

General Personnel

Administrative Resource - Sample Questions for Conducting the Internal Sexual Harassment in the Workplace Investigation

State and federal law prohibit sexual harassment. For the purpose of this procedure, sexual harassment includes harassment on the basis of sexual orientation, which means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity. The person charged with conducting the internal sexual harassment investigation must ascertain whether the sexual conduct is unwelcome and whether it affects a term or condition of employment (29 C.F.R. §1604.11(a)). The questions that follow are designed to help the investigator uncover this evidence. They are not all-inclusive and the exact questions must be designed for the specific allegations in each case.

Is the conduct complained of unwelcome sexual conduct?

Unwelcome sexual conduct is that verbal or physical sexual conduct which the employee did not solicit or incite and that which the employee regarded as undesirable or offensive. It is difficult to discern because the line between welcome and unwelcome sexual conduct is often quite fuzzy. The EEOC evaluates the issue of welcomeness in sexual harassment cases on a case-by-case basis. It looks at the record as a whole, considering the totality of the circumstances. The wise investigator will do the same.

Below are sample questions that can be used to formulate actual questions for this part of the investigation.

1. Who is the alleged sexual harasser? What is his/her name? Is he/she a co-worker or a supervisor?
2. Is the sexual conduct complained of physical, verbal, and/or committed using an electronic device, such as, through email, text message, or a social networking website?
3. If physical, describe with specificity the nature of the physical conduct. Describe all locations on the complainant's body that were touched and indicate when, how often, how he/she was approached, who witnessed the physical conduct, and where was the complainant when the conduct took place? Did the physical conduct involve an injury to or destruction of the complainant's possession(s) and, if so, what was the property, what was the nature of the injury, when did it happen, and where is the property now?
4. If the unwelcome conduct was verbal, what was stated, when, how often, where were the parties when the statements were made, and who witnessed the statements being made?
5. If the conduct was committed using an electronic device (e.g., through email, text message, or social networking website) what was stated, where, when, how often, who saw it?
6. Did the complainant retain any evidence of the offensive conduct such as a picture, email message, text message, or video or audio recording?
7. Was medical treatment required? If so, when was he/she treated, how often, by whom, where was he/she treated, and what was the diagnosis?
8. If medical treatment was not required, was a complaint or protest made to anyone employed by the District or to anyone else? If so, to whom did he/she complain, when was the complaint made, what was stated therein, and were there any witnesses to this or these complaints?

9. What was the complainant's response to the conduct? Did he/she tell him/her to stop? Did he/she complain to others about his/her behavior? Did he/she ask co-workers, supervisors or managers to make the harassment stop? If so, obtain all relevant details.
10. Did the complainant engage in any conduct with the alleged harasser that could have encouraged his/her behavior? If so, what was the conduct, when and where did it occur, how often and who witnessed it?
11. Did the complainant and the alleged harasser have a prior consensual relationship? If so, how long did it last and when did that relationship end?
12. Did the complainant make the alleged harasser aware at the point when the sexual advances became unwelcome? If so, when, how was this done, what was communicated to the alleged harasser, and were there any witnesses?
13. Did the complainant complain about the harassment to the alleged harasser, his/her supervisors, other managers or others? If so, when were the complaints made, what was said, who was present, and what was the response to each complaint?
14. If no complaints about the alleged harassment were made, why not?
15. What other actions, if any, did the complainant take to indicate to the alleged harasser that his/her conduct was unwelcome?
16. Did the complainant engage in any conduct which elicited the unwelcome conduct of the alleged harasser? For example, how did he/she demean him or herself in the workplace, how did he/she dress, did he/she use sexual and provocative language, did he/she engage in sexually provocative conduct, and was this conduct directed towards the alleged harasser?
17. If they lack knowledge about the harassment, did co-workers, supervisors or managers notice any changes in charging party's behavior at work or in the alleged harasser's treatment of the charging party?
18. Has the alleged harasser been accused of sexual harassment by other employees? If so, when, and were the allegations investigated? If so, what was the result of the investigation, and what was management's response, i.e., what remedy was imposed?

Did the work environment become hostile?

To ascertain whether unwelcome sexual conduct creates an unlawful *hostile environment*, the major inquiry is whether the conduct "unreasonably interferes with an individual's performance" or creates "an intimidating, hostile, or offensive working environment." (29 C.F.R. §1601.11(a)(3)). Thus, trivial or annoying conduct such as sexual flirtation or innuendo or vulgar language would probably not establish a hostile environment. The challenged conduct must substantially affect the work environment of a reasonable person for a violation to be found.

Consider the following additional questions for this part of the inquiry:

1. What effect, if any, did the alleged harassment have upon the complainant's ability to perform his/her job?
2. What effect, if any, did the alleged harassment have upon the complainant's mental or physical health or well-being?
3. What was the sexual character of the work environment before the complainant entered the environment? Were sexual comments and actions common? If so, what types, when did they occur? Who was involved? Were supervisors involved or just co-workers?

4. Did the character of the workplace change after complainant joined the workplace? If so, how? What was complainant's behavior? How did the accused and other co-workers or supervisors respond to complainant's behavior?
5. Was the complaint of verbal or physical behavior directed at persons other than complainant? If so, who were they? What conduct was directed towards them, when, how frequently, who was present, where did it occur and who witnessed it? How did these persons react to the physical or verbal conduct?
6. Did the alleged harasser single out the charging party? If so, how, when, where, and why?
7. Did others join in perpetrating the harassment? If so, who? What was done; when, where, who witnessed the conduct, and were others harassed too?
8. If the complaint of conduct was verbal, what were the remarks? Were they hostile and derogatory? What was the frequency and context of the comments? Were the parties in or out of the workplace when the comments were made?
9. Was the alleged harassment observed by supervisors, managers, or other co-workers? If so, by whom, when, where, and what was observed?
10. Was the alleged harassment observed by former employees or others outside the workplace? If so, by whom, when, where, and what was seen?

Was the harassment committed by a supervisor?

The employer will always be held responsible for acts of sexual harassment committed by the employee's supervisor, meaning someone who was authorized by the employer to have authority over the complainant's terms and conditions of employment. To investigate sexual harassment committed by the complainant's supervisor, include questions such as the following:

1. What sexual conduct is the supervisor accused of? When, where, how often did it occur, and who observed?
2. Was the supervisor authorized to grant or deny tangible job benefits to the complainant? If so, what was the scope of that authority and what documents evidence it? If not, were his/her recommendations concerning the complainant's terms and conditions of employment typically or routinely followed?

Was the harassment *quid pro quo* (do this for that)?

An employer will always be held responsible for acts of *quid pro quo* sexual harassment, meaning that tangible job benefits were either (1) conditioned on submitting to sexual favors, or (2) denied because of the complainant's rejection of a sexual advance or request for sexual favors.

1. How was the complainant's employment affected by the alleged harassment? Was he/she denied a salary increase, a promotion, a job transfer, etc.? If so, when?
2. Was the complainant treated differently from similarly situated employees in regard to the denied salary increase, promotion, job transfer, etc.? If so, who was treated differently by this same supervisor?
3. What other management employees were involved in decisions to grant or deny the tangible job benefit(s) to the complainant? Did they have knowledge of the sexual conduct?