

Ask Sarah: Navigating Sexual Harassment Complaints- Best Practices for Employers

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By Sarah Goodman



Dear Sarah,

I've recently been informed about a troubling situation involving ongoing sexual harassment within our organization. It appears that this behavior has occurred for several months, yet this is the first time it has been brought to my attention. The incidents range from inappropriate actions in the office to unwelcome advances at company-sponsored events and unsolicited messages outside of working hours. This is a serious issue that requires immediate attention. What should my organization do in response to this complaint? Can we really be liable for behaviors outside the workplace, such as at a bar?

— HR Rep Unsure of How to Handle Sexual Harassment Investigations in the Wake of the #MeToo movement

Good to hear from you, though I'm sorry it is under these circumstances. Conducting a thorough workplace investigation is paramount here. These are serious allegations; employees expect accountability, and the employer is responsible for ensuring a fair and transparent process. Regarding your question about liability for incidents outside of the workplace, such as those occurring at a bar, it's essential to understand that sexual harassment is by no means confined to the workplace. Put another way, it is not required for the harasser to be in the process of rendering his or her job duties at the time the harassment takes place; as long as an employment relationship exists at the time of the conduct, the employer may be liable. While the situation may seem complex, addressing all instances of harassment, regardless of where they occur, is imperative to avoid legal consequences. Failure to do so could leave the organization vulnerable to legal consequences. Below, I've outlined key steps for conducting a comprehensive investigation.

1. **Conduct Timely Investigations:**

Addressing workplace issues and complaints promptly is essential. Offering multiple reporting avenues to ensure the complainant feels comfortable coming forward and encouraging open communication can help mitigate reporting delays.

2. **Create an Investigation Plan:**

Developing a clear plan that outlines the complaint's nature, investigation scope, and the involved participants is crucial. Consider whether the investigation will be privileged and designate the investigator. This ensures focus and efficiency, allowing flexibility if needed while maintaining the structure for a complete investigation.

3. **Determine the Investigation Scope:**

Clearly defining the goals of the investigation, such as ensuring fairness and reaching a resolution, is essential. Specify the scope by detailing the specific questions the investigation aims to address, maintaining focus and clarity. Avoid legal inquiries (*i.e.*, was the complainant subject to a hostile work environment) and instead focus on factual aspects, such as determining if the complainant received unwelcome advances from a supervisor at the company holiday party.

4. **Gather and Preserve Relevant Documents:**

Collecting and maintaining relevant documentation throughout the investigation process is vital. This includes policies, witness statements, and any other pertinent information. Before interviewing any witnesses, the investigator should begin to gather, assemble, and review relevant documents that will eventually form the investigation file. Continuously update the investigation file as new documents become available. During witness interviews, take detailed notes, documenting observations and conversations with clear and descriptive language. Details such as body language and specific incidents should be included to provide a comprehensive overview.

5. **Finalize the Investigation File:**

Whether conveying the investigation findings through a written report or informal communication, it is crucial to ensure that all parties involved receive the information. There are some instances where a written report may not be wise; you should consult with counsel before determining how to conclude the investigation. Additionally, preserving the investigation file separately from personnel records ensures accessibility and confidentiality. It is also essential to securely store relevant communications, notes, and documents in a central repository. By following these steps and maintaining transparency throughout the process, the employer can uphold the integrity of its organization and provide a sense of fairness to all involved parties.

If you have any further questions or concerns about conducting internal investigations, please don't hesitate to reach out.

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The information provided in this blog is for general informational purposes only and should not be considered legal advice. Consult a qualified attorney for advice on specific legal issues.