

HANDOUT

Some Questions to Ask Before Agreeing to an Internal Investigation

In considering an investigation process, it is valuable to ask a number of questions at the outset. These include:

1. What risk is the complainant facing in making a complaint? Does the employer's policy say that complainants will not be penalized for making complaints, or will not be penalized for making complaints in good faith, or does it provide no protection for making a complaint?
2. What protection does the policy create to prevent retaliation against the complainant?
3. What will happen while the complaint is being investigated. Will there be supports for the complainant? Will steps be taken to ensure there is no ongoing contact between the complainant and the respondent? If someone is inconvenienced by these steps, for example required to go on leave, will it be the complainant or the respondent?
4. Why is the complainant making the complaint? What do they hope to achieve or prevent?
5. Who within the employer's organization will be involved and have knowledge of the complaint? Human resources personnel? Supervisors? Upper management? All of the Board? Only part of the Board?
6. What rules of confidentiality apply to the investigation? Will the complainant retain the right to speak about their harassment experience as they may need or want to do? Are there constraints on sharing the complaint with others? Are there constraints on sharing information obtained through the investigation process with others?
7. Who will investigate? Will the investigator be an internal or external person? How neutral are they? How skilled are they?
8. Is the complainant entitled to have a support person or advocate through the whole process?
9. Will the complainant have a chance and proper support to set out the complaint in detail in writing?
10. Will the respondent be given the complaint and an opportunity to respond in writing. If so, will this be given to the complainant?
11. If there are multiple complainants, how will this be handled? Will the complainants see the complaints of other complainants, or will only the respondent see everything?

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12. Will relevant documents be identified on all sides and made part of the investigation? If so, will both parties get to see them, or only the respondent?
13. Will there be interviews by the investigator? If so, what record will be kept of the interviews? Who will see these records? In particular, will the complainant be provided a summary of the respondent's replies to the complaint? Will the complainant see summaries of the comments of witnesses or other persons interviewed?
14. If the investigator is going to write a report, will the complainant and respondent see that report before it is finalized in order to correct any errors?
15. Once the report is complete, who will see it, both parties or just the respondent?
16. Once the report is complete, who will see it within the employer or service provider?
17. Who will be the decision-maker with respect to any consequences of the report?
18. What range of outcomes will be considered by the employer? Will these outcomes include steps to prevent occurrences of sexual harassment in future in the workplace? Will they include policy changes?
19. Who will be advised of any outcomes, just the respondent or the respondent and the complainant? Will there be sharing within the workplace or service provider? To WorkSafe? Beyond? Are the results confidential?
20. Is there any further mechanism for either party if they object to the investigation report or the outcomes?
21. Will supports and protections remain in place for the complainant in any event of the investigation, only if the investigation finds sexual harassment, or not in either case?
22. What will happen to the complaint file after the investigation?
23. Do any confidentiality rules change once an investigation is complete?
24. How long is the investigation likely to take?