

# Reasonable Workplace Investigations

Investigations are an important tool to assist employers in fulfilling their legal obligation to provide a safe workplace that is free of bullying and harassment. There is no strict requirement for employers to conduct any particular form of investigation for workplace sexual harassment (exceptions may arise under the employer's own internal policies or if the employer is unionized). The employer's only obligation is to ensure the investigation is adequate, reasonable and fair.

## WHAT ARE THE CHARACTERISTICS OF A FAIR AND REASONABLE WORKPLACE INVESTIGATION?

An investigation should:

- **Be Conducted Promptly:** Once the employer becomes aware of a workplace sexual harassment complaint, they should commence the investigation as quickly as reasonably possible.
- **Be Conducted in Accordance with Internal Policies:** The employer should ensure they are following any guidelines or steps set out in their internal investigation policies.
- **Be Conducted by a Qualified Investigator:** The investigator should be neutral. This means the investigator must not have close relationships or connections with the respondent or complainant. The investigator should also be competent. This means the investigator should be trained and experienced in conducting workplace investigations.
- **Provide the Respondent with the Details of the Complaint:** The respondent must be provided with the specific allegations made against them so that they have the opportunity to respond. The respondent should be provided with the allegations against them at the earliest opportunity possible. The details of the complaint should be sufficiently detailed to permit the respondent to respond appropriately. A general reference to the complaint or incident is not sufficient.
- **Be Thorough and Unbiased:** The investigator must be thorough in collecting evidence and interviewing witnesses. The investigator should interview all individuals involved and anyone else that may be aware of the events. The investigator's findings cannot be based on hearsay, rumours or predetermined thoughts or assessments of the complainant or respondent.



- **Include the Collection and Review of Evidence:** The investigator should consider what types of evidence are available to either support or refute the complaint. Once they have determined what evidence is available, the investigator should obtain that evidence. This can be done through obtaining photos, emails, videos, text messages or conducting interviews of employees.
- **Be Documented:** The investigator must document the investigation. This includes documenting the steps the investigator took, the evidence collected (including notes from interviews), and any notes on the investigator's decision making process. These steps are important for creating a reliable record in the event a dispute arises pertaining to the investigation.

Once a proper investigation has been completed, the employer will be able to make an informed decision about whether corrective actions are required (in the case that the complaint is substantiated) and, if so, what types of corrective actions are appropriate given the specific scenario.

