

CONDUCTING SEXUAL HARASSMENT INVESTIGATIONS IN THE #METOO ERA

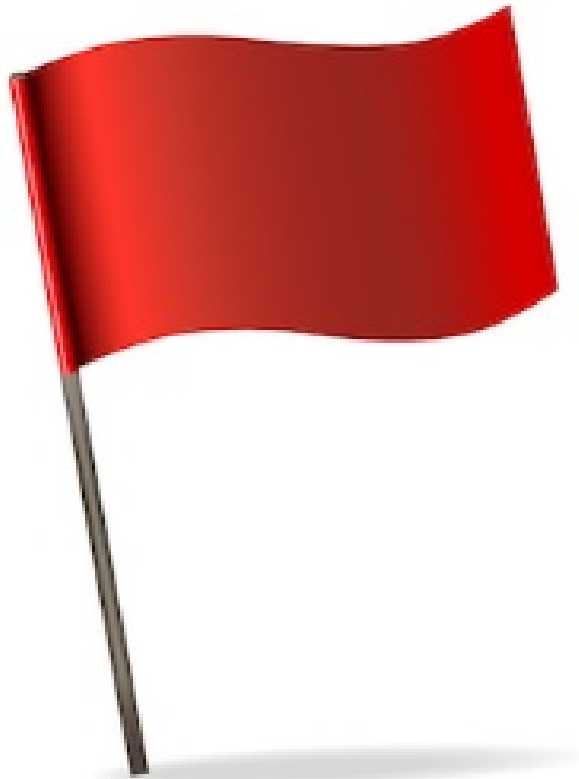
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What the h--- is this flag for?



Pre-Investigation

- Before initiating an investigation, employers must address five questions:
 - Should the employer initiate an investigation?
 - How should the employer conduct an intake?
 - Who should conduct the investigation?
 - Should the employer take protective or remedial measures during the pendency of the investigation?
 - What steps should the employer take at the inception of the investigation to protect the attorney-client and/or work product privileges?

Who Should Conduct the Investigation?

- Non-human resources management
- Human resources personnel
- In-house counsel
- Outside counsel
- Independent investigator

Protective or Remedial Measures

- Should you take protective or remedial measures during the pendency of the investigation?
 - Necessary remedial measures
 - Interim safety measures
 - Suspension of the alleged harasser
 - Preservation of evidence

Investigation

- What should be included in an investigation plan?
 - Define scope of investigation
 - Decide order of witness interviews
 - Determine what documents to gather
 - Email
 - Text messages
 - Decide where to conduct interviews
 - Determine who should be privy to investigation

Interviewing the subject of the complaint

- What should be kept in mind when interviewing the subject of the complaint?
 - Explain the accusations
 - Allow the subject to respond to the accusations
 - Follow up on any exculpatory evidence or witnesses identified by the accused
 - If necessary, conduct follow up interviews with the accused

Credibility Determinations and Factual Findings

- How does an investigator make and report credibility determinations and factual findings?
 - Credibility determinations
 - Factual findings
 - Reports
 - Preserving the privilege

Investigation Results

- How do you communicate the results of the investigation?
 - Summarize what the investigator did
 - Summarize what the investigator found
 - Summarize next steps

Post-Investigation

- What action should you take in response to the results of an investigation?
 - Termination
 - Discipline
 - No disciplinary action
 - Training
 - Audits of past investigations
 - Support for reporter and victim

#MeToo

- New considerations in the wake of #metoo
 - Multiple accusers and credibility determinations
 - Auditing past investigations
 - Examining effectiveness of reporting mechanisms
 - Auditing past non-disclosure agreements
 - Publicity concerns

Questions?

Does anyone have any questions about anything we have covered today?

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