

# INTERVIEWING TECHNIQUES FOR HARASSMENT INVESTIGATIONS

## INTRODUCTION

- I. Factors That Complicate Harassment Investigations
  - A. One person's word against another's
  - B. Absence of physical evidence or witnesses
  - C. Both parties are likely to withhold information, exaggerate or minimize circumstances.
  - D. Motives for a complainant to exaggerate information
    1. Fear that the company may not take action
    2. Unwarranted feelings of guilt or blame
    3. Revenge, advancement, rescheduled hours
- II. Categories of Harassment Complaints
  - A. Prima Facie: Situations which, in and of themselves, clearly support harassment (if they occurred).
    1. Clearly threatening or derogatory statements
    2. Claims of forced sexual contact
    3. Quid pro quo claims
  - B. Perceptual: Situations in which the respondent's behavior is objectionable because of the complainant's perception of it.
    1. Claims of a hostile work environment
    2. Claims of unfair treatment
    3. Claims of biased performance reviews or work assignments
- III. Investigating Person's Opinions or Beliefs

A. Principle: Opinions or beliefs are not fixed in time and can change with motivational incentives. They are therefore generally not a suitable issue upon which to make an evaluation of truth or deception.

B. The harassment investigation should focus on the employee's behavior

1. What was said
2. What was done
3. What was seen

Opinion: "I felt degraded and put down."

Behavior: "I started to cry and ran out of the meeting."

Opinion: "He's unfair to Latinos."

Behavior: "I heard him tell Larry Smith to cut back on the Latinos work hours because then more of them will quit."

Opinion: "I'm afraid of him."

Behavior: "When I was late picking up a patient's chart Dr. Williams picked up a stack of charts and threw them at me."

Opinion: "He harasses me in the hallway."

Behavior: "Last Friday he yelled out, 'Hey Bitch' to me and there were all sorts of students around."

#### IV. Goals of Complainant's Interview

A. Are the allegations factual?

NOTE: The investigator should mentally rank-order the allegations from those which most certainly did occur to those which may contain exaggeration or fabrication. The interview of the respondent should focus on those allegations having the highest certainty of having occurred.

B. Can any of the allegations be independently corroborated through an internal investigation?

1. Witnessed statements or behaviors
2. Recovered memos or E-mail messages

3. Review of receipts or expense vouchers

C. Establish tangible statements or actions to investigate

Exactly what happened?

When did it happen?

Where did it happen?

How many times did it happen?

D. Suggested areas of inquiry for different types of allegations

Unwanted sexual advances: How did the complainant respond to the respondent's statements or actions to document that the advances were unwanted? Did anyone witness the sexual advances? Did the complainant tell any family member or coworkers about the advances? Did the respondent's behavior continue after the complainant notified him of her feelings?

Hostile environment: Specifically, what within the work environment does the employee believe is hostile? How has it negatively affected the employee? Are any other coworkers bothered by this behavior? How often does it occur? Who is engaging in the hostile behavior?

Consensual relationships that soured: What was done or said to terminate the relationship? Has the complainant told any coworkers about her attempts to end the relationship? How is the harasser's post-relationship behavior different than during the relationship?

Unwanted physical contact: How do you know the physical contact was intentional and not accidental or inadvertent? How often has it happened? Were there witnesses? What was the complainant's verbal and behavioral response to it?

DemEANING or hostile statements: What was said? In what context was the statement made? How did the complainant respond to the statement? Who else heard the statement? Has the respondent said this to others?

V. Characteristics of the Investigator

A. Knowledgeable about legal elements required to prove harassment

B. Knowledgeable about proper interviewing techniques

C. Someone not closely associated with the employees involved

D. A person not ultimately involved in disciplining either the complainant or respondent

1. Makes it easier for both parties to tell the truth
2. Protects the company from liability claims of biases during the investigations.

Key Concept: The role of the interviewer in a harassment investigation should be limited to collecting factual information. It is not the interviewer's job to determine whether or not harassment has occurred; that is the responsibility of an attorney. Nor is it the interviewer's role to console or counsel employees.

An interviewer who "takes sides" with either the complainant or respondent during an investigation may not conduct a thorough investigation and may be later accused of biased reporting.

#### VI. Importance of Conducting a Prompt Investigation

- A. Employer's obligation under EEOC guidelines
- B. Improved recall on the part of the complainant
- C. Improved recall for witnesses
- D. Respondent is less likely to blame memory failure

#### VII. Necessity of Revealing Details to the Respondent

- A. A respondent cannot be properly questioned unless the name of the complainant is revealed.
- B. Ambiguous questioning of a respondent is unlikely to result in useful information.
- C. Vague questioning of a respondent may cause him to retain an attorney early during the investigation.
- D. The employer has a legal responsibility to protect all employee's reputations.

Side Note: Statistically, the worst day of the week to interview a respondent, or take disciplinary action against an employee is a Friday. Disciplinary actions occurring on a Friday are more often disputed than those occurring earlier in the week. Part of the reason for this is that the employer is unavailable over the weekend.

## VIII. Characteristics of the Interviewing Environment

### A. Do not interview over a desk or table (barrier)

1. Barriers decrease ability of the interviewer to communicate effectively
2. Barriers make identifying deceptive responses more difficult

## **INSERT DIAGRAM OF INTERVIEW CONFIGURATION**

### B. Establish a sense of privacy

Principle: Privacy is the key psychological factor contributing to a successful interview. A truthful employee wants to experience a sense of confidentiality when discussing a sensitive topic. One of the major reasons a deceptive employee lies is because of the fear of being judged by others. Privacy within the environment reduces this fear.

1. Closed door
2. Prevent interruptions by coworkers
3. Prevent interruptions by phone or beeper
4. Consider conducting interview before or after normal work hours

### C. Witnesses during the interview

1. A witness serves as an obvious violation to privacy
2. If a witness is present, place that person in an area that is psychologically removed from the interviewing environment.
3. The witness should remain silent and uninvolved during the entire interview.

### D. Note-taking

1. Benefits
  - a. Slows down the pace of questions, creates periods of silence
  - b. Documents employee's responses

- c. Do not attempt to write responses down verbatim - only document key information.

## **INSERT OVERVIEW OF INVESTIGATIVE PROCESS CHART**

- IX. Arranging a Meeting Between the Respondent and Complainant for the Purpose of Resolving the Issue.
  - A. Adversarial environment is not conducive to truthfulness
  - B. Session is likely to cause anger and resentment
  - C. May be a satisfactory technique as a closing procedure for the harassment complaint, but not to elicit further information.

## **SUMMARY SECTION I**

1. The investigator should approach a harassment interview with an expectation that both the respondent and complainant may withhold or exaggerate important information.
2. One of the primary goals for the complainant's interview is to establish tangible statements or actions to investigate.
3. The person conducting the interviews should not be in a position to make employment decisions or be personally familiar with either party involved.
4. It is important to conduct a prompt investigation once a complaint has been filed.
5. When discussing the complaint with the respondent it is necessary to reveal the name of the complainant as well as details concerning the specific allegations.
6. The interviewing environment should be private and conducted in the absence of physical barriers. If a witness is present, that person should remain silent and out of the subject's direct line of sight.

## **SECTION I EXERCISE**

From these complaints, identify key issues that should be pursued during the interview with the complainant. Also identify documents or records that might be helpful to resolve the complaint.

1. Joyce is complaining that her boss, Jerry, often asks her to stay late for dictation. Joyce is a single mother. By staying late she misses her usual

bus which means that she is not home when her son arrives home from grade school. Joyce believes that Jerry is intentionally keeping her late so that she will leave the company.

2. The following memo was sent to all front desk employees: "It has come to our attention that employees are discussing each other's salaries. This is confidential information and any further such disclosures could result in disciplinary action." Sally is one of the front desk employees and has complained that this memo is harassment because she was the employee who talked about her salary to others and she is now frightened to come to work.
  
3. Barb has reported that Ken has been harassing her by repeatedly asking her to go out with him, even though she has expressed no interest in dating him.
  
4. James is the only black programmer on the staff. He was hired 2 years ago and has only received one raise. Three other white programmers hired within the same period of time have all received two raises.