

# **WORKPLACE INVESTIGATIONS**

By

Betsy Oulton, AIC, SHRM-CP

HR Maine Consulting

# COMMON TYPES OF COMPLAINTS

**Sexual Harassment**

**Hostile Work Environment**

**Discrimination based on any protected class**

**Retaliation**

**Theft**

**Safety Issues**

**Bullying**

**FMLA Interference**

**Fair Labor Standards Act violations**

# LEADERSHIP TRAINING

Overview of organization's policies and procedures and federal, state and local laws - **Ensure there is a policy for cooperation with investigations, a technology policy and a non-bullying policy**

Explanation of why current policies and procedures are in place

Examples of inappropriate conduct and violations of policies

Discussion regarding how conduct should be dealt with and why

Overview of the organization's progressive discipline policy

# INVESTIGATOR REQUIREMENTS

The investigator must:

- Be knowledgeable about state and federal employment laws
- Uphold the privacy rights of employees and others
- Must conduct an immediate, thorough investigation, without dragging on
- Must be objective
- Must keep their mind on the ultimate goal of any investigation, i.e., discovering the underlying reasons for the problem so that management can take corrective action.

# **PUBLIC VS. PRIVATE SECTOR**

**Is there a Collective Bargaining Agreement? If so, the employee has the right to have the union steward or agent present during the interview**

**Is a member of the police force going to be interviewed? If so, Garrity Rights must be read prior to interview (Garrity Rights protect public employees from being **compelled to incriminate** themselves during investigatory interviews conducted by their employers)**

# **COMPLAINANT STATEMENT**

**Date of Statement**

**Employee Name, Job Title, Department**

**Employee's Immediate Supervisor**

**Date of the incident/event**

**Individuals involved in the incident/event**

**Employee's relationship to the accuser**

# **COMPLAINANT STATEMENT. . .**

**Names and contact information of witnesses**

**Employee's accounting of incident/event and specific facts –**

**Who, What, When, Where, How, Why?**

**Clarity regarding employee's specific allegations**

**Policies that may have been violated**

# PREPARATION PRIOR TO ACTION

- Resist the temptation to pick up the phone and call witnesses
- Map out a strategy for gathering evidence and working a case



# **GATHERING EVIDENCE**

**Gathering of evidence is critical in minimizing he said/she said cases, particularly in harassment claims**

**Document all evidence**

# **DOCUMENTARY EVIDENCE**

**All information that is relevant and that is recorded in some way in physical form, such as:**

**Texts and/or e-mails**

**Time and Attendance Records**

**Performance reviews**

**Disciplinary warnings**

**Supervisory or employee notes**

# PHYSICAL EVIDENCE

Evidence that is tangible such as:

Digital security videos

Damaged piece of equipment

Recordings

# **IDENTIFY POTENTIAL WITNESSES**

**First Hand Witness – saw or heard directly**

**Assess departmental relationships**

**Customers/Clients**

**Delivery personnel, vendors**

# PREPARE QUESTIONS

## **Bulls Eye Technique:**

- **Behavioral Baseline Questions**
- **Chronology Questions**
- **Open-Ended Background Questions**
- **Clarifying Questions**
- **Close Ended Questions**

# **BEHAVIORAL BASELINE QUESTIONS**

**Ask 5-7 baseline questions to assess body language**

**Pay close attention to tone of voice, pitch, cadence, body language**

**Ex. What is your position in the company? Who is your supervisor?  
How long have you worked there?**

# CHRONOLOGY QUESTIONS

These questions confirm the Who, What, Where, When, How

- Who else was present at the time of the incident?
- What exactly did he/she say or do?
- Where were you standing/sitting specifically?
- When did this happen?
- How did the situation escalate specifically?

# **OPEN-ENDED/BACKGROUND QUESTIONS**

Questions that gather a response other than a yes or no.

**“What is the working relationship between Sally Jones, Manager and John Smith?”**

**“What has John’s demeanor been like the past few weeks?”**

**“What have you noticed in the department that appears unusual?”**

These types of questions help with understanding the work environment, personal relationships, etc.



# CLARIFYING QUESTIONS

These are usually not prepared questions. They enable the verification of facts and allows you to compare and contrast a witness testimony - Intended to ensure you heard the person correctly

“So, Tim, please clarify something for me. Earlier you said that you walked into the breakroom at 11:00 to clock out, yet a minute ago you said you didn’t clock out until 11:30. Exactly what time did you walk into the break room and exactly what time did you clock out?”

# **CLOSED ENDED QUESTIONS**

**Use an assertive tone and wait for the answer – may be several moments of awkward silence**

**Did you take the money?**

**Did you tell Sally Smith she had to go out with you or you would give her a job task she wouldn't like?**

# CONDUCT EFFECTIVE WITNESS INTERVIEWS

Avoid solo interview, if at all possible

Greet witnesses professionally and courteously

Sit either at a round table or at the end of a table – avoid across from each other – us vs. them

Explain the use of a laptop for taking notes

Clarify the time frame

Relax

Maintain the appearance of objectivity

Avoid oral agreements

# **INTERVIEW DON'TS**

**Interrogate or threaten the witness**

**Use coercion, force or threat of force**

**Fail to treat the witness with dignity and respect**

# **PREPARE FOR WRITING AN INVESTIGATIVE REPORT**

**Facts – Not Hearsay**

**Quotes and/or Examples of Behavior**

**Focus on Relevance**

**Easy to Read**

**Do NOT include recommendations without consulting legal**

# EXAMPLE FORMAT OF REPORT

**Overview/Summary**

**Allegation(s)**

**Policy Implications**

**Specific Findings**

**Conclusion**

**Appendix**

# OVERVIEW/SUMMARY

**This is simply the summation of the entire report. It is brief and summarizes the allegations and provides a brief overview of how the investigation was conducted.**

**Although the Summary is first in the format, it is usually the last section that an investigator writes. It is easier and more efficient to begin writing the report with the section on Allegations.**

# ALLEGATIONS

The purpose of any investigation is to investigate a violation of a specific policy. It should only include the allegation and not the summary or findings:

**”On Monday, November 30, 2020, Jane Smith, a server at ABC Restaurant filed a formal complaint with the Human Resources department alleging that her supervisor, John Jones, had sexually harassed her at ABC Restaurant”**



# **POLICY IMPLICATIONS**

**This section should refer to the policy/policies that were allegedly violated.**

**“Ms. Smith’s allegation implicates several provisions of the ABC Restaurant’s discrimination/anti-harassment policy and several provisions of the Workplace Rules in the Personnel Handbook.”**

# **SPECIFIC FINDINGS**

**Captures the specifics about what physical, documentary, and/or testimonial evidence was obtained**

**Maps out what witnesses said in their statements – specific to what he/she personally observed by being present**

**Indicates what has or has not be corroborated**

**“According to the witness statement obtained by Mark Johnson, Assistant General Manager at ABC Restaurant, Ms. Smith recently received a written disciplinary warning from Mr. Jones”. In his statement, he further elaborated . . . .”**

**“All witnesses corroborated that they had never seen Mr. Jones act inappropriately, in any way, toward any employees at ABC Restaurant”**

# CONCLUSION

Normally a brief statement that brings a close to the case.

“A prompt and thorough investigation was conducted by Betsy Oulton, HR Director at ABC Company. Based on the documentary and testimonial evidence collected, it has been determined that Ms. Smiths’ allegation of sexual harassment has not been substantiated.”

# APPENDIX

**Includes:**

**Statement of Complainant**

**List of Witnesses Interviewed, including Accused**

**Documents Reviewed – handbook/policies, etc.**

**Evidence (pictures, e-mails, surveillance images, screen shots, texts)**