

The Fact-Finding Process

Prepare for the Interviews

You may find it helpful—or necessary—to go look at the place where the conduct allegedly occurred. You may do this before you begin the interviews and you may want to return for another look after you have gathered enough facts to understand the basic allegations and response. Going to the scene will help you understand who could have seen or heard what happened, what impediments there would be to doing so, and so forth. A visit to the scene also may suggest additional questions.

Example #16

Clues from the Scene of the Complaint

Jeff complains that his supervisor, Myra, constantly calls him her “whipping boy.” Myra says she made the comment only once, as a joke, because she had heard Jeff refer to himself as “Myra’s whipping boy.” When the investigator visits Jeff in his office, she notices that Jeff has an actual whip mounted on the wall behind his desk. Seeing the whip puts Jeff’s complaint in another context and leads to questions that would not have occurred to the investigator had she not known it was there. For example, when did Jeff put the whip there—before Myra’s alleged comments or after? To what extent has Jeff initiated or participated in this “joke?” Could Jeff’s actions have led to Myra thinking that her comments were welcome?

In another case—one with no apparent witnesses—an investigator spent some time in the area where the harassing behavior allegedly took place. He noticed people in the area who might have witnessed the behavior and he was able to find a witness who was able to corroborate the complaint.

In nearly all investigations of workplace harassment you will begin your interviews with the complainant. The only exceptions to this are when there is an anonymous complaint or when a complainant is unavailable and will not be available in a reasonable amount of time. For example, the complainant won't be your first interview when an employee voices a complaint about harassment and then quits, refusing to be interviewed under any circumstances. In this situation you should make every attempt to persuade the complainant to reconsider and allow an interview. If that is not possible, however, an investigation should still take place and you should be sure to document your attempts to obtain an interview with the complainant. There may be other victims. Even if the complainant is the only victim, you don't want wrong behavior to go unpunished. And—although this situation is extremely rare—if the complainant fabricated the allegations, you want to uncover the facts to clear the respondent of any suspicion. The employer has a duty to attend to all complaints of harassment. Fortunately, it is the rare case in which the complainant can't be interviewed. In all other circumstances the interviews will begin with the complainant.

Occasionally the complainant will be out on stress leave during the time the investigation will need to take place. It is likely that the reason for the stress leave will be connected to the alleged harassment, so you will need to proceed cautiously with your interview to avoid any charges that you exacerbated the complainant's stress. Contact the complainant and ask him or her if there are any circumstances (such as meeting offsite, including a representative, relative, or friend at the meeting, or some other circumstance) that will make it possible for you to collect the information you need so that the proper steps can be taken relative to the complaint. If the complainant is still reluctant to meet with you, check with the employer's legal counsel and your workers' compensation carrier (if the stress leave is being taken as an occupational injury leave) to determine the feasibility of contacting the complainant's care provider to request his or her assistance in interviewing the complainant.

Once you have interviewed the complainant, you will proceed with more interviews. Usually you will interview the respondent next, followed by witnesses, to the extent that they are necessary.

Most interviewing techniques apply to all witnesses. Still, you should keep some special considerations in mind when interviewing the complainant and the respondent.