

10 KEY STEPS FOR CARRYING OUT A HARASSMENT INVESTIGATION IN THE US



Federal harassment laws cover all US employers with 15 or more employees. At least half of US states* also have sexual harassment laws that cover employers with fewer than 15 employees.

Where the law applies to your organization, you are expected to carry out investigations into any claims of harassment, discrimination or hostile work environment.

If you are a smaller employer, not covered by federal or state laws, you should consider following a similar approach to maintain a safe and productive work environment.

This report outlines a typical harassment investigation in a small employer.

**State and local laws vary. Employers should verify their compliance requirements with local government agencies.*

1. Complaint received

Your employees can use a variety of methods to report an allegation of harassment, through

- email, letter or voicemail
- an anonymous whistleblower hotline, or even an anonymous note.

You should obtain a detailed, written complaint from the complainant at the outset, whenever possible.

2. Assess the severity of the claim

When a complaint is received, escalate it to the appropriate internal person within your organization. This person will verify that it meets, or appears to meet, the legal definition of harassment.

In a small employer, the appropriate internal person is likely to be

- the business owner or partner
- a senior manager
- a staff member designated to address these complaints.

Once the claim has been verified as harassment, an investigation is initiated.

An impartial individual should be selected to lead the investigation. Their role will include

- coordinating investigatory interviews
- communicating with participants and
- keeping superiors apprised of the process.

This individual is referred to as the 'investigation leader' in this summary.

3. Complaint does not meet the definition of harassment

Your employee may allege harassment, and you conclude their complaint does not fall within the definition. Their complaint should still be addressed, but a full investigation would not be necessary.



4. Meeting to discuss claim

If you are the investigation leader, you will determine with input from relevant members of management:

- who will be interviewed as a part of the investigation
- who will conduct and document the interviews: the 'interviewer.'

Best practice is for an external investigator, typically an attorney, to conduct interviews and document findings.

However, if this is not viable, then you should ask another manager to conduct the interviews.

When the interviewer is an internal employee, you should ensure there are no real or perceived conflicts of interest, eg reporting relationships, personal or familial relationships.



5. Plan the investigation process

Once the interviewer has been identified, you set up the schedule of interviews. The location must be private, ideally in a place removed from the work area.

Typically, the complainant is interviewed first and the alleged harasser last.

The interviewer creates interview questions for the complainant based upon the content of their complaint. You would assist if required.

6. Notice of an investigation

You provide the complainant and alleged perpetrator of the harassment with written notice of the investigation. This should include expectations of confidentiality and policies against retaliation during the process.

Any additional parties with a 'need to know', eg management chain of command or legal team are also notified. Every effort should be made to keep the complaint and investigation as confidential as possible.

During the investigation, the interviewer may identify additional witnesses to be interviewed.

7. Consider intermediate measures

You should discuss with relevant managers whether the alleged harasser should be temporarily reassigned or placed on paid administrative leave during the investigation.

Such intermediate measures help to

- reduce the stress on the complainant
- minimize the risk of retaliatory actions between your two employees.



8. Conducting interviews

The interviewer conducts each interview, taking detailed notes which are typed up at the end of each session.

Each interviewee is provided with a record of their interview and asked to sign off on the accuracy of their account.

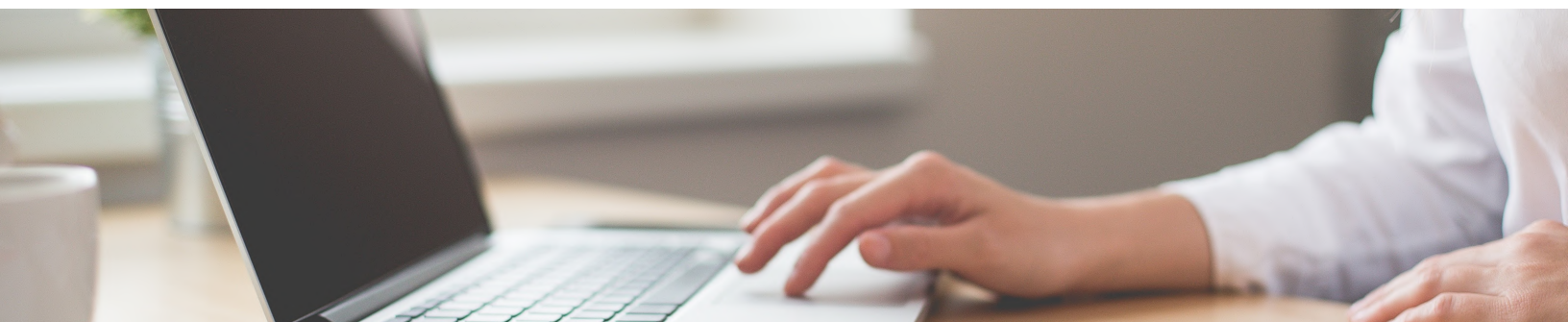
The interviewer prepares interview questions for the alleged perpetrator using the notes from the earlier interviews with the complainant and witnesses.

The alleged perpetrator denies the allegations

The alleged perpetrator may deny the allegations outright.

Ask whether they have any documents or witnesses that may support their version of events.

If they do, examine the documents they provide and interview their witnesses.



9. Document investigation results

On completion of all interviews, the interviewer provides a written summary of the results to you as the investigation leader. Depending upon the expertise of the interviewer, their summary may include a recommended course of action.

You review the results and recommend a course of action. You would take into consideration the interviewer's recommendations, if provided.

The results and recommendations are conveyed to the business owner and, if applicable, to appropriate members of management.

If the complaint is upheld, management will recommend, with advice from relevant internal parties, whether to take disciplinary action.

This action may range from a verbal warning to termination. You should have recommendations for termination reviewed by an attorney.

Unable to make a decision

Many harassment claims are "he said, she said".

At the end of the investigation, you may have credible yet conflicting statements from the complainant and alleged perpetrator.

In these situations, you may be unable to decide who is telling the truth and make a fair and reasonable decision.

As long as you investigate thoroughly and document your findings, you've done your job.

If there are any further incidents, you can revisit this file and take a fresh look at the evidence.

10. Investigation closure

The investigation leader meets with the complainant and provides a brief written notice of the investigation results.

This notice does not include details of disciplinary actions, other than in the case of termination.

The alleged harasser is also provided with a written summary of the investigation results.

