

Investigating Workplace Harassment Complaints . . . Without Making It Worse

Scott P. Horton

Horton Law PLLC

HORTON
Management Law



My Top 7 Tips

... for Performing this Unenviable Task That Everyone Wishes Wasn't Necessary

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.





Tip #1

» Be Prompt and Thorough



Ready?

Sufficient facts → Rational conclusion

» Team

» Witnesses

» Physical Evidence

Tip #2

» Maintain Appropriate Confidentiality



Confidential?

Thou Shalt

- » Managers/Supervisors must report
- » Organization must investigate
- » No one can retaliate

Privacy vs. Freedom

EEOC

“An employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis.”

NLRB

“[I]t is the employer’s ‘responsibility to first determine whether in any given investigation witnesses need protection, evidence is in danger of being destroyed, testimony is in danger of being fabricated, and there is a need to prevent a cover up. Only if the [employer] determines that such a corruption of its investigation would likely occur without confidentiality is the [employer] then free to prohibit its employees from discussing these matters among themselves.’”

Tip #3

» Get Buy-in from the Complainant



Trust?

It's No Joke

Comfortable and Confident



No Unanswered Concerns

Who Should You Talk To?



No Stone Unturned

What Would They Like Done?



No Guarantees

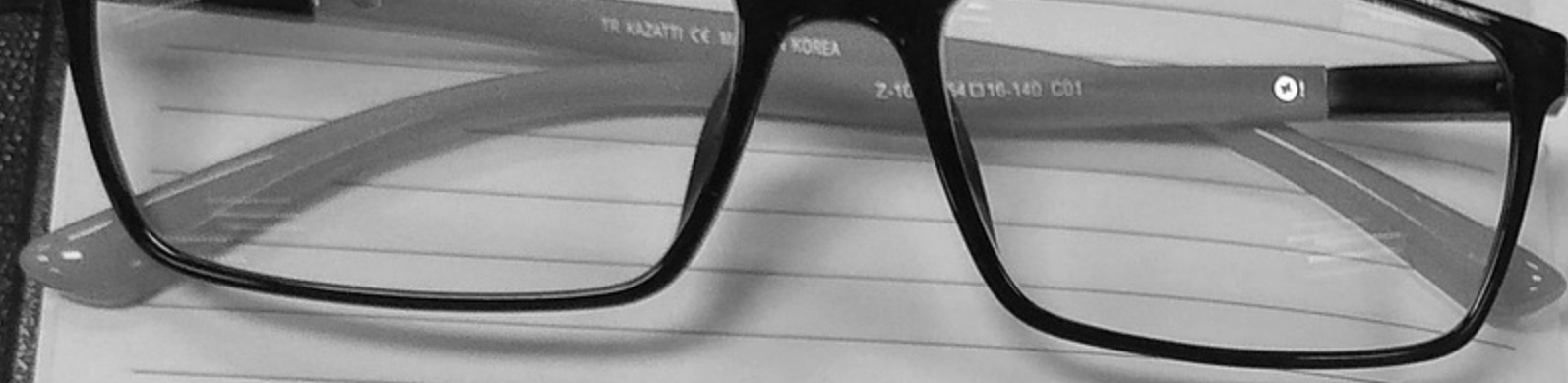
Discuss Proposed Outcome



No Retaliation

Tip #4

» Put It in Writing



Confirmation?

Keep Your Notes Straight

» Facts

- What witnesses say
- Drawings/descriptions of work areas
- Pictures/copies of physical evidence

» Impressions

- Characterizations of witnesses
- Credibility evaluations
- Thoughts about physical evidence

Tip #5

» Involve Your Attorney



Privilege?

Do We Really Need Lawyers?

- » Not Always Necessary, but
- » Protect Privilege Where You Can
- » Keep Legal Advice and Factual Conclusions Separate

Tip #6

» Reach Conclusions, but Not Too Early



Ready?

Review and Follow-Up



Final Checklist

- Exhaust All Relevant Leads
- Make Credibility Determinations
- State Factual Conclusions
- Recommend Outcome
- Compile Written Investigation Report
- Keep "Legal" Conclusions Separate

Tip #7

» Avoid Retaliation



Resolved?



Investigation Isn't the End

» Caution Witnesses

- Don't Retaliate
- Report Retaliation

» Remind Managers

- Mandatory Reporting
- No Self Help

» Take Corrective Action

- Consider Impact on All Involved
- Emphasis on Avoiding Future Harassment

» Be Proactive

- Review/Revise Policies
- Schedule Training



Thanks for your time!



Questions?

Investigating Workplace Harassment Complaints Without Making It Worse

My Top 7 Tips for Performing this Unenviable Task That Everyone Wishes Wasn't Necessary

Scott P. Horton, Esq.

Horton Law PLLC

4955 Chestnut Ridge Rd., Suite 203

Orchard Park, New York 14127

scott@hortonpllc.com

(716) 508-7748

HortonPLLC.com

HORTON
Management Law