

Human Resource Administrators

Best practices for addressing workplace sexual harassment without a report

Disclosing is not Reporting

Disclosing workplace sexual harassment is not the same as reporting workplace sexual harassment. Some complainants may choose to disclose for several reasons including to ask questions, to request an accommodation or to seek personal support. These complainants may not wish to proceed with a formal report, at any time. Accordingly, you should have procedures in place to respond to disclosures in a survivor-centered manner understanding that some disclosures may never proceed to a report.

Do I Have a Legal Obligation to Act on a Third-Party Report or Disclosure?

You are not under a legal obligation to act on a third-party report or a disclosure of workplace sexual harassment. However, you do have a legal duty to ensure a safe workplace.

What Action Can I Take in the Absence of a Report?

Your ability to proceed to an investigation is significantly hindered without a report which details who was sexually harassed in the workplace and when. These reports will often simply identify the harasser with few accompanying details. Other times, the witness will identify themselves, but the complainant refuses to report.

Consider creating a procedure in consultation with an employment lawyer to determine what, if any, legal obligations you have to inquire or to investigate with only a witness but no complainant, or with neither.

Just a reminder, anytime an employer intends to proceed to investigating workplace sexual harassment, the respondent is entitled to know who and what was reported. This information ensures fairness and allows the respondent an opportunity to provide a response to the report.

Sometimes You Cannot Proceed to an Investigation

There are several reasons why you may not be able to proceed to an investigation into an incident of workplace sexual harassment. These limitations should be outlined in your workplace policy and should reference: