

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Supervisory and Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 10
Investigating Employee Complaints

Consider the following scenarios:

1. An employee tells you that she was sexually harassed by a co-worker.
2. An employee alleges that a co-worker is making long distance phone calls on County time and charging them to the County and is using the photocopier and fax machine for personal business.
3. An employee writes you a note reporting a health/safety hazard and asking that you provide expensive safety equipment to all employees in the Division.

How you respond to complaints like these could make the difference between a prompt and effective resolution and expensive litigation. In cases involving allegations of sexual harassment or workplace safety violations, you have a legal duty to investigate. Proper and prompt investigations can be the single most important factor in preventing lawsuits, or helping you successfully defend yourself if a suit is filed. At a minimum, effective investigations demonstrate that you acted fairly and in good faith. Failing to act, or improperly investigating can greatly increase your legal risks. The key to a successful investigation is to approach each complaint in an organized and consistent manner.

The goal of the investigation is to gather information so you can decide how to respond appropriately to an employee's complaint. Complaints of sexual harassment should be reported immediately to your Department Head and to the County's Equal Employment Opportunity Manager (X4340). Alleged safety violations should be reported to your Department Head and to the County's Safety Manager (x4613). For most other complaints, you should be able to use the following steps as an outline for conducting the investigation.

1. Receive the Complaint

- Explain procedures. Tell the complainant that the matter will be promptly investigated and explain your procedures for investigation. Mention that someone else may interview the employee later to obtain additional information. Advise him/her that there will be no

retaliation for coming forward with a complaint made in good faith and tell him/her to report any perceived retaliation immediately.

- Discuss confidentiality. It is important not to promise confidentiality. But explain that the investigation will be handled as discreetly as possible, and information will be disclosed only on a “need to know” basis.
- Written complaint. Have the employee write out the complaint. You may want to use a form such as the sample attached. The complaint should be written out before you begin the investigation because the employee’s description of the problem will determine how you proceed with the investigation.
- Employee’s own words. It is best to have the employee explain the problem in his/her own words. You want the employee’s best recollection of the facts, not what other people remember. For this reason, ask the employee to fill out the complaint form at work (in a private office if possible), rather than taking it home.
- Review written complaint. After the form is completed or the employee has written out the complaint, go over it with the employee. Make sure you understand the problem. Verify orally that the information on the form is complete and accurate. Also make sure the employee has signed and dated the complaint.

2. Overall Considerations

- Keep the investigation low key. Throughout the investigation, be sure to act in as discreet and professional a manner as possible. Don’t talk about the complaint or investigation to anyone who does not have a direct interest in the matter.
- Maintain a separate investigation file. Be sure to preserve any documents that you collect, including notes, memos, and witness statements. Remember to protect e-mail messages and computer files. All of the records should be kept in an investigation file, separate from the personnel files of those involved. Remember that anything you put in writing, unless it is correspondence between you and an attorney, can be subpoenaed. Be sure that your notes are factual and not just speculation or opinion.
- Don’t be overly aggressive. Don’t record conversations or interviews with the complainant, witnesses, or the alleged perpetrator without first consulting with County Counsel. Do not search employee lockers, desks, purses, etc., without consulting County Counsel.

3. Select an Investigator

- Choose an uninvolved party. Select a non-involved manager to investigate the complaint. (For allegations of sexual harassment or alleged safety violations, consult your Department Head and the County’s EEO Manager (x4340), respectively, prior to selecting an investigator.) The person selected should be objective and should not be implicated in the complaint, and should have credibility, sensitivity, good interviewing skills, and a good knowledge of department policies and procedures.

- Consider two-member teams. Sometimes it is a good idea to have a two-person interviewing team, as long as it doesn't seem too intimidating. If you choose this option, make sure both individuals have enough time to devote to the investigation so it can be conducted in a timely manner.

4. Interview Witnesses

Act quickly. Start the investigation as soon as possible after the complaint is made. Memories will be fresher and you may be able to prevent the problem from escalating:

- Disclosing details. The investigator should interview the employees and witnesses identified on the complaint form, including the complaining employee and, depending on the complaint, the alleged offender. In interviewing witnesses, it is usually best to advise them of the general nature of the complaint, but not to provide details of the complaint. This will allow them to have a clear memory of the alleged events without being influenced by what the complainant alleged.
- Explain procedures. At the beginning of each interview, explain that: 1) you need the witness' assistance in investigating a workplace complaint; 2) you have an obligation to investigate and gather information; 3) you want the witness to provide accurate and truthful responses; 4) no conclusions have been reached and you are simply trying to ascertain the facts; and 5) you will not permit any retaliation against them and they should immediately report any perceived retaliation.
- Remind accused employee of procedures. Prior to interviewing the employee against whom the complaint was filed, advise him/her of the general nature of the allegations (without giving specifics), that the allegations are serious, and that disciplinary action could result if the investigation shows that the alleged behavior or misconduct occurred. If the employee is represented and he/she requests the presence of a Union representative, allow him/her reasonable time to arrange representation.
- Dealing with uncooperative employees. If someone won't cooperate, point out that you will base your decisions on the information you have on hand and you won't have the benefit of their version of the story. Keep in mind that some employees may be entitled to have a Union representative present during the interview. Also, if for any reason an employee wants to leave the room, never prevent the person from doing so.
- Allow nothing "off the record". If an employee wants to talk with you about the problem in confidence, it's important to point out that because you have a duty to investigate complaints, the discussion can't be "off the record." But make clear that you'll try to be as discreet as possible.
- Take notes. During the interviews, take detailed notes of the questions asked and the person's responses. Since these notes may have to be disclosed in the event of a lawsuit or grievance, be sure to keep them factual and free of personal opinions. The notes should also indicate the

name of the person interviewed, the date, time, and location of the interview, who was present, the length of the interview, and the identity of the interviewer.

- Ask factual questions. Remember to stick to basic objective questions designed to obtain the most complete information about the complaint - in other words, who, what, when, where, why and how.
- Try to reduce rumors. Ask interviewees not to discuss the interview or investigation with anyone else while the investigation is going on, so as not to influence the result and to prevent rumors.
- Seek complainant's opinion. When interviewing the complainant, ask how he/she would like to see the matter resolved. Although the complainant's preference isn't binding on you, it may be helpful to have the desired resolution on the record.
- Identify additional witnesses. Decide whether there are any other witnesses, and, if appropriate, interview those employees.

5. Reach a Conclusion

- Analyze information. Review all documents that might be relevant to the complaint, such as performance evaluations, disciplinary memos, and attendance records. Also, find out whether similar complaints have been made in the past against the alleged offender and the results. The latter information should be kept confidential and not disclosed to the complaining party or witnesses.
- Consider credibility. Evaluate the credibility of the witnesses. Among other factors, consider their reputation for honesty and their opportunity to observe what happened. Determine if they have a motive to lie or shade their story in favor of or against a particular individual or whether they have anything to gain from the results of the investigation. Note if any of their prior statements are inconsistent with their present recollection of events or if their statements differ factually from other witnesses. Observe their demeanor and attitude including physical signals such as squirming in a chair while answering questions or refusing to make eye contact.
- Witness verification. Determine whether the complaining employee's account is consistent and verified by other witnesses. Answer the same questions about the alleged offender's version of events. Also, consider whether either party appeared to be withholding information or otherwise failed to cooperate.

Come to a conclusion. Reach a decision about whether the information you have gathered supports one of the following conclusions: 1) the complaint is valid; 2) the complaint is unjustified; or 3) the evidence is inconclusive. Document the reasons for your conclusion in writing. Once again, keep in mind that your written remarks may have to be revealed if a lawsuit or grievance is filed.

6. Determine Appropriate Action

When the complaint is valid, take action. If you conclude that the complaint is valid, decide what action is appropriate. This may involve corrective or disciplinary action against the subject of the investigation. Prior to initiating corrective or disciplinary action, consult Employee Relations. If the complaint involved a workplace safety violation or similar problem, consult The County's Safety Manager at x 4613 to determine appropriate measures to take to remedy the problem.

- Choose appropriate disciplinary action. If discipline is warranted, keep in mind that it should be proportionate to the offense committed, and designed to prevent or discourage future problems. Your decision to discipline or not discipline should be documented in the investigatory file.
- Proceed cautiously when the complaint is not substantiated. If you decide the complaint is not supported by the evidence, don't take disciplinary action against the complaining party unless you have very clear proof that the person lied or made the complaint in bad faith. Otherwise, you risk being accused of retaliation. If you conclude the complaining party lied or made the complaint in bad faith, call Employee Relations.
- Explore options when there is an inconclusive outcome. If you are unable to determine whether the complaint is justified - which is frequently the case - you may still want to take steps to make sure that you have done everything in your power to solve the problem or prevent the alleged behavior from recurring. For example, consider discussing the general topic at a staff meeting, or distributing a memo reminding employees of your position on the issue or policy that was the subject of the investigation. But, don't disclose the specifics of the complaint.

7. Follow Up

- Notify affected parties. Inform the complaining party and the accused of the outcome of the investigation. If the offending employee was disciplined, let the employee who filed the complaint know that corrective action was taken, but do not disclose the nature of the corrective action. Ask the complaining party to advise you if there are any further problems. Tell other employees of the outcome only to the extent they need to know.
- Report illegal activity. In some cases, where an investigation demonstrates that a law may have been violated, you have an obligation to report the violation to a government agency. Consult County Counsel in any case in which this may be an issue.

Attachment - Sample Complaint Form (To be given to any employee who wishes to lodge a complaint before the investigation begins.)

Use this form to describe the workplace problem you want investigated. Management will use this information to investigate your concerns and attempt to resolve them. This information may be disclosed to others to the extent necessary to complete the investigation. No adverse action will be taken against you for making a complaint, provided the complaint is made in good faith.

Please be as complete and accurate as you can in describing the problem:

1. Date(s) of the event or problem

2. Time(s) of the event or problem

3. Location(s) of the event or problem

4. Description of the event or problem (continue on a separate sheet if necessary)

5. Witnesses to the event or problem

6. Proposed Resolution

I verify that the above information is true and correct to the best of my knowledge:

Employee Signature

Date

For Office Use Only

Received by:

Date: