

# FAQs About Workplace Restoration



Janice Rubin and I recently completed a two-part webinar series on workplace restoration. During the sessions, we received several interesting questions, all of which we did not get the opportunity to answer. The questions were excellent and thought provoking and represent some of the questions that we are frequently asked when engaging in this work. So, we thought it would be great to use this blog as an opportunity to answer some of those questions that we did not get to tackle during the webinar.

## **Q1. Should the concept of workplace restoration be included in anti-harassment policies?**

Given that there is no legislative or legal mandate to engage in workplace restoration, organizations are not obligated to include it in their policies. That said, if organizations truly wish to include workplace restoration as part of their framework for resolving disputes in the workplace, their policy would be a good place to start. First, policies are often used as an educational tool. An organization's policies could be used by employers to educate employees on what workplace restoration is, particularly in circumstances where it is a new concept. Second, the policy is the mechanism that informs employees of the avenues that are available to them for resolution. The inclusion of workplace restoration as an available option may lead to the likelihood that employees will, of their own volition, express a desire to engage in this process. Third, its absence from the policy framework may lead to the perception that workplace restoration is not a "serious" process. Thus, when offered as an option to employees, it may be viewed as the organization not taking their concerns seriously. Therefore, there are many arguments for the inclusion of workplace restoration in an organization's policy framework.

## **Q2. How can employees engage in workplace restoration if their leader has indicated that they no longer wish to discuss an issue?**

On the face of it, it may seem that workplace restoration would be impossible in such a situation. That is because it is usually necessary that parties volunteer their participation in the process. However, the beauty of workplace restoration is that the process is flexible and customized to address the specific issues that exist in a particular case. It is not unusual for one or more parties to be resistant to a restoration process at the outset. A starting place in a situation like this one may be to understand why the leader no longer wishes to discuss the issue. Usually there is a reason for such a strident position. If you gain that understanding, it may give

insight into what may be needed for restoration to be feasible; such consideration may open the door to the leader reconsidering their position.

### **Q3. How do you know what has been happening without conducting an investigation?**

Implicit in this question is the assumption that an investigation is the only means by which an employer can ascertain what is happening – that assumption is because an investigation involves the making of factual findings. However, a step in the workplace restoration process involves engaging with the parties and stakeholders to hear directly from them their perspective on what has happened. While the information gathered in an investigation is tested and used to make factual findings, in a workplace restoration process, the information gathered is used to identify the underlying issues and the interventions that are suitable to address them. In fact, you may find that people may be more open to sharing in a restoration process, simply by virtue of its non-adversarial nature. That said, to reiterate the point that we made in the webinar series, the consideration is not always “either, or.” Sometimes, there is value in first conducting a workplace investigation to obtain factual findings, which would then inform the approach to a workplace restoration process that follows. The takeaways are that (i) an investigation is not the only way to find out what is happening, (ii) an investigation does not tell you definitively what happened. It only tells you what is more than likely to have happened, based on the evidence that is available, and (iii) the processes are not always mutually exclusive. One can follow the other.

### **Q4. If someone lodges a complaint that does not meet the threshold, how does Human Resources communicate this when the person is expecting an investigation?**

This is quite a common issue. First, it usually helps if the policy expressly contemplates some form of threshold assessment and flags to employees that employers have the discretion not to proceed with an investigation if it is determined that the threshold has not been met. If there is policy language to this effect, it can be used as the basis for the discussion or explanation. Second, the expectation of an investigation is often because that is the mechanism that is known to employees. Therefore, if workplace restoration is part of the policy framework, as discussed above at Q1, then that too can be used as the basis to introduce workplace restoration as an alternate method of resolution. The policy helps to shift and manage expectations. That said, even in the absence of the above-mentioned policy language, when there is an expectation of an investigation, very often the underlying interest is some form of recourse or response to the issue raised. Therefore, our recommendation is that the communication should not be limited to the fact that threshold has not been met but extend to consideration of how the organization intends to respond to the concern. That may be where the discussion of workplace restoration may be raised.

### **Q5. How does the company avoid subsequent accusations of “tried to talk me out of it,” if things don’t go to the complainant’s expectations?**

In our experience, feedback like this usually comes when proper and adequate information is not shared with the parties or stakeholders at the outset of a workplace restoration process. This is why we identify communication as a specific step in the workplace restoration process. Providing adequate information about what the process is, the goal, and how they will be asked to participate, helps to manage their expectations about the outcome. Communication should not be a step overlooked because it can be the thing that makes or breaks a restoration process.

These are just some of the frequently asked questions. We know that there are many more, and the questions will continue to grow as more organizations and employers start to recognize and explore the value of workplace restoration.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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