

Preparing for an Investigation of Workplace Harassment

When you begin an investigation you cannot know what the outcome will be. Your ideas about who did or said what to whom may change frequently. Witnesses to the same event may present vastly differing recollections of what happened. Their stories might be irreconcilable. Full of human drama and mystery, investigations are fascinating—and extremely challenging.

How can you prepare yourself for such a task? Doing so may seem like a tall order. An effective investigator must act as a

- detective, uncovering and discovering relevant information from reluctant witnesses;
- therapist, carefully listening without judgment to people's deepest thoughts;
- judge, determining what occurred and ferreting out the truth; and
- reporter, accurately describing what is discovered.

Performing an investigation of workplace harassment will challenge you to practice some of the most sophisticated interpersonal communication skills that you will ever use in your work. To begin, you will need to establish a relationship of trust with two or more individuals who are likely to be distressed. You will have to attempt to maintain that trust while asking difficult, prying questions about matters that many people may find deeply offensive, personal, and embarrassing. Throughout your work you will be trying hard to preserve the rights—including the right to privacy—of the person who complained, the person complained about, and other witnesses.

When you consider all that is necessary to conduct a good investigation, the task can seem daunting. Even after doing everything necessary, you

may be unable to say with certainty your conclusion is correct. Nonetheless, the ability to conduct a fair, thorough, and legal investigation of workplace harassment is well within the reach of most human resource practitioners who are proficient in the use of human resources management principles and have experience dealing with employee relations.

Keep in mind that no investigation is perfect. You are not expected to determine the absolute truth; rather, you are expected to be thorough in your quest for the truth and objective in your findings. Most importantly, you are expected to operate *fairly and in good faith*. Investigations that are scrutinized by courts generally are found to be adequate when they have been both thorough and fair.

Prevention and Response

Investigations of harassment are part of an employer's overall prevention and response plan. Prevention of harassment is discussed more thoroughly in Chapter 2. Under the law, employers have a duty not only to respond to complaints of harassment, but also to take all reasonable steps to prevent harassment from occurring. Prevention includes promulgating policies by

- making those policies known to employees through distribution;
- training employees on what harassment is and how to complain about it;
- training supervisors and managers on how to respond to harassment; and
- monitoring the workplace to ensure that no harassment is occurring.

If prevention involves so much effort, why not just wait and respond to actual complaints on a case-by-case basis? The answer is that most people don't complain about harassment. In 1981 the United States Merit Systems Protection Board (MSPB) did a large-scale study of sexual harassment in the federal workplace. The study was updated in 1988 and again in 1995. One clear result was that most victims of harassment did not report the harassment. In the MSPB study, as much as 90% of all harassment incidents went unreported. Figure 1 shows how victims of harassment say they responded. Figure 2 gives the reasons victims gave for not responding.

The fact that most victims don't complain about harassment is why it is so critical that employers take affirmative steps to prevent harassment.