumption of his or her guilt and often adopts an accusatory tone. In contrast, an interview involves a more conversational approach with the primary purpose of gathering information and assessing the behaviour of the witness. In general, the interview will be non-judgmental, business-like and lacking in scepticism. The investigator needs to delve into the details necessary, allow the witness to respond to evidence which contradicts his or her own and, where necessary, to challenge the logic of a witness's evidence or the objective reality of a witness's subjective interpretation of events.

Interviews:

It is always a good practice to notify the persons involved about the time and location of the interview in advance. Once we get the complaint in writing, we need to first meet with the complainant and seek clarifications or ask for more specifics like the time, date, and place of the alleged incident. When we meet with the respondent, we should provide a copy of the complaint to the respondent, as he/she has the right to know what was the complaint about and who made the complaint. We ask for the respondent's version and get it in writing. We may re-interview both the complainant and respondent if there's anything that we need to clarify before meeting with the witnesses and getting their statements. At the end of the interview, we should make it a point to caution everyone to maintain confidentiality about the investigation and to thank each one for their time.

Assessing Credibility:

After meeting with all the parties involved, the next step is to assess the credibility of all those who have

been interviewed. We do this by assessing whose version of the events is consistent with that of the evidence available, has there been any prior incidents similar to this or is there any vested interests for anyone in the outcome of the investigation

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