

# ANATOMY OF A WORKPLACE INVESTIGATION



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Finding the skeletons in your  
company's closet

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# Anatomy of a Workplace Investigation

## FINDING THE SKELETONS IN YOUR COMPANY'S CLOSET

### WHEN SHOULD YOU INVESTIGATE?

**Scenario # 1.1:** Employee Edward stopped by Manager Mike's office one afternoon. He asked if he could put a small menorah in his cubicle during Hanukah. Manager Mike said, "Sure." Two days later, Mark walked by Edward's cubicle and noticed that someone had stuck a sticker that said, "Merry Christmas" on the menorah. Edward never complained about it.

**INVESTIGATE?**

**DON'T INVESTIGATE?**

**Scenario #1.2:** Manager Mike walked into the employee breakroom where five female employees were sitting. As he walked past the table, he heard Emily say, "Yeah, Carl tried to hug me last week too. I don't think he means anything by it, but I don't like it. I just backed away and told him I had to go pick up the mail." Ella chimed in, "He used to do that all the time until I got pregnant. I guess the belly is a problem."

**INVESTIGATE?**

**DON'T INVESTIGATE?**

**Scenario # 1.3:** Manager Mike walked into the employee breakroom where five female employees were sitting. As he walked past the table, he heard Emily say, "I can't believe she hasn't gotten in trouble for wearing that skirt. It's so short you better hope she doesn't bend over."

**INVESTIGATE?**

**DON'T INVESTIGATE?**

### Complaints vs. Gripes

- Who is affected—the complainant or someone else?
- Does it involve a protected class?
- Does it involve a protected activity?
- Does it involve a violation of company policy?
- Does it involve time cards, pay, or overtime?

“The key to good eavesdropping is not getting caught.” Lemony Snickett, *The Blank Book*

## What is your Company Complaint Procedure?

- Employers should establish, distribute to all employees, and enforce a policy prohibiting harassment and setting out a procedure for making complaints. In most cases, the policy and procedure should be in writing.
- Small businesses may be able to discharge their responsibility to prevent and correct harassment through less formal means. For example, if a business is sufficiently small that the owner maintains regular contact with all employees, the owner can tell the employees at staff meetings that harassment is prohibited, that employees should report such conduct promptly, and that a complaint can be brought "straight to the top." If the business conducts a prompt, thorough, and impartial investigation of any complaint that arises and undertakes swift and appropriate corrective action, it will have fulfilled its responsibility to "effectively prevent and correct harassment."
- An employer's anti-harassment policy should make clear that the employer will not tolerate harassment based on race, sex, religion, national origin, age, disability, or genetic information, or harassment based on opposition to discrimination or participation in complaint proceedings. The policy should also state that the employer will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation.
- The employer should encourage employees to report harassment to management before it becomes severe or pervasive.
- The employer should designate more than one individual to take complaints, and should ensure that these individuals are in accessible locations. The employer also should instruct all of its supervisors to report complaints of harassment to appropriate officials.
- The employer should assure employees that it will protect the confidentiality of harassment complaints to the extent possible.

Is a complaint procedure adequate if employees are instructed to report harassment to their immediate supervisors?

- No, because the supervisor may be the one committing harassment or may not be impartial. It is advisable for an employer to designate at least one official outside an employee's chain of command to take complaints, to assure that the complaint will be handled impartially.

EEOC, *Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors*, <https://www.eeoc.gov/policy/docs/harassment-facts.html>.

## HOW SHOULD YOU INVESTIGATE?

**Scenario #2:** The controversy started when Atlas Logistics Group Retail Services, a grocery distributor had a problem with someone who was going to the bathroom in the warehouse. Police were seeking a “devious defecator”: the person responsible for leaving piles of poos in the aisle. Atlas investigated and, based on shifts and employee samples, they narrowed the suspects down to a few employees. Knowing that DNA doesn’t lie, Atlas asked these employees to let the insides of their mouths be swabbed. The employees consented, and the swabs were sent off to a lab to determine if the swabs matched the stool sample found in the warehouse aisle.

## Company Policy

- An employer should conduct a prompt, thorough, and impartial investigation. The alleged harasser should not have any direct or indirect control over the investigation.
- The investigator should interview the employee who complained of harassment, the alleged harasser, and others who could reasonably be expected to have relevant information. The Guidance provides examples of specific questions that may be appropriate to ask.
- Before completing the investigation, the employer should take steps to make sure that harassment does not continue. If the parties have to be separated, then the separation should not burden the employee who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.

EEOC, *Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors*, <https://www.eeoc.gov/policy/docs/harassment-facts.html>.

**“When people talk, listen completely. Most people never listen.” Ernest Hemingway**

### Interviewing employees

- Discuss limited confidentiality
- Discuss the non-retaliation policy
- Ask open-ended questions that begin with “w.”
  - Who, what where, how
- Gather facts, not feelings

## HOW DO YOU DOCUMENT YOUR INVESTIGATION?

**Scenario #3:** After three employees reported discovering poop in the warehouse every Monday morning for three weeks straight, Atlas supervisor, Sheila, decided to investigate. She interviewed Eric and Evelyn, the employees who discovered the poop.

Eric said he didn’t see David on aisle three on Monday morning, but that he knew it had to be David who was the “devious defecator.” Eric said he knew this because the poop was in aisle three and David was really lazy and liked to sit and nap on the sacks of flour stored on aisle three.

Evelyn said that, Monday mornings, she worked on aisle 4. She said she reported straight to her section on aisle four last Monday and thought she saw David over on aisle three. She couldn’t be sure, but she remembered seeing a red baseball cap.

Sheila then interviewed David. He said he did work in aisle 3 on Monday mornings, and he denied being the “devious defecator.” He said that Eric and Evelyn had always hated him ever since he reported them for clocking in and out for each other.

Sheila then interviewed Stacy, the warehouse supervisor. Stacy said that she was the one who picked up the poop off the floor after Eric and Evelyn reported it to him. She said she watched a lot of CSI, so she knew better than to use her bare hands. She put on gloves and then scooped up the poop into a plastic bag. She

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wrote the date and time on the bag. Then, she went around the warehouse asking every employee who sh@#\$\$%^ on the floor. No one said they did it, but Eric told her it was David.

Sheila reviewed the surveillance video for the Sunday night and Monday morning shifts. She also looked at the time clock records and employee schedules for the Sunday night and Monday morning shifts.

### **Business Miranda Warning: What you say can be used against you. What you put in writing will be used against you.**

- **FACTS:**
  - What someone saw.
  - What someone heard.
  - What someone tasted, touched, or smelled.
- **Facts are not opinions.**
  - Say what happened, not what you think about what happened.
  - **Helpful:** “The surveillance video for Monday morning shows David sitting on a sack of flour at 7:02 a.m.”
  - **Not Helpful:** “The surveillance video for Monday morning shows David being lazy just like he always is the first part of the shift.”
- **Facts are not feelings.**
  - Say what happened, not how you feel about it.
  - **Helpful:** “At 6:52 a.m., the surveillance video for aisle 3 shows a person wearing a black, company issued hoodie, pull down his or her pants and squat down toward the floor.”
  - **Helpful:** “At 6:52 a.m., the surveillance video for aisle 3 show some disgusting person drop his or her pants and poop on the floor. It is so gross.”
- **Facts are not speculations.**
  - Say what happened, not what someone believes happened.
  - **Helpful:** Eric said that he often saw David sitting on a sack of flour in aisle three and that, around 7:05 on September 28, 2017, he saw David heading down aisle three toward the flour storage area.
  - **Not Helpful:** Eric said that he knows David is the one who pooped on the floor because David is always telling everyone that he thinks this job is “sh\$%.”

**“All we want are the facts, ma’am. . .” Sgt. Joe Friday, *Dragnet***

- Include
  - Dates & Times
  - Conclusion/Resolution
  - “CONFIDENTIAL” watermark
- Filing?

- In the personnel files of (1) the employee(s) who complained & (2) the employee(s) who was investigated.
- Separate copy in a separate company file.
- DO NOT save a copy in the files of the employees who participated in the investigation.

- NO RETALIATION

## SAMPLE FORM INVESTIGATION REPORT

**To: Personnel File**

From: \_\_\_\_\_

Re: \_\_\_\_\_

Date: \_\_\_\_\_

**Background:**

Complainant: \_\_\_\_\_ (Date of Employment \_\_\_\_\_)

Subject: \_\_\_\_\_ (Date of Employment \_\_\_\_\_)

**Initiating Event:**

On \_\_\_\_\_ [DATE], \_\_\_\_\_ [NAME], [JOB TITLE], approached

\_\_\_\_\_ [NAME], \_\_\_\_\_ [JOB TITLE], and asked to talk about \_\_\_\_\_

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**Interviews:**

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**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Interviewer(s):** \_\_\_\_\_

**Summary:** \_\_\_\_\_

\_\_\_\_\_ [NAME] met with \_\_\_\_\_ [NAME] around \_\_\_\_\_

[TIME]. on \_\_\_\_\_ [DATE] at \_\_\_\_\_ [LOCATION]. \_\_\_\_\_

\_\_\_\_\_ [NAME stated \_\_\_\_\_

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**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Interviewer(s):** \_\_\_\_\_

**Summary:** \_\_\_\_\_

\_\_\_\_\_ [NAME] met with \_\_\_\_\_ [NAME] around \_\_\_\_\_

[TIME]. on \_\_\_\_\_ [DATE] at \_\_\_\_\_ [LOCATION]. \_\_\_\_\_

\_\_\_\_\_ [NAME stated \_\_\_\_\_

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Name: \_\_\_\_\_

Date: \_\_\_\_\_

Interviewer(s): \_\_\_\_\_

**Summary:**

\_\_\_\_\_ [NAME] met with \_\_\_\_\_ [NAME] around \_\_\_\_\_

[TIME]. on \_\_\_\_\_ [DATE] at \_\_\_\_\_ [LOCATION]. \_\_\_\_\_

\_\_\_\_\_ [NAME stated \_\_\_\_\_

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**Documents/Items Reviewed:**

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**Conclusions/Resolution:**

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