



Harassment/Discrimination Investigations

Investigations are complicated. Conducting a comprehensive investigation is both an “art” and a “science.” This article does not, and cannot, cover everything that may be necessary; however, the following information will provide you with clear starting point. The goal of the investigator is to not determine the guilt, innocence or outcome of any party involved in the case. The goal of the investigator is to obtain and document facts. Human Resources (HR) or other decision makers within the organization will review the report and determine the culpability of those involved in the allegation.



Preparing for the investigation

- Decide who should conduct the investigation
 - Highly experienced
 - Well trained
 - Preferably an HR professional
- Review all applicable documents
 - Policies
 - Evidence received
 - Personnel files
 - Any other pertinent information
- Create a confidential investigation file
 - All documents kept in the investigation file are subject to discovery. Do not include personal comments or notes which may appear to be biased towards any party involved in the investigation
 - Keep in mind your state, local and your organization’s policies regarding record retentions
 - Include a copy of your company’s current harassment/discrimination policy
 - Include copies of all documentation received to date:
 - » Written complaint, if applicable
 - » Copies from personnel files that may be pertinent
 - » Any additional information received prior to interviews
 - » Copies of all interview notes and signed statements
 - Decide who should be interviewed
 - Complainant
 - Alleged harasser/discriminator
 - Witnesses
- If English is not an individual’s native language or they cannot speak English, have a translator present, and clearly indicate in your documentation that a translator was used during the interview. List the translator’s name in the reports.
- Decide where the interview should take place
 - Private meeting room
 - Private office
 - Preferably away from high traffic areas
 - Off site, if highly sensitive
- The complainant should not be retaliated against for having submitted a complaint
- Have water and tissue available in the room



Conducting the investigation

- Interviews should always include a witness, preferably an additional person to take notes while investigator is asking questions
- Remain impartial – if this will be difficult for you, it is best to find someone else to conduct the investigation
- Be a good listener; demonstrate empathy
- Be thorough
- Take all complaints seriously
- If possible, interview the complainant and all witnesses before the alleged harasser/discriminator
- Ultimately, investigator needs to exercise their best judgment as to order of interviews – sometimes it is preferable in a harassment investigation to interview the accused directly after interviewing the accuser to avoid “poisoning the well”

Interview the complainant:

- Explain the investigation process and develop rapport
- At beginning of the conversation, explain that they are free to go at any time during the interview and are not being held against their will. This should apply to the accuser, witnesses, and alleged harasser/discriminator.
- If company lawyer is conducting the investigation, the lawyer should make clear that they represent the company and not any one individual; there may be additional warnings necessary in a union setting
- Be careful not to promise total confidentiality. It is nearly impossible to do this and conduct a thorough investigation.
- Get the details
 - Dates
 - Times
 - Locations
 - Document specific conduct and comments, paying specific attention to any mention of social media. This will need to be investigated and included in the file, etc.
- Obtain the names of witnesses and ask what information the complainant can provide
- Encourage complainant to provide a signed written statement of the allegations
- Explain that retaliation is not tolerated and who to contact if it occurs
- Emphasize the expectation of confidentiality

The Zurich Services Corporation
1299 Zurich Way, Schaumburg, IL 60196-1056
800 982 5964 www.zurichna.com



Interview the alleged harasser/discriminator

- Explain the investigation process and develop rapport
- At beginning of the conversation, explain that they are free to go at any time during the interview and are not being held against their will. This should apply to the accuser, witnesses, and alleged harasser/discriminator.
- Explain that no determination will be made until the investigation is completed (anticipate shock/anger/hostility)
- Ask the alleged harasser/discriminator to specifically respond to each of the allegations
 - Get details
 - Ask follow-up questions
- Ask for the names of witnesses and what information the alleged harasser/discriminator can provide
- Encourage the alleged harasser/discriminator to provide a signed written statement
- Explain that retaliation is strictly prohibited – give examples of what this might look like
- Emphasize the expectation of confidentiality



Interview the witnesses

- Explain the purpose of the interview and your role
 - Complaint has been made
 - They have been identified as a witness
- Ask if the witness has ever experienced or observed any of the alleged behavior
 - If yes, get specific details with dates and times if possible
 - If no, ask for a signed statement affirming the same
- Emphasize the expectation of confidentiality



Completing the investigation

- Objectively evaluate the evidence
 - conduct follow up interviews, if necessary
- Prepare a written report of findings
- The person conducting the investigation shall not include any assumptions or opinions in any of the written report
- Follow up with the complainant and the alleged harasser/discriminator separately after the decision has been made
- Ordinarily, communication would be at a high level – no policy violation or action was taken to address (without specifying action)
- Document the discussions/actions taken in the file
 - Explain what conclusions were reached and what actions were taken
 - Take corrective action (if you reasonably conclude harassment/discrimination occurred)
- Action must be reasonably calculated to prevent further harassment/discrimination
- Tailor action to the specific situation
- Be consistent to past situations
- Be careful NOT TO discipline the alleged harasser/discriminator if the evidence does not support a finding that harassment/discrimination occurred
 - Reaffirm policy against harassment/discrimination
 - Reaffirm the consequences for retaliation
 - Encourage future reporting of any incidents of harassment/discrimination or retaliation
 - Place a copy of the investigative report in each employees' personnel file.
- Present all documentation to HR Department/management

The information in this publication was compiled from sources believed to be reliable for informational purposes only. All sample policies and procedures herein should serve as a guideline, which you can use to create your own policies and procedures. We trust that you will customize these samples to reflect your own operations and believe that these samples may serve as a helpful platform for this endeavor. Any and all information contained herein is not intended to constitute advice (particularly not legal advice). Accordingly, persons requiring advice should consult independent advisors when developing programs and policies. We do not guarantee the accuracy of this information or any results and further assume no liability in connection with this publication and sample policies and procedures, including any information, methods or safety suggestions contained herein. We undertake no obligation to publicly update or revise any of this information, whether to reflect new information, future developments, events or circumstances or otherwise. Moreover, Zurich reminds you that this cannot be assumed to contain every acceptable safety and compliance procedure or that additional procedures might not be appropriate under the circumstances. The subject matter of this publication is not tied to any specific insurance product nor will adopting these policies and procedures ensure coverage under any insurance policy. ©2022 The Zurich Services Corporation. All rights reserved A1-P0153990-A (02/22) P0153990

