

[IMPORTANT: The information and materials contained herein should not be considered or relied upon as legal advice on specific factual situations. Users are urged to consult legal counsel concerning particular situations and specific legal questions.]

(Firm Name)

SEXUAL HARASSMENT INVESTIGATION CHECKLIST

Consider the order in which investigation interviews will be conducted.

Complainant.

Alleged harasser.

Coworkers and other witnesses.

Second interview of the Complainant to discuss any factual questions as a result of the investigation.

Second interview with the alleged harasser to discuss any factual questions as a result of the investigation.

Interview each witness separately in an office or room where the discussion will not be overheard by other witnesses, the alleged harasser or any other unauthorized persons.

- Two managers should participate in the interview process. At least one of the investigating managers should be thoroughly familiar with sexual harassment law and the Firm's harassment policies and procedures. One manager should be designated as the interviewer and the other should act primarily as a witness and take notes of the discussion.
- Before the interview, explain the purpose of the interview by referring generally to recent complaints about the relationship between the Complainant and the alleged harasser. Do not necessarily discuss the issue of sexual harassment, so that you do not taint the witness' recollection of the events.
- Emphasize that the Firm takes these charges very seriously and that the Firm is investigating these charges by interviewing all potential witnesses in compliance with Firm policy.

- Explain that upon completion of the investigation the Firm will attempt to determine what occurred and will take appropriate action based on its determination.
- Both the alleged victim and the alleged harasser should be advised that each will be apprised of the results of the investigation and any action taken.
- Instruct each witness interviewed not to discuss the matters covered during the interview with any co-employee or the alleged harasser.
- Explain to the witness that confidentiality is necessary to protect the integrity of the investigation and to ensure that the Firm receives trustworthy information in an atmosphere free from coercion.
- Avoid leading questions.
- Ask open-ended, non-judgmental questions. Use investigation interview forms where appropriate.
- Explain to all witnesses that retaliation will not be tolerated.

Avoid the appearance of impropriety or favoritism in conducting interviews.

Observe and record all physical and verbal reactions of witnesses.

Do not record conclusions regarding credibility.

Avoid judgmental statements or furthering of myths or stereotypes.

Explore the effect of alleged harassment on each witness (i.e., psychological, emotional, physical and financial).

Interview all possible witnesses:

Complainant.

Alleged harasser.

Complainant's supervisor.

Alleged harasser's supervisor.

Coworkers.

Other.

Review Complainant's personnel file.

Review alleged harasser's personnel file.

Discuss investigation results and proposed action with investigation team. This discussion should be limited to those with a need to know the results of the investigation, such as the Complainant's supervisor, the alleged harasser's supervisor and senior Human Resources Department staff.

Consider credibility determinations. Factors include:

- Memory.
- Perception.
- Veracity (truthfulness).
- Corroboration or lack of corroboration and implications of such determination.
- Bias of witnesses.
- Consistency of accounts.
- Prior misconduct or lack thereof and implications of such misconduct.
- Plausibility of accounts.

Review any documentary evidence.

Consider appropriate remedial action:

- Document investigation in personnel file.
- Verbal warning.
- Written warning.
- Suspension.
- Demotion.
- Termination.

Factors in determining appropriate remedial action.

- Credibility determinations.
- Prior conduct, if any.
- Prior discipline of alleged harasser.
- Level of harassment, including type and frequency of conduct.
- Alleged harasser's knowledge of Firm rules of conduct.
- Prior disciplinary "precedent" for identical, similar or analogous misconduct.
- Political considerations within the organization.
- Public and employee relations issues.
- Other: _____

Review harassment investigation and findings.

- Was the Firm harassment policy adequate?
- Were the employees aware of the terms of the harassment policy?
- Was the harassment complaint procedure adequate?
- Did the investigator uncover other issues which need to be addressed?
- Other: _____

Implement changes to harassment policies and procedures where appropriate.

(Firm Name)

COMPLAINANT INTERVIEW FORM

Name: _____ Date: _____

Position: _____ Supervisor: _____

Name and position of the alleged harasser: _____

Date and time of the harassment: _____

Did the harassment occur more than once? Yes ___ No ___

If so, how often did it occur? _____

If it occurred more than once, on what dates and at what times did it take place?

For each incident, ascertain and document what occurred. Try to get as many details as possible, even though this may be uncomfortable for the Complainant. Use additional pages if necessary. Ask open-ended, non-judgmental questions, such as:

- Did the alleged harasser touch the Complainant? _____

- If so, where was the Complainant touched? _____

- Was the Complainant touched more than once? _____

- Did the alleged harasser threaten the Complainant in any way? _____

- If so, what was the threat or threats? _____

• How long was the incident, for example, a few seconds, five minutes? _____

• Where did the incidents of harassment take place? _____

• Were there any witnesses to the incidents of harassment? If so, who were the witnesses? _____

• Does the Complainant know of any others subjected to the same behavior?

• Does the Complainant know motive for harassment? _____

• How did the Complainant respond to the harassment? Did he or she make any effort to bring it to a halt? _____

• Did the Complainant tell anyone else about the incidents of harassment: superiors, coworkers, family, friends, government representatives, attorneys? If so, get details concerning who, what, when, where and the response, if any.

• Does the Complainant have any tangible evidence or records of harassment: notes, letters or memos to or from harasser, witnesses; calendar or diary entries, memos, letters, notes, etc. by Complainant; tape recordings, surreptitious or otherwise; formal complaint forms to any agencies? _____

• How did the Complainant feel about the harassment at the time it occurred?

- Does the Complainant feel the same way now? If not, what is different about how the Complainant now feels and what brought about the difference? _____

- Does the alleged harasser have control over the compensation, working conditions or future employment of the Complainant? _____

- Has the alleged harasser made or carried out any threats or promises in connection with the alleged sexual harassment? _____

- Does the Complainant know or suspect there are other victims of harassment by the same person? If so, who are they? _____

- To what extent were others in control made aware of the situation? _____

What action would the Complainant like to have taken? _____

Ask the employee to write and sign a detailed description of all events to support the harassment claim.

Interviewer: _____ Date: _____

Witness: _____ Date: _____