

Conducting an Internal Investigation Checklist

This Checklist provides guidelines for companies to consider when developing an investigative strategy. However, every internal investigation is unique and requires significant judgment calls, including:

- When to conduct an investigation.
- Who should conduct the investigation.
- The scope of the investigation.
- What action to take at the conclusion of the investigation.

Determine Whether an Investigation Is Necessary and When to Conduct It

- An internal investigation should generally be conducted in response to any of the following:
 - government investigations or enforcement actions;
 - actual or credible allegations of wrongdoing committed by the company or its agents; or
 - a lawsuit against the company or one of its agents.
- Investigations should start as soon as a triggering event occurs to allow for a thorough inquiry and prevent further exposure to damages. However, in deciding the timing of the investigation, companies should also consider the availability of:
 - witnesses;
 - documents and relevant information; and
 - investigators.

Determine Whether to Conduct the Investigation through In-house or Outside Counsel

Investigations should be conducted through counsel to help establish and preserve a claim of privilege over the company's process in evaluating critical facts.

Considerations for Selecting In-house Counsel

- In-house counsel must be protected by, and be able to maintain, the **attorney-client privilege** and **work product** protection. Consider whether the in-house legal department:
 - played a role in the underlying activity at issue in the investigation; or
 - has a role in the company that may cause the attorney-client privilege or work product protection to be lost. Often the lines between business advice and legal advice are blurred.
- In-house counsel must be able to conduct a completely objective investigation.
- In-house counsel must be familiar with the applicable laws, and have the skills and investigative experience to conduct the investigation.

Considerations for Selecting Outside Counsel

- Retaining outside counsel may give the investigation greater credibility, which can be especially helpful when dealing with the government or the board of directors.
- Outside counsel may provide a greater likelihood that the investigation will be privileged because the line between business and legal advice may be less blurred.
- Retaining outside counsel may make it more likely that best practices will be followed because outside counsel is often specialized in conducting internal investigations. For model engagement letters for retaining outside counsel, see *Standard Documents, Engagement (Retainer) Letter: Hourly Fee Arrangement*;

Engagement (Retainer) Letter: Contingency Fee Arrangement and Engagement (Retainer) Letter: Alternative Fee Arrangement.

Determine Whether to Hire Consultants

- Outside consultants can be beneficial because they may increase the likelihood that:
 - potential problems will be detected; and
 - a basis for potential defenses will be discovered.
- Consider hiring outside consultants, including:
 - forensic accountants, who can provide a better understanding of the company's books and records and be able to detect irregularities that may indicate a problem;
 - e-discovery consultants, who can provide technical expertise and support in collecting, managing and reviewing electronic data; and
 - subject matter consultants, who can be helpful in identifying issues in complex industries.
- If consultants are hired, they should:
 - be hired by the company's counsel;
 - work at the direction of counsel;
 - report directly to counsel; and
 - maintain their work papers consistent with the attorney work product doctrine.

Determine to Whom Investigators Will Report and Clearly Inform the Investigators When They Are Retained

- Consider designating one of the following to supervise the investigation and receive the investigator's reports:
 - general counsel or another in-house counsel (see *Considerations for Selecting In-House Counsel*);
 - the audit committee of the board of directors; or
 - a special committee of the board of directors formed for this purpose.
- Moving supervision of the investigation away from company management:
 - gives further credibility to the objectivity of the investigation; and
 - reduces the risk of any apparent conflict in conducting the investigation.
- When retaining outside counsel or investigators, immediately let them know:
 - who the client is; and
 - to whom they must report.
- Throughout the investigation, investigators must keep the designated supervising individual, department or committee apprised of:
 - the investigation plan;
 - the scope of the investigation; and
 - all relevant developments.

Establish and Preserve the Attorney-Client Privilege and Work Product Protection

- Communications with counsel, written or oral, are privileged if they are:
 - confidential; and
 - made for the purpose of obtaining legal advice.
- Increase the likelihood that information collected during an investigation remains privileged by:
 - requesting that all employees refrain from interfering with the investigation and use their best judgment and discretion when discussing the investigation with others (for more information about instructing

employees on confidentiality of investigations, see *Practice Note, Handling Employment-related Internal Investigations: Confidentiality*);

- restricting anyone outside the attorney-client relationship from having access to this information;
 - carefully handling all documents that are created and collected so that they are not shared or disclosed to anyone outside of the investigation; and
 - clearly marking all privileged and work product-protected documents created during the investigation as “Attorney-Client Privileged Communication” or “Work Product.”
- Make communications in confidence and do not disseminate them beyond those persons who need to know their contents.
 - Give **Upjohn warnings** at the start of all employee interviews and discussions to ensure that at every meeting the employee understands that:
 - the attorney represents the company and not the individual;
 - the conversation is protected by the attorney-client privilege;
 - the attorney-client privilege belongs to the company and not the individual;
 - only the company can waive the attorney-client privilege; and
 - there is a real possibility the company may choose to waive the attorney-client privilege.
 - Be cautious when communicating with former employees because some courts may not extend the privilege to counsel’s communications with former employees regarding facts that occurred during their employment at the company.
 - Waiving the privilege for certain issues may be in the company’s best interest, but that should be the company’s deliberate decision and not an inadvertent waiver.

For more information on establishing and preserving the attorney-client privilege and work product protection in internal investigations, see *Practice Note, Internal Investigations: US Privilege and Work Product Protection*. For a model memorandum to employees about maintaining the attorney-client privilege, see *Memorandum to Employees Regarding Proper Maintenance of the Attorney-Client Privilege*.

Initiate the Document Review Process and Carefully Monitor It

- Start the document review process (including collecting documents) as soon as the company becomes aware of credible allegations of wrongful conduct.
- Consider imaging hard drives and collecting documents before notifying employees to avoid opportunities, or even the appearance of opportunities, for document **spoliation**. If hard drives are imaged, put a plan in place to get information while allowing employees to continue working (see *Practice Note, Practical Tips for Preserving ESI*).
- Preserve information by sending all employees a “document hold” or **litigation hold** communication (see *Standard Document, Litigation Hold Notice* and *Practice Note, Implementing a Litigation Hold*).
- Coordinate with the technology department to secure potentially relevant files and retain e-discovery consultants, if necessary (see *Determine Whether to Hire Consultants*).
- Consider how to handle information that may be stored on the employees’ own devices (for more information on employer information stored on employee personal devices, see *Standard Document, Bring Your Own Device to Work (BYOD) Policy*).
- Establish a document processing system and code all documents to aid their use by investigators (coding should reflect subject matter, custodian and other relevant information).
- Use follow-up interviews with relevant employees to discuss and monitor their document identification and preservation, as well as inquiring about other relevant information.

Ensure Company Access to Employee Information

- Inform all employees as early as possible that the company's computer systems and the information stored on them belong to the company.
- Inform all employees that the company may need access to their personal electronic devices if any were used for work purposes.
- Do not provide assurances to employees that personal e-mails or documents will not be reviewed by the company. This could bolster an otherwise weak claim of invasion of privacy.
- Ensure that for each search, there is good cause to conduct the search and that the search is conducted in a reasonable manner.
- Check with local counsel in the appropriate jurisdiction, especially foreign jurisdictions, to ensure that local laws do not give employees rights to privacy that may interfere with the investigation.

Conduct Employee Interviews

- Develop a list of employees that should be interviewed. Consider the order of the interviews as well as the location.
- Have two people attend each interview. Typically, this includes an attorney to conduct the interview and an attorney or paralegal to take accurate notes. The company's in-house counsel may also be present in certain circumstances, provided that it does not create a conflict.
- Remember to give *Upjohn* warnings at the start of all employee interviews (see *Establish and Preserve the Attorney-Client Privilege and Work Product Protection*).
- The individual taking notes should:
 - make a verbatim notation at the top of the interview notes of the *Upjohn* instruction that was given to allow future confirmation of precisely what was told to the employee; and
 - take accurate, but not necessarily verbatim, notes of the rest of the interview. The more the notes look like a transcript and less like the mental impressions of the person taking the notes, the more likely a court may find the notes are not protected by attorney work product.

For a model letter requesting an employee to participate in an internal investigation, see *Standard Document, Letter to Employee Requesting Participation in Internal Investigation*. For model questions for interviewing employees, witnesses and individuals in alleged workplace discrimination cases, see *Standard Document, Model Questions for Investigating a Discrimination Complaint* or for sexual harassment complaints, see *Standard Document, Model Questions for Investigating a Sexual Harassment Complaint*.

Determine Whether to Retain and Pay for Individual Counsel for Employees

- An employee should have separate individual counsel if either:
 - the employee has a potential for individual liability; or
 - an actual or potential conflict of interest exists between the company and the individual.
- Although a company can recommend particular attorneys to an employee or executive, the employee or executive must understand that the choice of attorney is entirely up to the individual.
- If a company decides that the employee should have separate counsel, the company must determine if it has to pay for the employee's counsel. The company should review:
 - its policies;
 - all agreements between the company and the employee; and
 - the local laws.
- Companies typically pay for an employee's individual counsel if the employee was working in the scope of employment when the issue under investigation arose.

- If the company pays for an employee's individual counsel, company counsel should decide at the outset whether the fees and expenses are:
 - indemnified or paid up front;
 - paid despite a finding of guilt; and
 - reimbursed for an appeal.
- Even if a company pays for an employee's legal fees, the employee is the client, and therefore the individual's counsel must do what is in the employee's best interest.

Consider Whether to Enter into a Joint Defense Agreement

- If both the company and any of its executives or employees are under investigation, consider that a **joint defense agreement**:
 - helps both the company and the individuals avoid working at cross purposes;
 - provides the company with access to an executive's knowledge that could help the company prepare a better defense; but
 - limits the company's ability to reveal to a third party without the executive's permission information that it obtains as part of the joint defense agreement. This is a factor to consider if there is a potential for a future privilege waiver (such as cooperating with the government).
- If a joint defense agreement is entered into, consider whether to memorialize the agreement in writing or whether an oral agreement will suffice. A written agreement ensures less confusion regarding the terms of the agreement (see *Standard Document, Joint Defense and Confidentiality Agreement*).
- If the joint defense agreement is terminated:
 - memorialize the termination in writing (whether or not the initial agreement was in writing) to ensure that the parties understand that no joint privilege remains;
 - require the parties to return any privileged documents; and
 - remind the parties that the communications and shared information obtained during the life of the joint defense agreement continues to be confidential unless all parties agree to a waiver.

Prepare a Final Report and Determine How to Present It

- The final investigative report should contain:
 - a summary of the issues raised;
 - the relevant facts;
 - the methodology used to conduct the investigation;
 - the scope of the investigation;
 - applicable law;
 - its findings; and
 - any recommendations.
- When reporting the findings to the designated committee or in-house counsel, consider whether to provide written copies of the report or to give the report orally. It is common for the report to be written and provided to the designated committee or in-house counsel, often with copies of the report not leaving the room. However, because an inadvertent waiver of the attorney-client privilege is always a possibility, some investigators prefer to give the report orally.
- In determining whether or not to provide hard copies of the final report to the designated committee or in-house counsel, consider that:
 - written reports reduce the potential for debate over what was reported, but can provide a guide for government investigators or private plaintiffs if a waiver occurs;

- oral reports encourage an open discussion, but the finality of the report may be in question; and
- oral reports do not guarantee, if a waiver occurs, that the information will remain confidential (discovery regarding the oral report could occur through conducting interviews or depositions of the individuals receiving and giving the report).

For a standard form for recording the findings of a discrimination or harassment internal investigation, see *Standard Document, Discrimination/Harassment Investigation Determination Form*.

Determine Whether to Report the Conduct to the Government

- Reporting the discovered misconduct to the government may be required by law, especially in regulated industries. Consult with local counsel or counsel familiar with the company's industry.
- Consider that self-reporting is generally looked on favorably by regulators considering any consequences for the company.
- If reporting the misconduct to the government is discretionary, the company should:
 - discuss whether to report the discovered misconduct to the board of directors and possibly outside counsel experienced in these matters;
 - make the decision promptly after learning of the results of an internal investigation;
 - have a plan in place to remediate the behavior; and
 - improve any faulty internal controls discovered during the investigation.

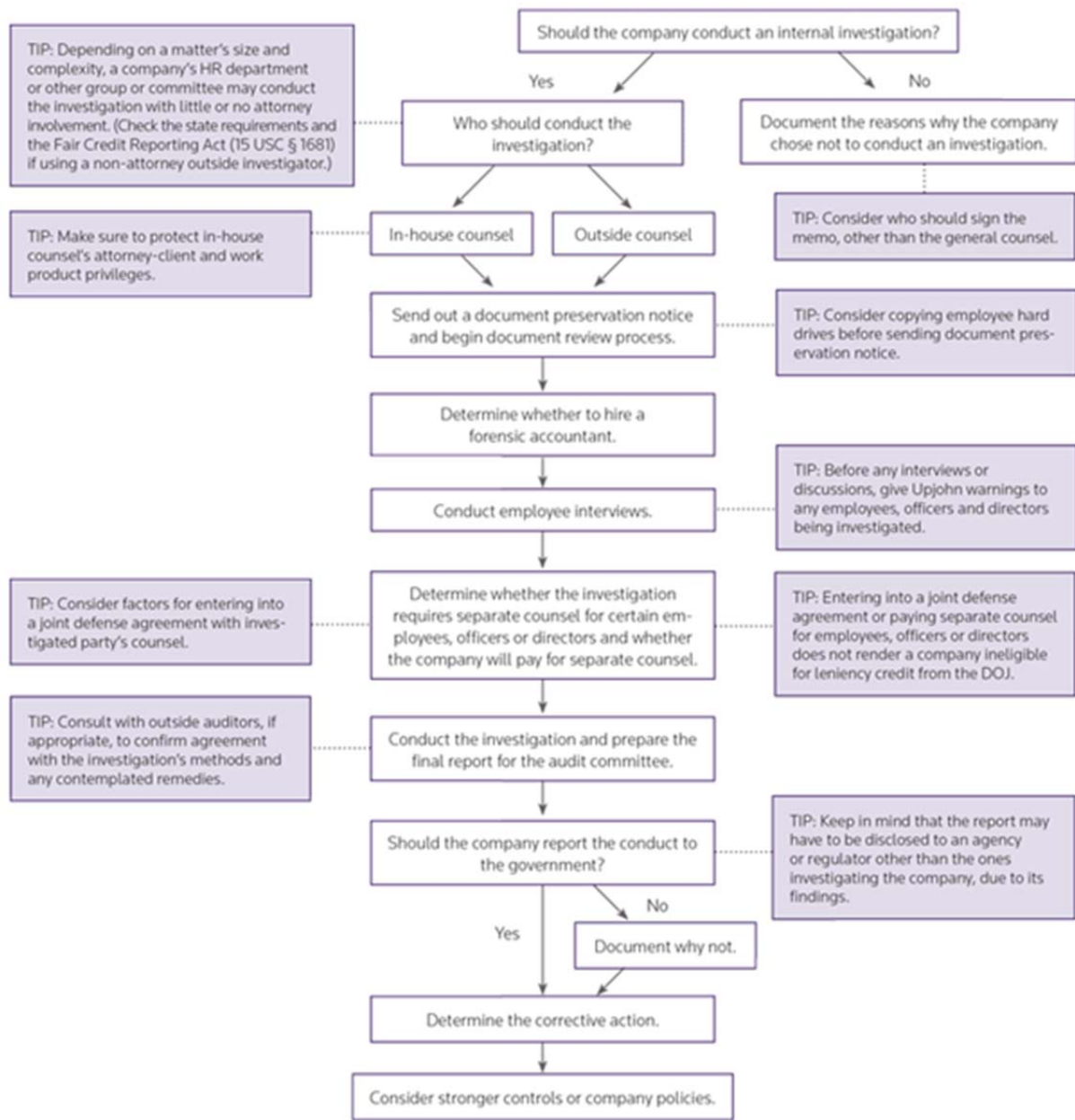
Determine Whether to Take Corrective Action Against the Wrongdoer and What Action to Take

- Review the company's policies for guidance on determining whether to take corrective action. For additional information about possible corrective action and termination from employment, see resources available in the *Departing Employee Toolkit*.
- Consider that enforcement of company policies helps ensure future compliance, but overlooking illegal or improper behavior may:
 - send the message that the company does not take compliance seriously;
 - increase the risk of future problems; and
 - impact how the government determines its course of action.
- At the conclusion of the investigation, be sure to obtain:
 - all relevant information from company employees; and
 - a commitment from company employees to provide additional resources in the future, in the event that there is a government investigation.

For more information on employee disciplinary policies and practices, see *Best Practices for Employee Discipline Checklist*. For a model form for recording details of an employee counseling session, see *Standard Document, Employee Counseling Form*.

Consider Implementing Stronger Controls or Company Policies

- Strengthen company policies if stronger controls would have prevented the behavior at issue.
- Promote increased awareness of the regulations and the prohibited behavior through improved employee training.
- Emphasize that the "tone from the top" is one that encourages ethical behavior and compliance with laws and regulations affecting the company's industry.



Do's and Don'ts of Investigations

Do

- Explain the process to the complainant and witnesses.
- Inform unionized employees that they may have a union representative present.
- Be thorough and objective.
- Be accurate and fair.
- Initiate investigation promptly.
- Explain confidentiality issues (confidentiality cannot be guaranteed).
- Explain retaliation issues (any retaliatory conduct should be reported immediately).
- Take time in interviews. If an interview is taking longer than anticipated, notify subsequent interviewees of expected delay.
- Be courteous and professional toward witnesses, including the complainant and accused.
- Ask non-leading questions and provide the witnesses an opportunity to speak. Do not cut off the witnesses.
- Ask the witnesses to identify corroborating evidence (other knowledgeable witnesses, documents, and so on).
- Re-interview witnesses if necessary, for example, to address newly disclosed information.
- If a new complaint is raised by a witness, encourage that individual to file a complaint.
- Document carefully.
- Destroy draft electronic versions of report (with electronic version, write over).

Don't

- Don't delay initiating investigation.
- Don't promise confidentiality.
- Don't give a blanket instruction to employees not to discuss the investigation, unless there is a compelling reason to do so.
- Don't disclose information, gather it.
- Don't answer questions regarding the substance of investigation.
- Don't rush through interviews.
- Don't allow the union representative to disrupt the interview.
- Don't allow the union representative to answer for the witness.
- Don't get angry or emotional during interviews.
- Avoid conclusory observations during interviews.
- Avoid communicating legal conclusions during interviews.
- Avoid ambiguous short-hand characterizations during interviews.
- Don't be reluctant to stop interviews if unanticipated problems arise (you then can evaluate the problems, consider the appropriate response and resume the interview at a later date).
- Don't disregard safety considerations. Use a witness wherever safety is a concern.
- Don't delay reporting results of investigation to those who need to know outcome.
- Don't fail to monitor for ongoing problems post-investigation.

Guidelines for Supervisors Responding to Employee Concerns

Value and Philosophy

[EMPLOYER NAME] believes that understanding, investigating (where necessary) and responding to employee concerns promotes workplace satisfaction and improves the workplace overall by rooting out and correcting problems as they arise. Supervisors are often the first members of [EMPLOYER NAME] to learn about a workplace concern. Employee concerns may include violations of rules or misconduct related to:

- Discrimination.
- Harassment (sexual and otherwise).
- Safety or health.
- Fraud, waste or abuse.
- Working conditions.
- Wage and hour issues.
- Workplace rules.
- Workplace violence or threats.
- Workplace drug or alcohol abuse.
- Theft.
- Vandalism.
- Other criminal activity.
- Application of policies, practices, rules, regulations and procedures.
- Improper or unfair administration of employee benefits or conditions of employment, such as vacations, benefits, promotions, holidays, performance review or salary.

[EMPLOYER NAME] has developed these guidelines to assist all supervisors to respond effectively to employee concerns and to promote consistency in responses. If you have any questions about the guidelines or their application in a particular instance, please contact [NAME/POSITION/DEPARTMENT].

Responding to an Employee Concern, Grievance or Complaint

Your reaction to an employee presenting a concern is a reflection on [EMPLOYER NAME] and the employee's perception of how [EMPLOYER NAME] treats its employees. When an employee approaches you with a concern, you should do all you can to represent [EMPLOYER NAME] in the most positive manner possible.

Specifically, you should:

- **Remove distractions to provide the employee with your full attention.** Hearing employee concerns is an important part of your job, so ensure you focus on them when they arise. Working on your computer, taking phone calls, responding to emails or texts, or allowing interruptions of any other form signals to employees that their concerns are not important. Consider moving to a quiet

- private location where you are less likely to be interrupted (if you are not already in one) and be sure to let employees know they have your undivided attention.
- **Explain your role to the employee.** Specifically let the employee know that your role is to obtain the facts and help resolve the situation. Tell the employee to be as specific as possible so that you can respond in the most effective manner possible.
 - **Listen to the employee without interruption.** Let the employee explain any concern without interruption. If the employee is not making sense for any reason, politely say “let me stop you for a minute to be sure I understand” and then paraphrase what you have heard so far to confirm its accuracy.
 - **Ask as many questions as necessary to understand the issue fully.** Be sure to get the complete picture and all relevant details and issues from the employee. It is important to understand the entire situation before making decisions about how to act (for example, ask who, what, where, when, how and why?). Ask follow-up questions until you feel confident you have exhausted the employee’s knowledge of the issue.
 - **Take the concern seriously.** Thank the employee for reporting the concern and communicate your appreciation that the employee raised the concern so that you can ensure it is addressed. Refrain from reacting defensively or jumping to conclusions regardless of whether you believe the employee’s concern has merit. Avoid phrases like “Oh, that’s just how she is. Just ignore her” or “She did that to you? That’s sexual harassment!”
 - **Demonstrate understanding, but not necessarily agreement.** Displaying empathy and understanding goes a long way toward alleviating employee concerns and building employee satisfaction. However, given the possibility of conflicting stories and facts, be careful not to express agreement with the employee’s position. Instead, empathize by using statements like, “I can understand why that would upset you.” Remain neutral about issues involving other people or whether the conduct complained of occurred.
 - **Clarify what assistance is being requested.** Understand how the employee would like to see the issue resolved so you may address the concern most effectively and to the employee’s satisfaction (assuming the employee’s requested resolution is the most appropriate one). Refrain from making specific promises about how the concern will be resolved or indicating that the requested resolution is appropriate.

Informing the Employee of Next Steps

Once the employee has provided you with all of the information the employee possesses related to the concern, explain the next steps to the employee. Specifically, you should state that you will:

- **Take steps to investigate (or initiate investigation by another [EMPLOYER NAME] representative) as necessary and resolve the concern to the best of your ability.** Let the employee know that you will follow up and take steps to resolve the concern in the most effective way possible, even if you just elevate the concern to your supervisor or the Human Resources[or EMPLOYER LEGAL]

Department, which will complete the investigation. If you can, let the employee know the likely next steps while leaving yourself room for flexibility to adjust as necessary. You might tell the employee that possible steps also may include discussing the issue with:

- human resources or [EMPLOYER LEGAL DEPARTMENT] personnel to alert them to the issue and determine how to proceed;
- your supervisor;
- the employee's supervisor;
- those accused of being involved in perpetuating any alleged wrongful activity;
- those affected by any alleged wrongful activity;
- witnesses to any alleged wrongful activity;
- a designated investigator if appropriate, whether internal or external; and
- law enforcement if necessary.
- The section [Taking Action](#), below, provides specific guidance on the steps you should take once you have received the employee's concern. If the matter involves ongoing or imminent danger or harm to any individual, advise the employee that you will take appropriate immediate action to end or prevent the harm and follow through.
- **Handle the matter as confidentially as possible.** Tell the employee you cannot promise complete confidentiality and that certain people will need to be made aware of the concern to address it. However, assure the employee that you respect the employee's privacy and that you will do your best to only share information on a need-to-know basis. Explain that people who will need to know will likely include relevant [EMPLOYER NAME] administrators, people mentioned in the complaint and others with relevant information. If the employee refuses to go forward if the employee's identity will be disclosed, explain that you cannot conduct a meaningful investigation or resolve the issue without making at least limited disclosures.
- **Request that the employee cooperate fully with any investigation and use their best judgment and discretion when discussing the investigation with others.** Employees can be reminded that the employer expects its employees to cooperate fully in investigations and that the employee should not interfere with any investigation. While you can explain that the investigation may be more effective if the employee uses discretion about the investigation, you should not routinely instruct a non-supervisory employee not to discuss the investigation with the employee's co-workers. However, you may request that non-supervisory employees not discuss the substance of investigations if you determine that confidentiality in a particular investigation is necessary.
- **Inform the employee of the [EMPLOYER NAME]'s anti-retaliation policy.** Remind the employee of [EMPLOYER NAME]'s policy against retaliation for making a complaint or participating in the investigation of a complaint. Assure the employee that [EMPLOYER NAME] will not take any steps to retaliate against the employee and that the employee should immediately report any conduct the employee believes to be retaliatory. Also make clear that the employee cannot take any retaliatory action against any other employee who participates in the investigation.

- **Notify the employee of the results of your follow-up or [EMPLOYER NAME]'s investigation, if an investigation is necessary.** Do not commit to promising the full scope of related information but let the employee know that you or another [EMPLOYER NAME] administrator will let the employee know the general findings and whether any corrective action has been taken to address the issue.
- **Ask to be notified if any further related incidents occur or if any new information develops.** Even when [EMPLOYER NAME] becomes aware of a workplace problem, it cannot fully correct it if it is not aware of the full scope of the problem. Please remind the employee of this and ask to be notified about any further incidents or relevant information.

Taking Action

Once your conversation with the employee concludes, you should:

- **Immediately report the complaint to the [EMPLOYER LEGAL DEPARTMENT] and appropriate external authorities if there is an imminent danger to any employee.** [EMPLOYER NAME]'s first concern is to prevent or stop any imminent or ongoing danger to employees, so this should always be your first action if necessary.
- **Immediately report the complaint to the [EMPLOYER LEGAL DEPARTMENT] if any legal problem has been identified.** Whether you think the employee's complaint has any merit, you should report it to the legal department if the complaint raises any legal issues such as wage and hour issues, discriminatory or harassing conduct or health and safety violations.
- **If imminent danger or a legal issue is not immediately identified, report the issue to the Human Resources Department.** While you initially have been contacted about the particular concern, you must elevate the issue to the individuals who are most qualified to deal with it. When the issue does not involve imminent danger or a legal issue, the Human Resources Department is the most appropriate group. Specifically you should contact [POSITION NAME], who will assist you in determining the best way to proceed with the concern. [POSITION NAME] will also help you determine who else might need to be made aware of the concern (for example, your supervisor or the employee's supervisor, or [EMPLOYER'S] lawyers if any legal issues may be implicated).
- **Confer with the appropriate [EMPLOYER NAME] personnel as determined above and decide on a plan for investigating the complaint as necessary.** Before conducting any investigation, all administrative parties involved in the investigation should agree on an effective procedure for conducting the investigation. At this point, the Human Resources Department may decide that it is best equipped to further investigate the complaint, that the complaint should be elevated to the [EMPLOYER LEGAL DEPARTMENT], or that you should investigate.

- **If you are the individual conducting the investigation, ensure that you understand [EMPLOYER NAME]'s best practices for conducting internal investigations before proceeding.** If it is decided that you should investigate the complaint, make sure to confer with the Human Resources Department and [EMPLOYER LEGAL DEPARTMENT] for information about best practices for conducting internal investigations. Review any and all instructions provided to you and follow them to the best of your ability. Seek clarification where necessary. Inform the employee of the reasons for the investigation and the protections afforded to all participants, including that the [EMPLOYER]:
 - has a compelling interest in protecting the integrity of its investigations; and
 - has a strong desire to protect witnesses from harassment, intimidation and retaliation, to keep evidence from being destroyed, to ensure that testimony is not fabricated, and to prevent a cover-up.
- **If there are strong reasons to insist on confidentiality (such as witness safety concerns), then get the employee to acknowledge this before proceeding.** Specifically, unless the employee is a supervisory employee (or other employee not covered by the NLRA), you should have the employee acknowledge in writing that:
 - [EMPLOYER] may decide in some circumstances that in order to achieve the objectives of the investigation. [EMPLOYER] must maintain the investigation and its role in it in strict confidence.
 - If [EMPLOYER] reasonably requires strict confidentiality and the employee does not maintain such confidentiality, the employee may be subject to disciplinary action up to and including immediate termination.
 - **Different considerations apply to investigations involving supervisory personnel and other employees not covered by the NLRA.** An employer may routinely insist on confidentiality from supervisory employees and other workers not covered by the NLRA, even without showing strong reasons to insist on confidentiality, or obtaining a signed acknowledgment that those reasons exist. For more information on the scope of employee coverage under the NLRA, see NLRB Jurisdictional Limits and Standards Chart: Jurisdiction Over Workers.
- **If you are the individual conducting the investigation, ensure that you conduct it as promptly as possible so that the concern can be addressed quickly.** If your work schedule precludes you from conducting a prompt investigation for any reason, inform the other administrative parties involved in the investigation so that another individual can conduct it promptly or your schedule can be modified.
- **Maintain confidentiality of the issue and the investigation consistent with your statement to the employee.** Although complete confidentiality cannot be assured, disclosing facts and circumstances haphazardly can harm the investigation as well as the employee's trust in management and their ultimate job satisfaction.
- **Once the investigation concludes, confer with the appropriate [EMPLOYER NAME] individuals and determine your findings, including what, if any, corrective action is required.** It is important to make a group determination about the facts of the events, responsible parties, culpability and appropriate

corrective action where necessary, to minimize any risk or allegations of bias by a single person.

- **Once a decision has been made about the merits of the complaint and any corrective action and implementation has occurred (if necessary), meet with the complaining employee privately to update them about the findings of the investigation and whether any corrective action was necessary and implemented.** Ask the employee to update you if their original concern persists, even after corrective action is implemented.

Final Considerations

Remember the following important points:

- **Retaliation against any employee for raising an employment concern or participating in an internal investigation is absolutely prohibited.** Retaliation could subject you and [EMPLOYER NAME] to legal liability. [EMPLOYER NAME] will discipline anyone who retaliates. [For more information, see [EMPLOYER NAME]'s Anti-retaliation Policy.]
- **Do not reinforce repeated complaints about invalid concerns.** While it is important to acknowledge all legitimate employee concerns and to investigate where necessary, you are not obliged to acknowledge and empathize with repeated invalid complaints. When managing meritless complaints, remain polite and professional, but explain why you do not believe that further action by the employer is necessary and suggest that the employee raise the issue with [POSITION/DEPARTMENT] if they feel further attention must be paid to it.
- **Do not respond rashly.** Always check with the Human Resources Department or the [EMPLOYER LEGAL DEPARTMENT] before altering the terms and conditions of any employee's employment (for example, terminating employment or modifying job characteristics).

DISCRIMINATION/HARASSMENT/RETALIATION COMPLAINT FORM

Instructions: [EMPLOYER NAME] is committed to providing a work environment free from discrimination, harassment and retaliation. [EMPLOYER NAME]'s [Equal Employment Opportunity Policy/Anti-harassment Policy/Anti-retaliation Policy/OTHER POLICY PROHIBITING DISCRIMINATION outline(s) [EMPLOYER NAME]'s prohibitions against discrimination, harassment and retaliation. [These policies/This policy] can be found in [EMPLOYER NAME'S EMPLOYEE HANDBOOK/DESCRIBE OTHER LOCATIONS].

[These policies/This policy] provide(s) mandatory procedure(s) [with several options for employees] to report prohibited conduct. One option for reporting discrimination, harassment or retaliation is to complete this form and provide it to [NAME/DEPARTMENT]. You are not required to use this form to file a complaint. However, you should read and be aware of [EMPLOYER NAME]'s mandatory reporting procedures, whether you choose to use this form or not.

Any employee can report discrimination, harassment and retaliation, whether as a victim or a witness. Regardless of your experience with the discrimination, harassment or retaliation, it is important to be as specific as possible in your complaint so that [EMPLOYER NAME] can fully investigate the conduct and take prompt corrective action, as necessary. Include all known information about the complaint, including the identity of any witnesses with knowledge of the allegations or offenses and any other known evidence related to the complaint. You are not limited to the space provided. [EMPLOYER NAME] encourages you to attach any additional materials that may assist us in investigating the claim. [This form must be signed and dated by you to be considered an official complaint/Although not encouraged because it limits our ability to verify the facts alleged in your complaint, you may submit this complaint anonymously.]

To investigate the complaint, [EMPLOYER NAME] will need to interview you, those subject to the alleged discrimination, harassment or retaliation (if not yourself), the alleged offender(s) and any known witnesses. However, [EMPLOYER NAME] will notify all individuals involved that the investigation is confidential to the extent permitted by law and make clear that unauthorized disclosures could result in disciplinary action.

Employee Name:

Employee Title:

Supervisor or Manager Name:

Supervisor or Manager Title:

Today's Date:

[Incident Date/Period of Ongoing Incidents]:

Incident Time (if a single incident):

Incident Location (if a single incident):

Identify the individual(s) who participated in discrimination, harassment or retaliation:

Identify the individual(s) subject to the alleged discrimination, harassment or retaliation:

Identify (to the best of your knowledge) when the discrimination, harassment or retaliation occurred. If it occurred over a period of time or continues to occur, identify that period of time:

Identify why you believe the discrimination, harassment, or retaliation occurred:

Describe in detail the facts that form the basis of this complaint (attach additional sheets of paper if necessary):

Has anyone else witnessed the alleged conduct? To the best of your knowledge, please identify those individuals and describe their scope of knowledge of the alleged conduct:

Are you aware of any other evidence of the alleged conduct (for example, documents, e-mails, videotapes, audiotapes, or other records or materials that substantiate your complaint)? To the best of your knowledge, please identify and describe any and all existing evidence and attach any and all existing evidence in your possession to this complaint:

Did you take any action to try to stop the alleged conduct? If so, please describe the action you took and what resulted:

Have you previously reported or complained about the alleged conduct or any other discrimination, harassment or retaliation while employed at [EMPLOYER NAME]? If so, please identify the person you reported the conduct to, the date of the report and the resolution:

How would you like to see the situation resolved?:

I acknowledge that I have read and understand the above information. I certify that to the best of my knowledge, the information I have provided on this form is accurate. I understand and acknowledge that a copy of this complaint and any attachments may be provided to the alleged offender(s). I also understand that this complaint and any attachments may be viewed by appropriate administrators and other witnesses involved in the investigation of this complaint. I am willing to fully cooperate in this investigation.

Employee Signature

Date

Signature of Supervisor or Manager Reviewing Date
Complaint

Model Questions for Investigating a Sexual Harassment Complaint

Interview the Complaining Employee

Complaining Employee's Background

- How long have you worked for [EMPLOYER]?
- Did anyone recruit you? If so, who?
- If not, how did you hear about the position?
- Who interviewed you before you began working here?
- Did anyone else interview you for any other positions you have held here? If so, who, when and what position?
- Who hired you for the position you now hold?
- Did anyone promote or rehire you during your employment here? If so, who?
- What is your current job title?
- Who is your current supervisor?
- What are your job responsibilities?
- What is your current compensation (including regular pay and any bonuses)?
- What other job titles have you held in the past and when did you hold them?
- Who were your past supervisors and when did they supervise you?
- What were your past job responsibilities in these prior positions?
- What was your compensation in prior positions here (including regular pay and any bonuses)?
- Have you received any sort of counseling or workplace discipline during your employment here? If so, please describe it and the circumstances leading to it.
- Who carried out that counseling or discipline?
- Apart from this instance, have you filed an internal complaint during your employment here?
- If so, what did your prior complaint allege and how was it resolved?
- Have you filed an external complaint during your employment here?
- If so, what did your prior complaint allege and how was it resolved?

Complaining Employee's Relationship with the Alleged Harasser

- How long have you known [ACCUSED]?
- Did you know [ACCUSED] before you joined [EMPLOYER]? If so, in what capacity (business, personal)?
- Do you work with, work for or supervise [ACCUSED]? If so:
- how long have you worked with [ACCUSED]?
- how much time do you spend in direct contact with [ACCUSED] and where does this contact occur (inside and outside the office)?
- if the contact occurs at work, who else typically works in this area?
- has [ACCUSED] ever disciplined you or threatened to discipline you in any way?
- has [ACCUSED] ever enhanced or promised to enhance your job duties, salary, employee benefits or quality of work life in any way?

-
- has [ACCUSED] ever unfavorably changed or threatened to unfavorably change your job duties, salary, employee benefits or quality of work life in any way?
 - are there relevant documents (for example, notes you have taken or e-mails exchanged)? If so, may we have a copy?
 - Have you ever socialized with [ACCUSED] outside of work? If so, provide details of timing, location and witnesses.
 - Has [ACCUSED] contacted you outside of work? If so, provide details of timing, method of communication, and witnesses.
 - Have you ever been intimately involved with [ACCUSED]? If so:
 - when did the nature of your relationship change?
 - what happened as a result of that change?
 - how did you feel about that change?
 - Have you experienced any performance problems during the past year? If so, provide details of their nature and timing?
 -

Complaining Employee's Allegations

- In your own words, please identify each of the events and circumstances that prompted you to initiate this complaint. Please explain:
- what happened to you that you believe rose to the level of sexual harassment;
- who was involved (for example, who engaged in inappropriate behavior, who made any adverse employment decisions, who communicated those to you);
- anything said or done by the individuals you have identified that prompted your complaint (or that relates to your complaint), including any instances where someone has spoken to you, touched you or otherwise treated you inappropriately at work or during any work-related activity (for example, work-related social function, business trip or client visit);
- precisely what the individuals involved said and/or did (for example, making propositions, making requests for sexual favors, flirting, joking, acting abusively, threatening, displaying written materials or touching);
- when these events took place;
- where these events took place;
- exactly when you found this conduct objectionable;
- what makes you believe that this event is harassment on the basis of your sex;
- what you said and/or did immediately before [ACCUSED] acted in this manner (for example, did you initiate, instigate or otherwise demonstrate that [ACCUSED]'s actions were welcome);
- what you said and/or did immediately after [ACCUSED] acted in this manner (for example, did you participate in the behavior or indicate, by word, facial expression or conduct, that you felt the behavior was inappropriate and wished it to stop);
- the [ACCUSED]'s response to your reaction;
- the names of any and all witnesses who may have information relevant to the situation at issue; and

-
- describe any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
 - Please confirm that you have listed all instances of sexual harassment against you.
 - Have you reported the events, circumstances or your concerns about them to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - Did you discuss any of the reported events with any coworkers? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - If you did not report the events, circumstances or your concerns about them to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
 - If you made a prior report, did anyone provide you with a response to any prior report of your concerns?
 - If so, what was that response?
 - Did you believe that the response was adequate?
 - If you believe that the response was inadequate, why was it inadequate?
 - If you believe that the response was inadequate, did you follow up? If so, how and what happened?
 - Did any of the incidents you have described have any impact on your job performance? If so, when and what is or was the impact?
 - For any of the above questions, are there relevant documents? If so, may we have a copy?
 -

Alleged Sexual Harassment Against Others

- Are you aware of any other instances of possible sexual harassment against another employee?
- If so, in your own words, please explain:
 - which employee experienced this possible sexual harassment;
 - what happened to the employee that you believe was sexually harassed;
 - who acted inappropriately;
 - how that individual acted inappropriately;
 - when these events took place;

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- where these events took place;
 - what makes you believe that this event is sexual harassment;
 - who may have information relevant to these matters (please provide their names);
 - how you became aware of this possible harassment; and
 - any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to this matter).
 - Please confirm you have listed all instances of sexual harassment against other employees.
 - Have you reported the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
 - For any of the above questions, are there relevant documents? If so, may we have a copy?

Restate the Employer's Policy and Procedure

- We will discuss your concerns with the individuals you have identified as being involved in the subject matter underlying your complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]
- [EMPLOYER] does not tolerate harassment and will not allow any form of retaliation against you for voicing your concerns.
- Please immediately report any further incidents of inappropriate behavior that you experience, observe or hear about.

Interview All Potential Witnesses

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting sexual harassment in the workplace.
- A co-worker has made a complaint that is being investigated under the policy.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].
- You have been identified as a potential witness to the events or circumstances described in the complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Witness' Background

- How long have you worked for the employer?
- What is your current job title?
- What are your current job responsibilities?
- If you have had other job titles with this organization, please describe them (when and what).
- If you had other job titles, what were your job responsibilities in those positions?
- How long have you known [COMPLAINING EMPLOYEE]?
- How long have you known [ACCUSED]?
- Describe the nature of your relationship with [COMPLAINING EMPLOYEE] and [ACCUSED] (for example, business only or personal friends).
- Do you socialize with either [COMPLAINING EMPLOYEE] or [ACCUSED] outside of work? If so, provide details of how often, location and other participants.
- Do you supervise the work of [COMPLAINING EMPLOYEE] or [ACCUSED]?
- Have [COMPLAINING EMPLOYEE] or [ACCUSED] ever supervised your work?
- If so, has either [COMPLAINING EMPLOYEE] or [ACCUSED] ever disciplined, threatened to discipline, rewarded or promised to reward you in any way?
- Are you involved in making decisions about hiring, firing, promotions, compensation or other terms and conditions of employment? If so, for whom?
- Have you made or been involved in decisions about the terms and conditions of employment of either [COMPLAINING EMPLOYEE] or [ACCUSED]? If so, describe:
 - the decision that was made;
 - when that decision was made;
 - other individuals involved in the decision-making process; and
 - your role in the decision-making process.

Witness' Thoughts on the Work Environment

- How would you describe your working environment (for example, supportive or hostile or abusive)?
- What are examples of this characterization of the working environment?

Complaining Employee's Allegations

- Do you have any knowledge about the allegations of the complaint? If so, please fully describe:
 - exactly what you saw or heard;
 - when you witnessed this;
 - who you saw or heard; and
 - your reaction to this occurrence (what you thought of it and what you did about it).
- Are you aware of any documents relating to what you saw or heard (for example, notes you have taken or e-mails exchanged)? If so:
 - do you know where they are maintained;
 - do you have a copy or access to copies; and

-
- if so, please provide us with a copy or let us know how to obtain one.
 - Are you aware of other parties who are knowledgeable about these allegations? If so, please identify them and describe their knowledge to the best of your ability.
 - Can you provide any context to help us better understand these events or circumstances? Are there relevant events that occurred before or after the situation about which your co-worker complained that would provide a more complete picture of the events alleged? If so, please describe them.
 - Did you ever discuss this situation or any other concerns about sexual harassment with anyone else? If so, provide details of:
 - the people to whom you spoke;
 - the people about whom you spoke;
 - when you discussed this situation with these individuals, including all occasions if there were several;
 - location of each of these discussions;
 - what was discussed; and
 - any and all witnesses.

Alleged Harasser's Behavior to the Witness

- Has [ACCUSED] 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, provide details of:
 - the inappropriate behavior;
 - timing;
 - location; and
 - witnesses.
 - Did you ever report this incident to a manager or anyone else? If so, provide details of:
 - who you told;
 - when you told them; and
 - what occurred as a result?
 - If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
 - Did you ever discuss this incident with anyone else apart from management? If so, provide details of who you told and when.
 - Did you ever prepare notes to describe the incident? If so, please provide a copy.

Alleged Sexual Harassment Against Others

- Have you ever seen or heard others in your workplace speak to or otherwise treat anyone else in a way that you believe suggests sexual harassment (at work, during any work-related activities or otherwise)? If so, please fully describe those instances, including:
 - what was said or done;
 - by whom;
 - whether that person is a supervisor or manager;
 - why you found it suggested sexual harassment;

-
- when this incident took place;
 - where this incident took place; and
 - the identity of any witnesses.
 - Did you ever report these incidents to a manager or anyone else? If so, provide details of:
 - who you told;
 - when you told them; and
 - what occurred as result.
 - If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
 - Did either you or anyone else prepare notes describing that incident? If so, please provide a copy. If someone else prepared notes, what did they do with them?

Restate the Company's Policy and Procedure

- We will not allow any form of retaliation against you for participating in the investigation. [REVIEW POLICY]
- You are also strictly prohibited from retaliating against others for involving you in the investigative process. [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY]
- Please immediately report any further incidents of inappropriate behavior that you experience, observe or otherwise learn about to [HUMAN RESOURCES OR OTHER IDENTIFIED PARTY].

Advise the Witness on Returning to Work

- Thank you for participating in the interview.
- [Please do not discuss the investigation or the information you disclosed with anyone else at work, including any individuals identified in this investigation.]
- Please maintain a professional demeanor when dealing with the individuals identified in this investigation and all other employees.
- This investigation is ongoing and we have not made any determination about the merits of the complaint at this time.

Interview the Alleged Harasser

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting sexual harassment.
- A co-worker has made a complaint that involves you and we are investigating those allegations.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].
- The employee who has made the complaint is [COMPLAINING EMPLOYEE]. [IF POSSIBLE, DO NOT IDENTIFY THE WITNESSES WHO PARTICIPATED IN THE INVESTIGATION.]
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF THIS IS QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Review the Employer's Anti-Sexual Harassment Policy

- It is useful for us to review the employment policies to be sure we are on the same page.
- [EMPLOYER] has a policy and practice of prohibiting sexual harassment and a commitment to investigating and resolving all complaints that are made in accordance with the policy.
- Are you aware of the policy?
- Were you provided with a copy of the policy when you began your employment?
- Did you sign an acknowledgment of having received the policy?
- As a reminder, our policy is as follows: [REVIEW POLICY].
- Examples of prohibited behavior under the policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].
- [EMPLOYER] also strictly prohibits retaliation. Our policy is as follows: [REVIEW POLICY].
- Examples of prohibited behavior under the anti-retaliation policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].

Background of Individual Alleged to Have Engaged in Sexual Harassment

- How long have you worked for [EMPLOYER]?
- What is your current job title and what job titles have you previously had?
- What are your current job responsibilities and what responsibilities have you previously had?
- What dates did you hold each prior job?
- Do you supervise anyone in this organization? If so, who do you supervise?
- Do you supervise [COMPLAINING EMPLOYEE]?
- Do you make decisions or instruct others on making decisions about hiring, firing, promotions, compensation or other terms and conditions of employment? If so, describe:
 - instances in which you have been involved in that decision-making process in the past five years (excluding circumstances specific to this complaint, which will be discussed later);
 - when these decisions were made;
 - who else was involved in the decision-making process;
 - the role that you played in the decision-making process;
 - the decision that was ultimately made;
 - whether you supported the decision ultimately made (and if not, why not); and
 - any reaction from the parties involved at the time the decision was made.

Review the Allegations and Evidence

- We have gathered some evidence in our investigation so far and the facts that we have gathered that have caused the most concern to date are as follows: [CORROBORATING EVIDENCE].

Relationship between Alleged Harasser and Complaining Employee

-
- How long have you known [COMPLAINING EMPLOYEE]?
 - Describe the nature of your relationship with [COMPLAINING EMPLOYEE] (for example, supervisor of the complaining employee).
 - Do you have a social or any other kind of relationship with this individual outside of work? If so, please describe.
 - If that relationship is or was a romantic relationship, is it now a romantic relationship?
 - If it was a romantic relationship and is not currently a romantic relationship, how did it end?
 - Have you ever experienced any work-related, disciplinary or other problems with [COMPLAINING EMPLOYEE]? If so, describe these problems and when they occurred.
 - Describe how any problems were resolved and when that resolution occurred.
 - If problems did exist and are still ongoing, please describe their current status.

Request a Response to the Allegations

- Please provide your account of the events alleged. Include your thoughts on:
 - the complaint's validity;
 - the reasons the complaining employee may have made this complaint;
 - facts and circumstances underlying the complaint;
 - discrepancies between the facts and circumstances as they exist and as alleged;
 - any evidence to support your view of the events; and
 - any additional facts that would help us understand the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
- Have you made, been involved in making or instructed others on making decisions about the terms and conditions of [COMPLAINING EMPLOYEE]'s employment? If so, please identify:
 - instances in which you have been involved in that decision-making process in the past five years;
 - when these decisions were made;
 - who else was involved in the decision-making process;
 - the role that you played in the decision-making process;
 - the decision that was ultimately made;
 - whether you supported the decision ultimately made (and if not, why not); and
 - any reaction from the parties involved at the time the decision was made.
- What factors did you consider in the decision-making process you described?
- Did the employee's sex relate at all to the decision-making process you described?
- For any of the above questions, are there relevant documents? If so, may we have a copy?

Advise the Alleged Harasser of the Next Stages

- Once the investigation is complete, the company will review all of the evidence and make a final determination.

-
- If the investigation reveals harassment, we may find that disciplinary action is appropriate.
 - We will not allow any form of retaliation against [COMPLAINING EMPLOYEE] or any witnesses who may have participated in the investigation.
 - Please maintain a professional demeanor when dealing with [COMPLAINING EMPLOYEE] and with all employees.
 - [Please do not discuss the investigation or the information you disclosed with [COMPLAINING EMPLOYEE] or anyone else at work, including any other individuals identified in this investigation.]
 - As always, do not engage in any verbal or physical conduct that could be considered a violation of [EMPLOYER]'s sexual harassment policy.

Model Questions for Investigating a Discrimination Complaint

Interview the Complaining Employee

Complaining Employee's Background

- How long have you worked for [EMPLOYER]?
- Did anyone recruit you? If so, who?
- If not, how did you hear about the position?
- Who interviewed you when you began working here?
- Did anyone else interview you for any other positions you have held here? If so, who, when and what position?
- Who hired you for the position you now hold?
- Did anyone promote or rehire you during your employment here? If so, who?
- What is your current job title?
- Who is your current supervisor?
- What are your job responsibilities?
- What is your current compensation (including regular pay and any bonuses)?
- What other job titles have you held in the past and when did you hold them?
- Who were your past supervisors and when did they supervise you?
- What were your past job responsibilities in these prior positions?
- What was your compensation in prior positions here (include regular pay and any bonuses)?
- Have you received any sort of counseling or workplace discipline during your employment here? If so, please describe it and the circumstances leading to it.
- Who carried out that counseling or discipline?
- Apart from this instance, have you filed an internal complaint during your employment here?
- If so, what did your prior complaint allege and how was it resolved?
- Apart from this instance, have you filed any external complaint during your employment here?
- If so, what did your prior complaint allege and how was it resolved?

Complaining Employee's Allegations

- In your own words, please identify the events and circumstances that prompted you to initiate this complaint. Please explain:
 - what happened to you that you believe was discriminatory;
 - who was involved (for example, who made relevant decisions or communicated them to you);
 - anything said or done by the individuals you have identified that prompted your complaint (or that relates to your complaint);
 - when these events took place;
 - where these events took place;

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- the grounds on which you believe these events are discriminatory (for example, race or gender);
 - what makes you believe that this event is discriminatory (for example, statements or documents that you believe suggest discrimination);
 - whether you believe that you are treated in a less favorable manner than other employees;
 - identify all individuals treated in a more favorable manner than you and the way in which they are treated more favorably (please be specific);
 - the names of any and all witnesses who may have information relevant to the situation at issue; and
 - describe any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
 - Please confirm you have listed all instances of discrimination against you.
 - Have you reported the events, circumstances or your concerns about them to anyone affiliated with [EMPLOYER], (supervisors, managers or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - If you did not report the events, circumstances or your concerns about them to anyone affiliated with [EMPLOYER], (supervisors, managers or human resources professionals), why not?
 - If you made a prior report, did anyone provide you with a response to any prior report of your concerns?
 - If so, what was that response? Did you believe that the response was adequate?
 - If you believe that the response was not adequate, why was it inadequate?
 - If you believe that the response was not adequate, did you follow up? If so, how and what happened?
 - For any of the above questions, are there relevant documents? If so, may we have a copy?

Alleged Discrimination Against Others

- Are you aware of other instances of possible discrimination on the same grounds (that is, the ground you have identified in your complaint) against another employee?
 - If so, in your own words, please explain:
 - which employee experienced this possible discrimination;
 - what happened to this employee that you believe was discriminatory;
 - who was involved (for example, who made relevant decisions or communicated them);
 - anything said or done by the individuals you have identified that caused you to suspect discrimination;
 - when these events took place;

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- where these events took place;
 - what makes you believe that this event is discriminatory (for example, statements or documents that you believe suggest discrimination);
 - whether you believe that the employee you identified is treated in a less favorable manner than other employees;
 - which employees are treated in a more favorable manner than this employee and the way in which they are treated more favorably (please be specific);
 - who may have information relevant to these matters (please provide their names);
 - how you became aware of this possible discrimination; and
 - any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to this matter).
 - Please confirm that you have listed all instances of discrimination against other employees on the grounds identified in your complaint.
 - Have you reported the matters you have just identified to anyone affiliated with [EMPLOYER], (supervisors, managers or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER], (supervisors, managers or human resources professionals), why not?
 - Did you discuss any of the reported events with any coworkers? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - For any of the above questions, are there relevant documents? If so, may we have a copy?

Restate the Employer's Policy and Procedure

- We will discuss your concerns with the individuals you have identified as being involved in the subject matter underlying your complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF THIS IS QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]
- [EMPLOYER] does not tolerate discrimination and will not allow any form of retaliation against you for voicing your concerns.
- Please immediately report any further incidents of discrimination that you experience, observe or hear about.

Interview All Potential Witnesses

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting discrimination in the workplace.
- A co-worker has made a complaint that is being investigated under the policy.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].
- You have been identified as a potential witness to the events or circumstances described in the complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF THIS IS QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Witness' Background

- How long have you worked for the employer?
- What is your current job title?
- What are your current job responsibilities?
- If you have had other job titles with this organization, please describe them (when and what).
- If you had other job titles, what were your job responsibilities in those positions?
- How long have you known [COMPLAINING EMPLOYEE]?
- How long have you known [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION]?
- Describe the nature of your relationship with [COMPLAINING EMPLOYEE] and [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION] (for example, business only or personal friends).
- Do you socialize with either [COMPLAINING EMPLOYEE] or [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION] outside of work? If so, provide details of how often, location and other participants.
- Do you supervise the work of [COMPLAINING EMPLOYEE] or [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION]?
- Have [COMPLAINING EMPLOYEE] or [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION] ever supervised your work?
- If so, has either [COMPLAINING EMPLOYEE] or [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION] ever disciplined, threatened to discipline, rewarded or promised to reward you in any way?
- Are you involved in making decisions about hiring, firing, promotions, compensation or other terms and conditions of employment? If so, for whom?
- Have you made or been involved in decisions about the terms and conditions of employment of either [COMPLAINING EMPLOYEE] or [INDIVIDUAL(S) INVOLVED IN ALLEGED DISCRIMINATION]? If so, describe:
 - the decision that was made;
 - when that decision was made;
 - other individuals involved in the decision-making process; and
 - your role in the decision-making process.

Witness' Thoughts on the Work Environment

- How would you describe your working environment (for example, supportive, hostile, or abusive)?
- What are examples of this characterization of the working environment?

Complaining Employee's Allegations

- Do you have any knowledge about the allegations of the complaint? If so, please fully describe:
 - exactly what you saw or heard;
 - when you witnessed this;
 - who you saw or heard; and
 - your reaction to this occurrence (what you thought of it and what you did about it).
- Are you aware of any documents relating to what you saw or heard (for example, notes you have taken or e-mails exchanged)? If so:
 - do you know where they are maintained?
 - do you have a copy or access to copies?
 - if so, please provide us with a copy or let us know how to obtain one.
- Are you aware of other parties who are knowledgeable about these allegations? If so, please identify them and describe their knowledge to the best of your ability.
- Can you provide any context to help us better understand these events or circumstances? Are there relevant events that occurred before or after the situation about which your co-worker complained that would provide a more complete picture of the events alleged? If so, please describe them.
- Did you ever discuss this situation or any other concerns about discrimination on the same grounds with anyone else? If so, provide details of:
 - the people to whom you spoke;
 - the people about whom you spoke;
 - when you discussed this situation with these individuals, including all occasions if there were several;
 - location of each of these discussions;
 - what was discussed; and
 - any and all witnesses.

Alleged Discrimination Against Others

- The employee who brought this complaint has alleged discrimination on the basis of [PROTECTED CLASS]. Have you ever seen or heard others in your workplace say or do discriminatory things based on this characteristic? If so, please fully describe those instances, including:
 - what was said or done;
 - by whom;
 - whether that person is a supervisor or manager;
 - why you found it discriminatory;
 - when this incident took place;

-
- where this incident took place; and
 - the identity of any witnesses.
 - Did you ever report these incidents to a manager or anyone else? If so, provide details of:
 - who you told;
 - when you told them; and
 - what occurred as a result.
 - If not, why not?
 - Did you discuss any of the reported events with any coworkers? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone or other means); and
 - when you communicated with them.
 - Did either you or anyone else prepare notes describing that incident? If so, provide a copy. If someone else prepared notes, what did they do with them?

Restate the Employer's Policy and Procedure

- We will not allow any form of retaliation against you for participating in the investigation. [REVIEW POLICY.]
- You are also strictly prohibited from retaliating against others for involving you in the investigative process. [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY.]
- Please immediately report any further incidents of inappropriate behavior that you experience, observe or otherwise learn about to [HUMAN RESOURCES OR OTHER IDENTIFIED PARTY].

Advise the Witness on Returning to Work

- Thank you for participating in the interview.
- [Please do not discuss the investigation or the information you disclosed to anyone else at work, including any individuals identified in this investigation.]
- Please maintain a professional demeanor when dealing with individuals identified in this investigation and all other employees.
- This investigation is ongoing and we have not made any determination about the merits of the complaint at this time.

Interview the Individual(s) Alleged to be Discriminating

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting discrimination in the workplace.
- A co-worker has made a complaint that involves you and we are investigating those allegations.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].

- The employee who has made the complaint is [COMPLAINING EMPLOYEE]. [IF POSSIBLE, DO NOT IDENTIFY THE WITNESSES WHO PARTICIPATED IN THE INVESTIGATION.]

- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF THIS IS QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Review the Employer's Non-Discrimination Policy

- It is useful for us to review the employment policies to be sure we are on the same page.

- [EMPLOYER] has a policy and practice of prohibiting unlawful employment discrimination and a commitment to investigating and resolving all complaints that are made in accordance with the policy.

- Are you aware of the policy?

- Were you provided with a copy of the policy when you began your employment?

- Did you sign an acknowledgment of having received the policy?

- As a reminder, our policy is as follows: [REVIEW POLICY].

- Examples of prohibited behavior under the policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].

- [EMPLOYER] also strictly prohibits retaliation. Our policy is as follows: [REVIEW POLICY].

- Examples of prohibited behavior under the anti-retaliation policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].

Background of Individual(s) Alleged to be Discriminating

- How long have you worked for [EMPLOYER]?

- What is your current job title and what job titles have you previously had?

- What are your current job responsibilities and what responsibilities have you previously had?

- Do you supervise anyone in this organization? If so, who do you supervise?

- Do you supervise [COMPLAINING EMPLOYEE]?

- [Are you aware of [COMPLAINING EMPLOYEE]'s membership in the protected class identified in the complaint?]

- [Are you, yourself, a member of this protected class?]

- Do you make decisions or instruct others on making decisions about hiring, firing, promotions, compensation or other terms and conditions of employment? If so, describe:

- instances in which you have been involved in that decision-making process in the past five years (excluding circumstances specific to this complaint, which will be discussed later);

- when these decisions were made;

- who else was involved in the decision-making process;

- the role that you played in the decision-making process;

- the decision that was ultimately made;

- whether you supported the decision ultimately made (and if not, why not); and

-
- any reaction from the parties involved at the time the decision was made.

Review Allegations and Evidence

- We have gathered some evidence in our investigation so far and the facts that we have gathered that have caused the most concern to date are as follows:
[CORROBORATING EVIDENCE].

Relationship Between Individual(s) Alleged to be Discriminating and Complaining Employee

- How long have you known [COMPLAINING EMPLOYEE]?
- Describe the nature of your relationship with [COMPLAINING EMPLOYEE] (for example, supervisor of the complaining employee).
- Do you have a social or any other kind of relationship with this individual outside of work? If so, please describe.
- Have you ever experienced any work-related, disciplinary or other problems with [COMPLAINING EMPLOYEE]? If so, describe these problems and when they occurred.
- Describe how any problems were resolved and when that resolution occurred.
- If problems did exist and are still ongoing, please describe their current status.

Request a Response to the Allegations

- Please provide your account of the events alleged. Include your thoughts on:
 - the complaint's validity;
 - the reasons the complaining employee may have made this complaint;
 - facts and circumstances underlying the complaint;
 - discrepancies between the facts and circumstances as they exist and as alleged;
 - any evidence to support your view of the events; and
 - any additional facts that would help us understand the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
- Did you ever speak to anyone about the events alleged in the complaint? If so, provide details of:
 - who you told;
 - when you told them;
 - what you told them; and
 - their response.
- Have you made, been involved in making or instructed others on making decisions about the terms and conditions of [COMPLAINING EMPLOYEE]'s employment? If so, please identify:
 - instances in which you have been involved in that decision-making process in the past five years;
 - when these decisions were made;
 - who else was involved in the decision-making process;
 - the role that you played in the decision-making process;
 - the decision that was ultimately made;
 - whether you supported the decision ultimately made (and if not, why not); and

-
- any reaction from the parties involved at the time the decision was made.
 - What factors did you consider in the decision-making process you described?
 - Were you aware of [COMPLAINING EMPLOYEE]'s protected class status identified in the complaint during the time period identified in the complaint?
 - Did [COMPLAINING EMPLOYEE]'s protected class status identified in the complaint have any bearing on the employment decision made? If so, what bearing did it have?
 - For any of the above questions, are there relevant documents? If so, please provide us with a copy.

Advise the Individual Accused of Discrimination of the Next Stages

- Once the investigation is complete, we will review all of the evidence and make a final determination.
- If the investigation reveals discrimination, we may find that disciplinary action is appropriate.
- We will not allow any form of retaliation against [COMPLAINING EMPLOYEE] or any witnesses who may have participated in the investigation.
- Please maintain a professional demeanor when dealing with [COMPLAINING EMPLOYEE] and with all employees.
- [Please do not discuss the investigation or the information you disclosed with anyone else at work, including any individuals identified in this investigation.]

INVESTIGATIVE MEMORANDUM

TO: _____, Superintendent

FROM: _____, [Title]

Page | 1

DATE: [Report Date]

RE: Written Summary and Findings, _____ County School District Internal Investigation 2015-01; Subject of Investigation – [Name], [Title]

Procedural Background

- Describe date of complaint(s), name(s) of complainants, subject of complaint, and general overview of complaint.
- Describe date investigation began and at whose direction.

Scope of Investigation

The scope of the investigation included consideration of the following issue:

1. [Describe issue and list policies or rules governing conduct].

Steps Taken in Investigation

The investigation included interviews of current School District employees. It was explained to all current employees who were interviewed the school board policy regarding harassment and retaliation for participation in the investigation including the procedure for reporting suspected retaliation. [If confidentiality is required, detail reasons why.]. The following persons were interviewed:

<u>Interviewee</u>	<u>Status</u>	<u>Interview Date</u>
Name	Title	[Date(s) of Interview(s)]

The following documents were reviewed:

1. [insert list of documents gathered and reviewed]

A complete copy of all investigative materials will be provided to the Superintendent in accordance with School Board Policy 2.70 and, upon conclusion to this proceeding, will be maintained at the District Human Resources Office [records vault].

The evidence gathered is summarized below. References to witness statements are indicated as direct quotes and/or []s.

Summary of Investigation

[insert summaries of witness interviews]

[insert pertinent points from reviewed documents]

Conclusion/Findings

[insert narrative or list of findings, factual and credibility determinations, determinations of policy violations]

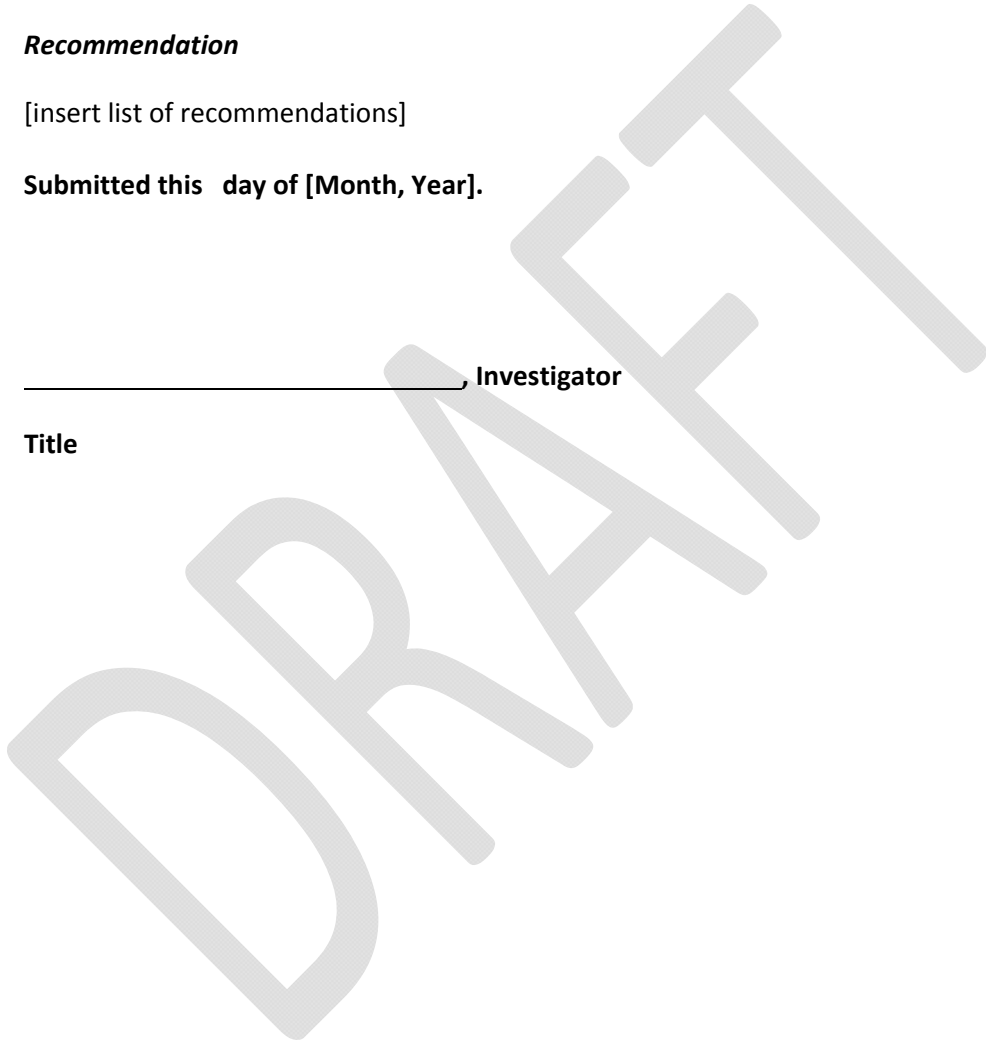
Recommendation

[insert list of recommendations]

Submitted this day of [Month, Year].

_____, Investigator

Title



**DISCRIMINATION/HARASSMENT
INVESTIGATION DETERMINATION FORM**

Employee Name:

Investigator(s) Name(s):

Date(s) of Investigation:

Employee Title:

Date Complaint Received:

Today's Date:

The investigator(s) named above conducted an investigation into the allegations made by the employee named above. A copy of the complaint will be filed along with this investigation report in a confidential investigation file. Briefly stated, the allegations of the complaint are as follows:

The complaint prompted investigators to investigate the following potential concern(s) (for example, possible race discrimination, age discrimination or sexual harassment), and these concerns were the focus of this investigation:

Investigators confirmed that the employer maintains a policy prohibiting unlawful discrimination and harassment: Yes No

Investigators confirmed that the employee(s) accused of wrongdoing in the complaint had received a copy of the employer's policy prohibiting unlawful discrimination and harassment: Yes No

If the employee(s) accused of wrongdoing received a copy of this policy, the date of receipt of the policy was:

Is there a signed acknowledgment of receipt of this policy (or the handbook in which it appears) signed by the employee(s) named in the complaint: Yes No

Copies of the employer policy and any signed acknowledgments will be maintained in the confidential investigation file.

If additional information about discrimination/harassment policies or signed acknowledgments is required, please provide it here:

Investigators confirmed that the employer has a defined and written protocol governing how employees file complaints of discrimination or harassment: Yes No

Investigators confirmed that the employee who filed the complaint received a copy of the employer's policy governing this protocol: Yes No

Is there a signed acknowledgment of receipt of this policy (or the handbook in which it appears) signed by the employee who filed the complaint?: Yes No

If the employee who filed the complaint received a copy of this policy, the date of receipt of the policy was:

The employee who filed this complaint followed these protocols for filing a complaint of discrimination or harassment: Yes No

Copies of the employer protocol policy and any signed acknowledgments will be maintained in the confidential investigation file. ___ Yes ___ No

If additional information is required to explain protocols, the employee's adherence to them or signed acknowledgments please provide it here:

In support of this investigation, the investigators interviewed the complaining employee, individuals named in the complaint and witnesses. Findings from those interviews are summarized as follows:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

Interviewee Name:

Interviewer Name:

Individuals Present During Interview:

Interview Date:

Reason for Interview of this Individual:

Briefly stated, this interview revealed the following:

In support of this investigation, the investigators named above reviewed the following documents:

Findings from those documents are summarized as follows:

Document:

Reviewer:

Date:

Reason for Review of this Document:

Briefly stated, this document revealed the following:

Document:

Reviewer:

Date:

Reason for Review of this Document:

Briefly stated, this document revealed the following:

Document:

Reviewer:

Date:

Reason for Review of this Document:

Briefly stated, this document revealed the following:

Document:

Reviewer:

Date:

Reason for Review of this Document:

Briefly stated, this document revealed the following:

Document:

Reviewer:

Date:

Reason for Review of this Document:

Briefly stated, this document revealed the following:

Additional steps taken in this investigation are as follows (for example, review of resources that are not documents, retaining forensic specialists):

Investigators confirm that they believe that they have interviewed all available witnesses, reviewed all available documents: Yes No

If investigators believe they have not interviewed all available witnesses or reviewed all available documents, please explain here:

If there are witnesses or documents that are unavailable that should be part of this investigation, please explain here:

Considering the findings outlined above, the determination of the investigation is as follows:

Investigators recommend the following course of action for the following reasons:

Investigator's Signature

[_____]

[Investigator's Signature]

[_____]

[Investigator's Signature]

[_____]

[Investigator's Signature]

Date

[_____]

[Date]

[_____]

[Date]

[_____]

[Date]