

HR Professional’s Guide to Workplace Investigations

Introduction

Workplace investigations are intended to address employee concerns, mitigate risk, uphold company policies, maintain employee trust and morale, improve your workplace, and meet legal requirements. This guide includes basic guiding principles to get started and takes you through what to do from the beginning of the process, when you get a complaint or a concern is brought to you, to the end of an investigation.

It is designed to support HR staff who are new to investigating as well as those who have experience. It includes step-by-step support, interview guides with sample questions for complainants, respondents and witnesses, questions specific to harassment allegations, more advanced guidance on interviewing as well as sample language to use when notifying your employees of an investigation.

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The Basics

Never ignore a complaint and take all concerns seriously. This is not always easy but is required under some federal and state laws like Oregon's Workplace Fairness Act. It's important to be impartial and unbiased, have a timely response (within 24 hours and sometimes immediately) to reassure employees that their complaint has been heard and appropriate action will be taken. It's also important to never promise confidentiality but maintain confidentiality to the extent possible.

The Complaint

Complaints can be anonymous, based on direct observations of behavior or based on conduct such as rumors, and gossip. They can be formal such as a written email, on a complaint form or a meeting with a supervisor or manager. They can also be informal such as a text message or casual comment to a supervisor. Regardless of whether the complaint is informal or formal, once the Company becomes aware or should be aware of a concern relating to workplace conduct that may be in violation of Company policies, the Company should take steps to respond, and an investigation is generally necessary.

Informal complaints may go unrecognized. For example, often informal complaints fall outside of the Company's reporting policy. The Company may learn of conduct from the Complainant, another employee, a third party, or a supervisor who has observed the behavior. It is important to remember that a complaint does not need to be in writing to require action by the Company, nor can an employer require complaints to be in writing.

Formal complaints are often made to a supervisor or other member of management. Formal complaints can be in writing, but the complaint may also be verbal.

Initial Response and Intake

Reiterate to the employee or reporter that you take all concerns seriously and that retaliation on all levels is prohibited. Thank the employee or reporter for coming forward and sharing their story. Do not apologize or say you are sorry this is happening or any other similar language as it could be interpreted as an admission of guilt and/or validating that the alleged conduct did indeed occur.

During this initial conversation, gather as much of the following information as you can from the reporter and document the conversation, writing down what the employees say as accurately as possible. Do not write down your own opinions. Here is an example of what you should start looking at during this initial phase:

- ❖ What is the complaint or allegation(s)?
- ❖ Gather as much information as you can
 - How long has the problem been going on?
 - What was the reason the employee came forward now?
 - Are there individuals who witnessed or participated in creating the issue?
 - What prior efforts have been made to resolve this effort?
 - How is this affecting the employee(s)?
 - Have they spoken with others?
 - Ask about: who, what, when, where, how, frequency, witnesses, motivations



- ❖ Get specific examples
- ❖ Get specific dates to start developing your timeline
- ❖ What are the relevant policies, rules, regulations, expectations?

Gathering this information will help to determine if a formal investigation is needed or if this is something that can be addressed through a more informal process.

Don't forget, under Oregon's Workplace Fairness Act, employers are required to provide a copy of their anti-harassment/non-discrimination policy to an employee at the time the employee discloses information regarding prohibited discrimination or harassment.

Determine Whether a Formal Investigation is Needed

Not all complaints or concerns will require a formal investigation, and your first step after your intake and initial fact finding, is to determine if a formal or big "I" investigation is needed. Consider the following when making this determination.

- ❖ What is the concern?
- ❖ Is there a simple answer or is it a more complex problem?
- ❖ Is it a single incident or pattern of conduct?
- ❖ Is the alleged conduct minor or severe?
- ❖ Is this a coaching opportunity or can it be handled through performance management?
- ❖ Does the Company already know all the key facts?
- ❖ Do you need more facts than the employee is able to provide to reach a resolution?

If the concern is one that is severe, complex or suggests a pattern of conduct, or you need more information than the employee can provide it is likely the complaint requires a formal investigation. Additionally, the following situations almost always require a formal investigation.

- ❖ Allegations of harassment, discrimination, bullying, hostile environment, retaliation, violence, abuse, intimidation, threats.
- ❖ Serious or egregious employee misconduct.
- ❖ Fraud/theft.
- ❖ Potential safety hazard identified.
- ❖ Persistent rumors or gossip that indicate possible violations of Company policy.

Pre-Investigation Steps

Before you begin your investigation, a critical step that will help keep you on track is to determine the scope and objectives of your investigation. As an investigation unfolds there are times when you may need to add to your scope. For example, if additional allegations arise. When interviewing employees, you may find that they may bring information that isn't necessarily relevant to your objective. The scope helps keep you and employees on track when you are conducting interviews.

Remember, the purpose of the investigation is not to draw legal conclusions, but rather to determine if the employee has violated your company's policies. The following are questions and steps that will get you



started once you've decided that an investigation is needed. Additionally, they will help confirm that decision, or sometimes, change that determination.

- ❖ What does the investigation set out to achieve?
- ❖ What are the allegations and potential policy violations?
 - *For example, did the employee commit [factual allegation] and if so, did this conduct violate [Company specific policy]?*
- ❖ Who are the involved parties?
- ❖ Are there any recent issues between the parties, performance issues, life events?
- ❖ Have there been previous complaints?
- ❖ Who needs to be informed of the allegations and investigation?
- ❖ Determine who will investigate
 - Choose an impartial investigator with strong interviewing skills and relevant experience. Internal investigators may be appropriate for minor issues, while complex or sensitive cases may benefit from a neutral, third-party investigator.
 - Consider the following:
 - Are there potential conflicts?
 - For example, is HR investigating their boss for alleged misconduct?
 - Is attorney/client privilege needed
 - What is the likelihood that litigation will occur
 - Consult with legal counsel throughout the investigation, especially for cases involving potential legal ramifications.
 - Adhere to all local, state, and federal employment laws and regulations.
 - Be mindful of privacy rights when collecting and handling employee information.
- ❖ Determine who will be the decision maker/adjudicator.
- ❖ Designate an impartial and unbiased point person for communication to avoid confusion and ensure consistency.
- ❖ Take any necessary immediate action to stop and prevent the alleged behavior from continuing, prevent interference with the investigation, and prevent retaliation.
- ❖ Is paid or unpaid administrative leave appropriate as an interim measure? Refer to your policies as you make this decision.
- ❖ Estimate the timeframe to completion. The goal of any workplace investigation is that it is objective, timely and thorough.

Plan the Investigation

While some situations require immediate investigation, skipping the step of planning, can result in missing crucial information, taking additional time that didn't need to be taken and putting your employees through more than one interview when that might not have been necessary.

Consider the following steps, some of which might have been started or completed in the pre-investigation phase.

- ❖ Review the initial notes, documentation and any records collected during the intake such as emails between parties, supervisor notes, etc.
- ❖ Review initial statements by the Complainant or reporter.



- ❖ Review relevant policies in employee handbook, standard operating procedures, procedural manuals, acknowledgements that employees knew the expectations (such as new employee orientation check off lists or training documents).
- ❖ Begin a timeline of events.
- ❖ Review information specific to each witness/party such as personnel file documentation if relevant, performance reviews, etc.
- ❖ Determine what facts are needed to determine findings.
- ❖ Write investigatory meeting script and key questions for each witness/party.
 - See sample questions below
 - The script will help keep you on track during your interviews
- ❖ Create a list of everyone you may need to initially speak with.
- ❖ Consider who the Complainant, Respondent, witnesses may have already spoken to as they may need to be questioned as witnesses.

Communication and Confidentiality

Notifications to each party will be specific to the situation but the following general guidelines apply to all. All involved parties (Complainant, Respondent, witnesses) need to be informed about the investigation process, your commitment to a fair, timely and thorough investigation, confidentiality expectations, and your anti-retaliation policies.

Talking to your employees either in person, by phone or virtually, if you work remotely, before notifying them via email is best practice in most, but not all situations. Plan your conversations so that you are clear and cover all the important points and they know what to expect. Your employees, particularly your Respondent, may have a lot of questions at this point, and you may not be able to answer all of them, so tell your employee what you can and can't answer.

Remember that employees will talk so you will need to remind your employees throughout the investigation that confidentiality is expected in order to protect the integrity of the investigation. It can be helpful to tell employees talking to others can impact the reliability of what they recall on their own.

Interim Measures

Sometimes interim measures to keep employees/parties apart are needed at the start of an investigation. For example, for allegations of sexual harassment or misconduct by an employee against a supervisor, it may be necessary to move the employee under another supervisor temporarily or to put the supervisor (Respondent) on administrative leave while you investigate. It is best practice not to put the Complainant on administrative leave, but there may be times when you will, for example if they request it. It is best practice to pay your employees while they are on administrative leave and not to require them to use their own leave accruals. Be sure to check your policies and collective bargaining agreements (union employers) as some Company policies address this.

**See sample notification language at the end of this document.*



Talking Points for HR/Leaders/Supervisors

- ❖ “I can’t discuss specifics of the investigation.”
- ❖ “I can discuss the process and what to expect.”
- ❖ “What I can and would like to discuss is how I can support you in the workplace right now. Is there anything you need from me?”
- ❖ “I realize this is hard.”
- ❖ “Investigations are important to ensure we address employee concerns, and they are required under our policies.”
- ❖ “It’s important that you are candid and honest throughout the process.”

Evidence Collection and Preservation

As you are investigating, secure and preserve all relevant documents, electronic records, and physical evidence. It’s best to organize electronic records from the beginning of the investigation as you will be accessing them often. If electronic devices are involved, follow Company policy and legal guidelines for data retrieval.

During the Investigation

You can expect the work of the Company to continue and for all parties involved to meet policies and expectations during an investigation. Additionally, you can expect and should clearly communicate the following:

- ❖ Be honest.
- ❖ Participate in the investigation if needed.
- ❖ Do not impede or interfere with the investigation.
- ❖ Do not discuss specifics of the investigation with other employees.
- ❖ Report if concerns continue or new ones arise.

Interim Measures

- ❖ Consider if interim measures need to change or be put in place if they aren’t already.
- ❖ If employees are talking to each other during the investigation reinforce your expectation that they respect confidentiality and privacy.
- ❖ If parties are interfering in the investigation or retaliating, they may need to be separated, and the retaliation/interference may need to be added as an allegation and investigated.

Maintain Objectivity

It’s critical to maintain your neutrality and objectivity during an investigation and not to make assumptions or decisions without gathering the facts.

- ❖ Conflict of Interest: Identify and address any potential conflicts of interest for the investigator. Consider appointing an external investigator for sensitive cases.
- ❖ Confirmation Bias: Avoid preconceived notions. Analyze evidence objectively and remain open to all possibilities.



- ❖ Emotional Detachment: Maintain a professional demeanor throughout the investigation.
- ❖ Neutrality: Maintain your neutrality throughout.

Interviewing Basics

Interviews should be conducted in a private, neutral setting, following a structured format. Although the Complainant may have already been talked to if they reported the concern, typically more information is needed, and they should be interviewed first. Witnesses are typically interviewed next, and Respondents are often interviewed last.

The following are additional tips:

- ❖ Review applicable policies with all parties.
- ❖ Conduct interviews in a similar manner, focusing on facts and avoiding accusatory language.
- ❖ If you are a union employer, follow the applicable collective bargaining agreement and grant employees the right to have a representative present during the interview.
- ❖ Make it clear the employee can leave or terminate the discussion at any time.
- ❖ Do not reveal who you have already talked to or commit to interviewing everyone they suggest.
- ❖ Ask open-ended, unbiased questions and avoid leading questions. (See sample questions below.)
- ❖ Do not discuss your opinions or conclusions.
- ❖ Do not disclose more information than is necessary to accomplish your task.
- ❖ If the employee is suspected of violating a particular policy and doesn't want to answer questions, tell them that you will have to complete your investigation regardless of whether they participate or not. This could potentially impact the accuracy of the findings, as the investigation would not capture that employee's side.
- ❖ Consider credibility when talking to employees:
 - Focus on specifics:
 1. Inherent plausibility – is their testimony believable on its face?
 2. Demeanor – did the person's demeanor change? How and when?
 3. Motive to falsify – did the person have a reason to lie?
 4. Corroboration – is there corroborating testimony or evidence?
 5. Past record – did the Respondent have a history of similar behavior in the past?
 6. Inconsistencies - did the employee contradict themselves or change their story?
- ❖ Inquire about all events which occurred during the relevant timeframe, in chronological blocks of time. Do not leave the chronological block until all the details necessary to recreate the scene have been established. For each block of time, the investigator should cover:
 - Exactly what occurred?
 - When did it happen?
 - Where did it happen?
 - Who was present?
 - Who else may know relevant information?
 - How did it happen?
 - Who did or said what? In what order?
 - Why did it happen? Could it have been avoided?
 - Are there any notes, documents or other evidence?



- ❖ Ask the witness to list all individuals who have knowledge of any of the events. For each individual, ask:
 - What knowledge does the witness have?
 - What is the source of the witness's knowledge?
 - Was the witness present?
 - Did the individual receive the information from someone else?
 - Did the individual see the information in writing, including over email, text, etc.?
- ❖ Follow-up on answers with appropriate, additional questions. Develop questions to corroborate or refute information provided by other witnesses or evidence without disclosing the source if there is no need to disclose the source. If appropriate, ask questions such as, "If your position is accurate, then how would you explain ___?"
- ❖ Throughout the interviews, take time to stop if necessary to ask if you are capturing what the witness is telling you. For example, you can read back your notes and ask, "Did I capture that accurately?"
- ❖ Before concluding the interview, give the witness an opportunity to disclose anything else they want the Company to know. It may be necessary to clarify that you are asking them to provide any additional relevant information they think is important for you to know.
- ❖ Ask the Complainant and Respondent who they think you should contact who would have relevant information to share. (You may also be asking witnesses this.)
- ❖ Conduct follow-up interviews with some or all parties if new or additional facts are learned.

Conducting Interviews

Remember that you want to treat Complainants and Respondents as equitably as possible, which you will see below is reflected in the sample questions. Also, remember that the investigation will end, and your employees will likely, with exceptions of course, still be with your Company when it's over. This is your opportunity to educate your employees as to your processes and policies while you are going through what is often a stressful process for them and you. Treating them with compassion, care and clarity is your goal.

The Complainant Interview

Establish Rapport and Outline What the Discussion Will Cover

- ❖ Thank them for being there and bringing their concerns forward.
- ❖ Explain the complaint resolution process in general (e.g., all complaints received are investigated. If based on the evidence, the employer concludes that the policy has been violated, discipline may result).
- ❖ Describe what the interview will be like, how long it will last, and offer the opportunity to take a break if they need one.
- ❖ Explain that, to the extent possible, the employer strives to maintain the confidentiality of its investigative procedures and findings.
- ❖ Tell them they are expected to be honest and candid.
- ❖ Ask them to briefly describe their work history and positions they've held.
- ❖ Ask them to describe what is a typical day like for them at work.



Questions

- ❖ Ask them what happened, what happened next, etc.
- ❖ Review incidents chronologically and establish a timeline with the Complainant.
- ❖ Be sure to ask specifics and ask for specific examples. For example, if someone having a bad attitude was mentioned by the Complainant, ask what specifically, “What do you mean by bad attitude?” “What was the person saying?” “What was the person doing?”
- ❖ If relevant, ask, “Did you ever report the incident to your supervisor or to any other member of management? If not, why not? If so, to whom, when, what did you say, what was their response, did either you or they make any notes of your conversation?”
- ❖ “Did this incident have any impact on your job performance? If so, how?”
- ❖ “Have you ever made any written record describing the incident (s)? If so, please provide me with a copy of that record.”
- ❖ “Do you know of any other relevant information?”

Review the Applicable Policy

- ❖ Review the applicable policies with the Complainant.
- ❖ Review examples of prohibited behavior under the policy.

Relationship with the Respondent

**The following questions are sample questions for investigations of workplace misconduct and some are specific to workplace harassment including sexual harassment, discrimination and retaliation.*

- ❖ How long have you known (the Respondent)?
- ❖ Did you know them before you joined the employer? If so, in what capacity (business, personal)?
- ❖ Do you work with (the Respondent)?
- ❖ If so, for how long?
- ❖ Does (the Respondent) supervise your work?
- ❖ Have you ever supervised (the Respondent's) work?
- ❖ On a daily, weekly, and/or monthly basis, how much time do you spend in direct contact with (the Respondent)?
- ❖ Where does this contact occur (e.g., your office, their office, common work area(s), business trips)?
- ❖ Who else typically works in this area?
- ❖ Has (the Respondent) ever disciplined you or threatened to discipline you in any way? If so, when, how and why?
- ❖ Has (the Respondent) ever enhanced or promised to enhance your job duties, salary, employee benefits, or quality of work life in any way? If so, when, how and why?
- ❖ Have you ever socialized with (the Respondent) outside of work?
- ❖ If so, when? How often? Where?
- ❖ If so, was anyone else present?
- ❖ Have you ever been intimately involved with (the Respondent)?
- ❖ If so, has the nature of your relationship changed, and if so when did it change and what has happened as a result of that change?
- ❖ Have you experienced any performance problems during the past six months? One year?
- ❖ Ask the Complainant what they think needs to happen to make things right?



- ❖ Depending on the allegations being investigated, for example sexual harassment, the following questions may be appropriate.
 - Can they continue to work in their position?
 - Do they feel safe being at work with the Respondent?
 - If applicable, can they continue to work with the Respondent?

Get Witness Information

- ❖ “Did anyone else witness these incidents?” If so, ask:
 - “What did they see or hear?”
 - “What have you and the witness discussed about the incident(s)? When did those discussions occur?” “Were these interactions in person, over email, text message, phone, etc.?”
- ❖ “To your knowledge, did the witness ever report the incident to any member of management? If so, to whom, when?”
- ❖ “To your knowledge, did the witness ever make any written record describing the incident? If so, what did they do with that record?”
- ❖ “Are there other people who may have relevant information that you think I should talk to?”
- ❖ Ask restorative questions such as:
 - What has been the impact of this on you?
 - What has been the hardest thing?
 - What do you think needs to happen to make things right?

Close the interview

- ❖ Advise the Complainant to reach out to you immediately if they have more to share.
- ❖ Advise the Complainant you will discuss the incident they described with any potential witnesses they identified and with the Respondent.
- ❖ Explain that you will strive to maintain confidentiality to the extent that it does not impede your investigation.
- ❖ If this is questioned, explain you cannot guarantee confidentiality.
- ❖ Assure the Complainant that the Company will not allow any form of retaliation against them for voicing their concerns.
- ❖ Ask the Complainant to immediately report any further incidents of inappropriate behavior which they experienced, observed or were informed of, including harassment or retaliation.
- ❖ Explain that, to the extent possible, the employer strives to maintain the confidentiality of its investigative procedures and findings.

Witness Interviews

The goal when interviewing witnesses is to focus on what firsthand knowledge they have of the situation including what they saw, heard, know, etc. Witnesses will often share information they've heard and it's important to determine what they've heard versus what they've actually observed. Witnesses may need to be interviewed more than once if you receive contradictory information while investigating.



Establish Rapport & Outline What the Discussion Will Cover

- ❖ If applicable - Remind the employee about the applicable policy.
- ❖ Advise the employee that you are investigating a concern/complaint raised in accordance with the policy.
- ❖ Inform the employee that they have been identified as a potential witness to the incidents that are being investigated
- ❖ Advise the employee that the Company has a policy against retaliation for participating in a workplace investigation, and that if they experience anything that feels like retaliation, they need to report it immediately to the investigator.
- ❖ Advise the employee that the information they provide will be maintained in a confidential investigatory file.
- ❖ Tell the employee to please not discuss the interview, the nature of your questions or related information with others, as you want others to remember details on their own.

Opening Questions

- ❖ How long have you worked for the employer?
- ❖ What is your present job title and responsibilities?
- ❖ Before asking specific questions about the incident, it can be helpful to ask if they know why they are there, for example:
 - Are you aware of what I'm investigating? What have you heard about this investigation?
 - On Friday, September 10, I understand you were at work. Did anything happen that afternoon that was notable to you?
 - It was reported to me that on Friday, September 10, an altercation happened at the beginning of the shift that was witnessed by you. Did you witness that altercation?

Relationship with Complainant/Respondent

**The following questions are sample questions for investigations of workplace misconduct and some are specific to workplace harassment including sexual harassment, discrimination and retaliation.*

- ❖ How long have you known the Complainant? The Respondent?
- ❖ Describe the nature of your relationship with the Complainant and the Respondent (e.g., business only, personal friends).
- ❖ Do you socialize with either the Complainant or the Respondent outside of work? If so, when, how often, where, with other participants?
- ❖ Do you supervise the work of the Complainant or the Respondent?
- ❖ Has either the Complainant or the Respondent ever supervised your work?
- ❖ If so, has either the Complainant or the Respondent ever disciplined you, threatened to discipline you, rewarded you, or promised to reward you in any way?
- ❖ How would you describe your working environment (e.g., supportive, hostile, abusive)?
- ❖ Has (Employee) ever spoken to you or otherwise treated you in a manner that you felt was inappropriate (at work, during any work-related activities or otherwise)?
 - If so, how, when, where, and were any witnesses present?
 - Did you ever report this incident to any member of management? If so, to whom and what occurred as a result? If not, why not?



- Did you ever discuss this incident with any of your co-workers. If so, with whom and when?
- Did you ever prepare a written record describing the incident? If so, please provide us with a copy of that record.
- ❖ Have you ever seen (Employee) speak to or otherwise treat anyone else in a manner that you felt was inappropriate (at work, during any work-related activities or otherwise)?
 - If so, what happened, to whom, when, where, were any witnesses present?
 - Did you ever discuss that incident with the co-worker in question? What did you and they say about the incident?
 - Did you ever report that incident to any member of management? If so, to whom and what occurred as a result? If not, why not?
 - Did either you or your co-worker ever prepare a written record describing that incident? If you did, please provide us with a copy of that record. If your co-worker did, what did they do with that record?
- ❖ Have any of your co-workers ever told you that (Employee) has spoken to or otherwise treated them in an inappropriate manner (at work, during any work-related activities or otherwise)?
 - If so, who told you this, what did they say happened, when, where, were any witnesses present?
 - Did you see this incident occur? If so, where were you located?
 - Did you hear about this incident from anyone else? If so, from whom, what did they say, when did this conversation occur, any witnesses present?
 - Did you ever report this incident to any member of management? If so to whom and what occurred as a result? If not, why not?
 - Did either you or your co-worker ever prepare a written record describing that incident? If you did, please provide us with a copy of that record. If your co-worker did, what did they do with that record?

Review Reported Incidents

- ❖ If the witness has not revealed what they know, review the reported incidents. This is often but not always done chronologically from first to last.
- ❖ Did you see this incident occur? If not, have you heard about this from anyone else? If so, who?
- ❖ If so, where were you located? Did anyone else ever witness the incident? When was this?
- ❖ Exactly what did you hear and/or see (Employee) say and/or do?
- ❖ What did your co-worker say and/or do immediately before and after (Employee) acted in this manner?
- ❖ Did you ever discuss this incident with your co-worker? If so, when, where, what did you discuss, were any witnesses present?
- ❖ Did you ever discuss this incident with the Respondent? If so, when, what did you discuss, any witnesses present?
- ❖ Did you ever report this incident to any member of management? If so, to whom and what occurred as a result? If not, why not?
- ❖ Did either you or your co-worker ever prepare a written record describing this incident? If you did, please provide us with a copy of that record. If your co-worker did, what did they do with that record?



Close the Interview

- ❖ Thank the witness for participating in the interview.
- ❖ Remind the witness to refrain from discussing the investigation or the information they disclosed to anyone else at work including the Respondent.
- ❖ Request the witness adhere to Company policy, exercise good judgment after your interview, and maintain a professional and respectful demeanor when dealing with all parties.
- ❖ Advise the witness that the investigation is underway, and you have not made any conclusions or decisions at this point.
- ❖ Confirm that the witness understands the Company's policy against retaliation and that they will not be subject to any adverse action for cooperating in the investigation and providing complete, accurate and truthful information.
- ❖ Advise the witness that if they ever believe they have been subjected to any adverse action (i.e., discipline, loss of pay, etc.) because they provided information, they should notify the investigator immediately.

The Respondent Interview

Respondents will often be on edge, defensive and sometimes fearful. This may be the first time they've ever been accused of something, so the goal is to put them at ease as best you can and help them understand the process and what to expect. Depending on the situation and their state of mind, you may want to get right to the questions and avoid rapport building or small talk. It's okay to acknowledge to them that you know this is difficult for them and remind them that your role is that of a neutral fact finder, but don't apologize, as that can be read that you are on their side.

Establish Rapport

- ❖ Explain the complaint resolution process in general (e.g., All complaints received are investigated. If based on the evidence, the employer concludes that the policy has been violated, discipline may result.)
- ❖ Describe what the interview will be like, how long it will last, and offer them the opportunity to take a break if they need one.
- ❖ Explain that, to the extent possible, the employer strives to maintain the confidentiality of its investigative procedures and findings.
- ❖ Ask them to tell you briefly about their work history and positions they've held.
- ❖ Have them describe what a typical day is like for them at work.

Initial Questions

- ❖ Start with broad questions such as, "I've been asked to look into a complaint involving potential violations of our harassment policy. This complaint was concerning conduct involving you. Can you think of any conduct that you've engaged in which may violate our Company policies on harassment?"
- ❖ Ask who, what, where, when, why, how, etc. questions related to the allegations. For example, "It was reported to me that last Friday you were in the staff meeting and you said such and such. Can you tell me about that?"



- ❖ Continue to ask the Respondent questions about the incident(s) or situation to understand their perspective.
- ❖ Give the Respondent the opportunity to speak to the specific allegations and any corroborating evidence that has been obtained.
 - If necessary, identify the Complainant and their allegations. In some cases you will not need to identify the Complainant.
 - If possible, refrain from revealing the identity of witnesses who participated in the investigation.

Relationship with the Complainant

**The following questions are sample questions for investigations of workplace misconduct, and some are specific to workplace harassment including sexual harassment, discrimination and retaliation.*

- ❖ Ask the Respondent to describe the nature of their personal and working relationships with the Complainant.
- ❖ If the Respondent confirms that conduct occurred as alleged but maintains that the conduct was welcome, or there are mitigating factors, elicit more detailed information about their personal and working relationships with the Complainant.

Matters to be Covered with the Respondent

- ❖ When allowing the Respondent to respond to each allegation:
 - It's not always necessary to reveal the source of your information, but sometimes it will be in order for the Respondent or witness to properly respond.
 - You should disclose the incidents/statements in full detail so the Respondent has a full opportunity to confirm, refute, or disprove them. If complicated, state them in writing to facilitate understanding by the Respondent.
 - Has the Complainant ever indicated any displeasure with anything the Respondent has said or done, or even asked the Respondent to stop?
 - Ask the Respondent for any facts which show anyone else may have a motive to fabricate the allegations against the Respondent.
 - If the Respondent denies wrongdoing and claims that the person raising the issue is lying, explore possible reasons.
 - Ask why the Complainant would make the claim.
 - Ask if anything has happened between the two individuals which would explain why one would make a meritless complaint.
 - Ask the Respondent what steps they believes should be taken to ensure a thorough investigation.

Review the Applicable Policy

- ❖ Review the applicable policy with the Respondent.
- ❖ Review examples of prohibited behavior under the policy.



Close Interview

- ❖ Ask the Respondent to identify all persons they believe should be interviewed as part of the investigation and what relevant information each is likely to have.
- ❖ Request that the Respondent provide to you all relevant documents and other evidence.
- ❖ Thank the Respondent for their participation in the investigation.
- ❖ Advise the Respondent of the follow-up they can expect.
- ❖ Inform the Respondent that after the investigation is completed, all evidence will be reviewed and a determination will be made as to whether, in the employer's opinion, Company policies or procedures have been violated.
- ❖ Advise the Respondent that the employer will not allow any form of retaliation against the Complainant or any of the witnesses who participated in the investigation. Tell the Respondent this policy is intended to protect them as well and they should report any concerns that they are being retaliated against.
- ❖ Advise the Respondent to comply with all Company policies when dealing with the Complainant and with all employees.
- ❖ Remind the Respondent again that they should not discuss the nature of your questions or the investigation with co-workers as that could be construed as attempting to influence the investigation.
- ❖ Advise the Respondent to reach out to you immediately if they have more to share.

Restorative questions that can be used with Complainants and Respondents.

- ❖ What has been the impact of this on you?
- ❖ What has been the hardest thing?
- ❖ What do you think needs to happen to make things right?

Additional Strategies for Interviewing

During investigatory interviews, there are a number of ways to enhance productivity and reduce the likelihood of problems.

- ❖ Do not investigate to draw legal conclusions, but rather, to determine if Company policies have been violated. For example, do not ask:
 - Did the employee create a hostile work environment?
 - Did the employee harass another individual?
 - Was there illegal discrimination?
- ❖ Consider cultural sensitivity when conducting interviews with employees who identify as one or more intersecting protected class.
- ❖ If you ask narrow, specific questions, you will get narrow, specific answers. Avoid the use of "yes or no" questions – try to get the witness to open up.
- ❖ Balance your need to maintain a comfortable interview session and a conversational style with the need to focus on the issues you are investigating. Your earlier preparation of the interview questions will bring you back on track when needed. To ensure you obtain the necessary information, you must establish and maintain control of the interview.
- ❖ If the interview becomes confrontational or emotional, take a break.



- ❖ Try to save difficult or embarrassing questions until the end; beginning with hostile or tough questions usually causes the witness to become defensive.
- ❖ Do not conclude the interview without asking tough questions, even if the witness is becoming uncomfortable.
- ❖ Do not give the impression you disbelieve a witness or express any opinion as to whether something inappropriate occurred during this portion of the fact-finding investigation.
- ❖ Ask additional questions based on the answers provided by all parties.
- ❖ Confirm you have a complete and accurate understanding of the witness's factual knowledge; before concluding the interview, review with the witness the significant points and information provided during the interview and confirm the information is accurate and complete (this confirmation should be contained in your notes).
- ❖ Avoid making statements to the witness; specifically avoid discussing theories, strategy assessment or other evidence.
- ❖ Recognize the witness will have worries about what your real agenda is, and whether they will become the "focus" of your investigation. They may also have worries that they violated Company policy. This can be either an advantage or disadvantage; it can either restrict the flow of information as the witness attempts to protect themselves or enhance the flow if they attempt to demonstrate teamwork and cooperativeness.
- ❖ Do not interview witnesses in groups. Group dynamics and peer pressure can discourage and suppress responses.
- ❖ When going into an interview, do not expect an "admission." Just keep the process fluid and retrieve as much information as you can.
- ❖ If you keep the witness guessing about how much you know, it may make them more honest due to the natural leverage of uncertainty.
- ❖ Do not disclose more information than is necessary to accomplish your task.
- ❖ Make it clear the employee can leave or terminate the discussion at any time. If the individual ever states that they wish to terminate the interview, or consult with someone, like a lawyer, let them do so.
- ❖ If the person being questioned is suspected of violating a particular policy, you can tell them that their failure to explain may lead to actions based on information that you have already received without any information from them. Suspension pending an investigation is one possible recourse.
- ❖ With complaints of harassment or unfair treatment, it is important to convey to all interviewed that the Company takes such allegations seriously.

Documentation and Reporting

It's important to maintain detailed and organized records of the entire investigation process, including:

- Dates, times, and locations of all interviews and meetings.
- Detailed notes from all interviews, capturing verbal and non-verbal cues and demeanor.
- Copies of all collected documents and evidence. This includes emails, text messages, instant messages, phone records, etc.

Prepare a comprehensive and objective report outlining:

- The scope and objectives of the investigation.
- The timeline of events.
- A summary of all findings, including witness statements and evidence analysis.
- A clear conclusion regarding whether the allegations were substantiated or not.



Post-Investigation

After the investigation it's important to be timely in your communication to your Complainant and Respondent that the investigation is complete. This is a step that is sometimes missed.

- ❖ Do not disclose more information than necessary to maintain confidentiality.
- ❖ Do not take action against the employee if the results of the investigation are not clear.
- ❖ Consider investigating further or issuing a memo of expectations to remind the employee of the applicable policy.
- ❖ Provide the Respondent with a verbal summary (some employers go so far as to provide a written one) of the findings.
 - What you share will depend on whether the Respondent is found to have violated policy, the allegations are unsubstantiated.
- ❖ If corrective action is warranted, follow established Company policies and procedures.
- ❖ If corrective action is being taken, the Respondent shouldn't be given the investigation report but should receive enough information to justify why the action is being taken. They should also know what your expectations are going forward.
- ❖ Do not communicate information obtained during the investigation to anyone, including other employees, supervisors or others who do not have a demonstrable business need-to-know.
 - This includes the parties involved in the investigation. They should not receive the report or details that they did not disclose.
- ❖ Maintain confidentiality by keeping records of investigation separate from the employee personnel files.
- ❖ Provide resources and support to those impacted by the investigation.
- ❖ Consider whether a mediated or facilitated conversation is needed between the Complainant and Respondent so that they can move forward if such is warranted.
- ❖ If a policy violation or misconduct occurred, take steps to monitor the situation to ensure misconduct does not happen again.
- ❖ Take steps to ensure that no retaliation is taken against the Complainant, Respondent or any other employee who participated in the investigation.
- ❖ Encourage the Complainant to come forward again at any time they believe a policy has been violated.
- ❖ Document all post-investigation communication and actions.

Sample Notification Language

Correspondence with COMPLAINANT

Thank you for making me aware of the [potential policy compliance issues] at [Company Name]. The Company takes these types of concerns very seriously and does not retaliate against employees for raising concerns under any Company policy.

I want to assure you that we will be conducting an investigation into your concerns. Your input and cooperation are essential. You will be contacted in the next few days to participate in the investigation process.



Please contact me if you feel that you are being treated differently or retaliated against in any way. I am also available to answer any questions you may have regarding the investigation process. Again, thank you for giving the Company the opportunity to address your concerns.

Correspondence with RESPONDENT

I have been made aware of potential policy compliance issues. [Some concerns have been brought to my attention about your behavior in the workplace that is affecting the work environment.] You will be given the opportunity to speak to all concerns raised, and I will be in touch soon to schedule an interview.

The Company takes these types of concerns very seriously and does not retaliate against employees for raising concerns under any Company Policy. Our goal is to be prompt and thorough. Interviews will be taking place over the next few days.

While no decisions have been made and time is needed to conduct a full investigation you are reminded to comply with all Company policies and procedures including our [General Conduct policy and expectations of respectful behavior].

It would be inappropriate to reach out to anyone to ask if they filed a concern/complaint as this could be viewed as retaliation. Additionally, you are directed not to discuss this with co-workers as this could be considered interference in the investigation.

Please let me know if you have any questions. I know that going through an investigation can be difficult. Please remember that we have an Employee Assistance Program (EAP) that you can contact for support. They can be reached at [Phone Number].

Correspondence with WITNESS (Interview Request)

Some concerns have been raised about some workplace behavior that may have violated our Company policy, and you have been identified as a potential **witness** to the behavior. [Optional: The concerns were not raised about you.] These concerns are being taken seriously and we are conducting an investigation. I would like to speak to you on [Date/Time].

It's important to maintain confidentiality about the investigation and your participation in the process. This helps protect the integrity of the investigation and helps ensure that your memories are your own and not those of others.

If you have any questions or concerns, don't hesitate to reach out to me.

