

HANDLING A SEXUAL HARASSMENT INVESTIGATION

COURSE OUTLINE

- **Sexual conduct in the workplace is always inappropriate, but when it's unwelcome or threatening, it's also illegal.**
 - In these cases, it's sexual harassment.

- **Sexual harassment can be devastating for its victims, and it can damage the companies they work for as well, resulting in:**
 - A hostile work environment.
 - Decreased productivity.
 - Increased costs.

- **To protect its employees and avoid potential legal actions and hefty fines, a company must be able to recognize, investigate and resolve sexual harassment allegations, promptly and fairly.**

- **From a legal standpoint, "sexual harassment" is a form of sex discrimination.**
 - It was made illegal in 1964 by the Civil Rights Act.

- **Sexually harassing behavior includes actions that the victim finds unwanted or threatening, such as:**
 - Unwelcome sexual advances.
 - Requests for sexual favors.
 - Other verbal or physical conduct of a sexual nature.

- **Blatant sexual acts qualify as sexual harassment whenever they occur. These include:**
 - Sexual assaults.
 - Touching a coworker with sexual intent.
 - Requiring them to engage in a sexual act to keep their job or advance their career.

- **Many less blatant types of offensive conduct can be considered to be harassing when they occur repeatedly, and can include:**
 - Talking about sex.
 - Making offensive remarks about a person's sexual orientation, as well as their gender, gender identification or gender expression.
 - Commenting on a coworker's physical appearance.
 - Looking at someone in an "inappropriate" manner.
 - Displaying sexually "suggestive" pictures or objects.
 - Visiting pornographic websites or sending provocative emails.
 - Using foul language or making obscene gestures.

- **Victims of sexual harassment can be damaged emotionally, psychologically and even physically by the abuse.**
 - This can often result in a victim becoming less productive.

- **This type of offensive behavior can poison the work environment for others as well, by...**
 - Interfering with the daily functioning of the workplace.
 - Increasing absenteeism.
 - Driving employees to look for another job.

- **Sexual harassment may lead to significant legal costs and can damage the reputation of the company as well.**
 - So preventing this type of abusive workplace behavior has to be a top priority for every company.

- **Each employee is the judge of what they themselves feel to be disturbing, so a company must take many things into account when establishing what types of behavior and language will and will not be acceptable in the workplace.**
 - These rules should be laid out in a written "sexual harassment policy".

- **The policy should start with the basics, including:**
 - A clear and concise definition of what it is that constitutes sexual harassment.
 - A declaration that the company will not tolerate sexual harassment by any employee, manager or contractor.

- **It should also describe how a sexual harassment incident should be reported, and how it will be investigated by management.**
 - The policy should list the disciplinary actions that may be taken against harassers as well.

- **Make sure everyone in the department has a copy of the policy, including contractors and other temporary workers.**
- **Employees should also receive training in how to recognize behavior that is unacceptable, and be comfortable responding effectively to it:**
 - By informing the harasser that they have "crossed the line".
 - And/or reporting the incident to company management.
- **You need to explain that employees who are not directly involved in an incident should also speak up when they witness and are offended by a person's behavior (this is called "bystander intervention").**
- **Be sure to let everyone know that sexual harassment reports must include specific facts, such as:**
 - The date and time of the incident.
 - Who was involved.
 - The names of witnesses.
 - What happened and what was said.
 - Why they felt the behavior was sexually harassing.
- **Encourage them to write this information down as soon as possible after a harassment incident.**
- **When you are investigating an allegation of sexual harassment in your workplace, you have a legal and ethical responsibility to...**
 - Begin your investigation promptly.
 - Follow your company's sexual harassment policy.
 - Conduct your inquiry systematically, to reach a fair and just resolution.
- **Any type of delay could make it look like you, and the company, might not be taking sexual harassment and employee well-being seriously.**
- **Whether the report has been submitted by a victim or someone who witnessed the abuse, take special care to respect their feelings and keep the investigation confidential.**
 - Rumor and gossip will only hamper the progress of the investigation and increase discomfort and stress for anyone involved.
 - If someone does "catch wind" of the allegations, advise them that spreading rumors can be considered a form of abuse too.

- **To investigate a sexual harassment incident you will have to “invade the privacy” of victims, witnesses and the accused to some extent.**
 - You can keep this to a minimum by asking only about things that are directly related to the allegations.
- **Use discretion when asking questions.**
 - Take care to avoid showing bias for or against anyone, including the potential victim and the perpetrator.
- **As an investigator you also have a responsibility to assess the facts impartially and not "jump" to conclusions.**
 - Any perceived lack of fairness could lead to complaints being filed... even legal action.
- **If one of your people comes to you with a report about sexual harassment in your department, how you end up responding is very important.**
 - You need to proceed systematically.
 - If you try to "wing it", any mistakes that you make could come back to haunt you and your organization.
- **If you need guidance, you should consult your company's sexual harassment policy.**
 - You can also speak to another manager or an HR representative to get their input.
- **But there are a few general guidelines that you should follow when you receive a report. You need to:**
 - Show concern.
 - Take it seriously.
 - Remember to keep it confidential.
- **Speak with the person who made the report in private.**
 - Treat them with respect and sensitivity.
 - They shouldn't feel penalized in any way for coming forward.
- **If they become emotional during the interview, you shouldn't try to quiet them by "downplaying" the incident.**
 - They might think you don't take their report seriously.

- **Your goal is to identify the facts in the report and assess them, so you need to:**
 - Thoroughly review the written record of the incident.
 - Listen carefully.
 - Ask questions.

- **Start your own "paper trail", by writing up a summary based on the report and your conversation with the originator.**
 - Have the victim or witness read your summary and sign it when they are satisfied that it is accurate.

- **Once you have obtained a statement from the victim or witness to a harassment incident, your next step should be to interview the person they have accused.**
 - It can be helpful to begin your conversation with them on another subject.

- **Once you have established a dialog, introduce the topic of the alleged harassment.**
 - Explain the allegation and ask for "their side" of the story.

- **Observe the behavior of the alleged harasser.**
 - Pay attention to what they say and do.
 - Take notes to record your conversation as accurately as possible.

- **After the interview, you should create a summary of their responses and have them read and sign it.**

- **You may find that the descriptions of the incident that are given by the victim or witnesses and the alleged harasser are significantly different.**
 - To determine what really happened you may have to “dig deeper”, by speaking to the other employees who have been identified as possible witnesses to the incident.

- **When interviewing them, avoid providing any details about the incident that you already have.**
 - Don't confuse the issue by giving them information that was supplied by others.
 - Phrase your questions generally, but without being vague.

- **Obtaining information from witnesses can sometimes be difficult. Many people are reluctant to “get involved”.**
 - Remind them that sexual harassment is everyone’s business.
 - Eliminating it from the workplace is the best thing for your department and the company.

- **The facts that you collect during a sexual harassment investigation provide the basis for resolving the issue in a way that is fair and just, for everyone who's involved.**

- **How you handle things will largely depend on two factors.**
 - The severity of the harassment.
 - How often the harassment has occurred.

- **Sometimes sexual harassment allegations are based on a simple misunderstanding.**
 - In these cases, the "severity" is close to zero, and no action may be required other than making sure that everyone knows what really transpired.

- **On the other hand, you may find the incident that you're investigating is just the "tip of the iceberg", and brings additional harassment to light.**

- **In any situation where harassment has taken place, a company needs to demonstrate that it will not tolerate harassing behavior.**

- **At the very least, the harasser should be:**
 - Instructed to “cease and desist”.
 - Warned that they will face disciplinary action if their conduct does not improve.

- **In situations where the harassment includes touching with sexual intent, or a manager is using their position to extort sexual favors from an employee, the harasser should probably be discharged.**

- **If you feel that you need some help in making a final determination, consider contacting the Equal Employment Opportunity Commission (EEOC) itself.**
 - They can provide information and even act as a mediator in resolving the situation, if necessary.
 - Involving the EEOC also shows that you and your company are making a "good faith" effort to "do the right thing".

- **Once a harasser has been dealt with, you need to ensure that the victim and any witnesses to the incident are able to return to a "positive" work environment.**
 - For instance, if the harasser is still with the company and the victim feels uneasy working around them, you may need to adjust work schedules or arrange a transfer to keep the two separated.
 - Just be careful that you do not appear to be “punishing” the victim in any way.
- **As we've seen, an effective investigation can help you to determine how to deal with allegations of sexual harassment on the job, but you need to make sure that the inquiry is thorough and fair.**

*** * * SUMMARY * * ***

- **Treat all reports of sexual harassment seriously, and look into the allegations promptly.**
- **Respect the privacy of everyone who is involved in the alleged harassment.**
- **Make sure that a written description of the incident is included with any sexual harassment report that you receive.**
- **Be impartial in your investigation. Take care not to show bias.**
- **Don't jump to conclusions. Gather the facts together and assess them before you make up your mind as to what happened.**
- **Looking into allegations of sexual harassment is serious business. Now that you know how the process works, and the procedures that will help to ensure a fair and just resolution, you can do your part to keep sexual harassment out of your workplace!**