

MAJOR PROGRAM POINTS

"HOW TO HANDLE A SEXUAL HARASSMENT INVESTIGATION"

Part of the "GENERAL SAFETY SERIES"

Quality Safety and Health Products, for Today...and Tomorrow

Outline of Major Points Covered in the "Handling a Sexual Harassment Investigation" Course

The following outline summarizes the major points of information presented in the course on "Handling a Sexual Harassment Investigation". The outline can be used to survey the course before taking it on a computer, as well as to review the course when a computer is not available.

- **Sexual harassment can take an incalculable toll on victims, their families, friends and coworkers.**
- **As a manager, you need to remember that any form of sexual conduct in the workplace is inappropriate.**
 - It may constitute sexual harassment if the actions or comments are unwanted or threatening.
- **Recognizing sexual harassment is only half the battle.**
 - If you don't act quickly, and resolve the situation fairly, your company could face lawsuits and hefty fines.
 - In fact, the company's reputation, business relationships and financial security could depend on how you handle a sexual harassment incident.
- **The Civil Rights Act of 1964 includes sexual harassment as a form of sexual discrimination.**
 - The U.S. Equal Employment Opportunities Commission (EEOC) enforces this act, which mandates that all companies have a legal responsibility to provide their employees with a harassment-free workplace.
- **In addition to these federal requirements, most states also have laws that address sexual harassment.**
 - It is important to be aware of your state's regulations, as well.

- **Legally, there are two distinct types of sexual harassment cases.**
 - Incidents that are considered "Quid Pro Quo."
 - Actions that create "hostile work environments."

- **"Quid Pro Quo" (Latin for "one thing in return for another") involves an employee who feels they must put up with a supervisor's sexual advances in return for some job-related benefit or to avoid disciplinary action.**
 - A single proposition from a manager can create a "Quid Pro Quo" situation.

- **A "hostile work environment" on the other hand, usually involves a pattern of offensive behavior, such as:**
 - Sexist remarks.
 - Foul language.
 - Visiting pornographic websites.
 - Making obscene gestures.

- **Physical contact, however, can instantly create a hostile work environment for the victim, particularly if it involves:**
 - Groping.
 - Sexual assault.

- **In addition to behaviors other things that can create a hostile work environment include:**
 - Pornographic magazines.
 - "Pinup" pictures.
 - Other sexually suggestive items.

- **To prevent sexual harassment, your company must have a written sexual harassment policy that includes:**
 - A clear and concise definition of what constitutes sexual harassment.
 - Examples of inappropriate sexual conduct.
 - A declaration that sexual harassment on anyone's part will not be tolerated.
 - Procedures employees should follow to file a sexual harassment complaint.
 - Requirements that managers and employees report harassment in a timely manner.
 - A statement forbidding retaliation against anyone reporting an incident.
 - How accusations are to be investigated.
 - Disciplinary actions used to punish harassers.

- **In addition to having a clear and thorough sexual harassment policy, it is critical that workers are provided with sexual harassment prevention training.**
 - Several states, including California, Connecticut, Maine and Vermont, require that this training be given on a regular basis.

- **Comprehensive training and a clear sexual harassment policy are often all that it takes to keep sexual harassment out of the workplace.**
 - But even the best preventative measures aren't foolproof.
 - You must have an effective way for managers and employees to report sexual harassment incidents.

- **Providing several ways for employees to confidentially file complaints will help to ease any fears they have, and encourage them to report anything that they find harassing.**
 - Since people tend to feel more comfortable talking to members of their own gender about sexual issues it is a good idea to designate at least one male and one female to whom employees can report harassment incidents.
 - In smaller facilities that person will often conduct the investigation, as well.
 - Larger companies typically have a Human Resources Department that will look into the incident.

- **If you are involved in a sexual harassment investigation, you have an ethical and legal responsibility to handle the allegations appropriately.**
 - Following the procedures listed in your company's sexual harassment policy will help you reach a fair and just decision on how to handle the incident.

- **Let's look at your responsibilities in greater detail.**
 - You should always begin the investigation as soon as an allegation is made.
 - Procrastinating or ignoring sexual harassment, and hoping that the incidents will end on their own, will only complicate the situation.

- **Another thing that is critical is maintaining privacy and confidentiality.**
 - The fewer people who know about the allegations the better.
 - Rumors could hamper the investigation and cause the people who are involved a lot of discomfort and stress.

- **If someone does "catch wind" of the allegations, it is important to ask that they don't talk about the situation.**
 - If necessary, you should remind them that spreading rumors can, in itself, be a form of harassment.

- **To investigate an incident you will have to invade the privacy of both the victim and the accused to some extent.**
 - You should avoid areas that aren't directly related to the allegations.
- **You need to keep things as confidential as possible, but critical information must be "on the record."**
- **Above all else, use discretion in how you ask questions.**
 - Be extremely careful not to make statements that attack the character of the people you are interviewing.
 - You don't want your actions or comments to become harassing.
- **As an investigator you also have an ethical responsibility to remain neutral and view the facts based on their face value.**
 - Emotional ties to a victim or an alleged harasser could create a conflict of interest.
 - If you are close to one of the parties who are involved, you should have another qualified person take over the investigation.
- **Sexual harassment includes a broad spectrum of misconduct, and there are no "cut and dried" ways to resolve all cases.**
 - But regardless of the nature of the incident, the steps that you should take when conducting an investigation are generally the same.
- **One thing that will influence the investigation process is how willing the victim is to cooperate.**
 - Sometimes victims are afraid or embarrassed to come forward, even when it appears that they are being harassed.
- **When sexual harassment allegations are reported by a manager or concerned employee, you need to find out specifically what they have observed.**

- **The next step is to speak privately with the apparent victim.**
 - Victims may be reluctant to answer your questions if they feel frightened, embarrassed or threatened.
 - Tell them that you understand their concerns and that you will take appropriate measures to keep the situation confidential.
 - If the person continues to deny that they are being harassed, let them know that company does not tolerate harassment and that you are there to help them.

- **When someone steps forward and reports being sexual harassed, they will often be angry or upset by the situation.**
 - If they are emotional, don't try to downplay the incident to calm them down.
 - It might seem to them as though you are not taking their allegations seriously.

- **Whether the apparent victim is reluctant to speak, or they bombard you with information, your job is to obtain the facts and sort them out.**
 - Even if the allegations seem unlikely to you, they must be treated seriously.

- **The goal of a sexual harassment investigation is to determine if harassment actually occurred. To separate different people's perspectives of an incident you need to:**
 - Take good notes.
 - Obtain written statements.
 - Consult existing documents will help you to separate different people's perspectives of the incident.

- **At the end of your initial interview, you should ask the victim to put their allegations in writing. This written statement should include:**
 - The date and time the incident occurred.
 - Who was involved.
 - The names of any witnesses to the incident.
 - A full account of what happened and what was said.
 - An explanation of why the actions or comments were sexually harassing to them.

- **This written statement will form the foundation of the investigation, by "spelling out" what the victim felt was harassing.**
 - After reviewing the document, you may want to talk to the victim again to answer any questions that you have.

- **In addition to your notes and the victim's written statement, other documents can provide valuable information, such as:**
 - Time sheets can prove whether workers were on-site when an alleged incident took place, and may also help you to identify potential witnesses.
 - Expense reports may contain questionable purchases that support a victim's claim that a manager was making sexual advances.
 - Performance appraisals and disciplinary records on the other hand, may reveal that a victim has a motive for making false accusations against the alleged harasser.

- **In addition to looking for paper trails, work areas should be examined for evidence.**
 - For instance, if the alleged harasser uses a computer it may contain emails or other files that have a bearing on the allegations.

- **Once you have obtained the victim's statement, and gathered relevant documents and other evidence, you should have a good handle on the nature and scope of the allegations.**
 - At this point, you should prepare to question the alleged harasser.
 - The way that you approach the alleged harasser can be instrumental in the outcome of the investigation.
 - Generally, you should not reveal the allegations immediately.

- **Once you have established a dialog, you need to inform the person of the allegations.**
 - Observe the person's reaction to the allegations.
 - Is there disbelief, anger, surprise?
 - Do they try and justify what they have been accused of doing?

- **Be sure to note anything that the alleged harasser says or does that may indicate guilt or innocence.**
- **The person who is accused of the harassment will often give a completely different account of the alleged incidents than the victim.**
 - So you may have to dig deeper to determine what really happened.
- **The testimony of an eye witness is often a decisive factor in establishing the guilt or innocence of an alleged harasser.**
- **When questioning a witness you should keep the names of the victim and the alleged harasser confidential, and if possible, avoid providing details of the incident.**
 - This will help to ensure that the information that you receive from the witness is reliable.
 - It will also reassure the witness that their statement will be kept confidential.
- **When you think that a witness knows something but is reluctant to talk, you may have to ask more direct questions.**
 - As always, you need to formulate your questions so that they don't reveal more than they have to.
- **Obtaining information from witnesses can be difficult.**
 - People are often reluctant to get involved in something that they feel doesn't concern them.
 - You may have to remind them that sexual harassment is everyone's business and that you need their help to ensure that the company remains a good place to work.
- **Making a final decision about how to handle a sexual harassment complaint can be the hardest part of an investigation.**
 - This is especially true if you don't have any witnesses or evidence that corroborates either the victim's or the alleged harasser's stories.

- **Sometimes sexual harassment allegations are based on nothing more than a misunderstanding.**
 - Other times the incident that you are investigating is just the "tip of the iceberg," and leads to additional allegations that you will need to look into.
- **It's imperative that everyone understands that your company takes sexual harassment allegations seriously.**
 - However, you must not use an incident to set an example.
- **When the facts show that the alleged harasser is at fault, your final decision on how to handle the situation will largely depend on two factors.**
 - The severity of the harassment.
 - How often incidents have occurred.
- **At the very least, the harasser should receive a stern warning to "cease and desist" or face disciplinary action.**
 - If the situation involves touching someone with sexual intent, a manager using their position to elicit sexual favors or a series of harassing incidents, the harasser will probably need to be discharged.
- **The final step in handling a sexual harassment incident is to ensure that the victim returns to a positive work environment.**
 - For instance, if the harasser is not discharged and the victim feels uneasy working around them you may have to adjust work schedules or arrange a transfer.
- **Whatever you do, be careful that you don't appear to be punishing the victim.**
- **Handling sexual harassment incidents can be tricky, so if at any point you feel that you don't have the training or expertise necessary to resolve an incident, find someone who does.**
 - This might be another manager, someone from your company's Human Resources Department or an outside agency that specializes in sexual harassment investigations.

- **Another resource that you can go to is the EEOC.**
 - They can provide you with invaluable information on what actions to take and even act as a mediator to help to resolve the situation.
 - In fact, involving the EEOC early on can show "good faith" that you are trying to deal with the allegations professionally.
 - This can help you to avoid fines, and may even benefit you in court if the victim takes legal action against your company.

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- **Handling a sexual harassment investigation may be one of the most difficult tasks that you ever perform. So it's critical that the actions that you take are the right ones.**
- **Treat all reports of sexual harassment seriously, and immediately look into the allegations.**
- **Keep allegations confidential and respect the privacy of those involved in the alleged harassment as much as possible.**
- **Have the victim provide you with a description of the incident in writing.**
- **Look for documents and other evidence that may be relevant to the allegations.**
- **Listen... observe... and make sure that you have all of the facts that you need before deciding what to do.**
- **If you feel that you don't have the resources to handle the investigation yourself, get some help.**
- **Regardless of how a sexual harassment investigation unfolds... the actions that you take as an investigator are critical. Your company is depending on you to conduct a fair, impartial and confidential investigation!**