

The Importance Of Process In Workplace Investigations

written by Haley O'Halloran | September 5, 2024



Workplace investigations, especially those involving harassment allegations, require a clear and consistent process. Employers in Ontario must be diligent in their approach to ensure compliance with the Occupational Health and Safety Act (OHSA), maintain a safe work environment, and protect the rights of all parties involved. A well-defined process is crucial for three main reasons: it ensures legal compliance, fosters trust among employees and reduces the risk of liability for the employer.

When Does a Statement or Complaint Trigger OHSA Obligations?

Not every complaint or statement about the workplace will automatically trigger the OHSA's obligations to investigate. However, when the statement or complaint relates to harassment or violence, it's a different story.

Under the OHSA, workplace harassment is defined as "engaging in a course of vexatious comment or conduct against a worker that is known or ought reasonably to be known to be unwelcome." The key is determining whether the statement or complaint alleges behaviour that falls within this definition. If it does, the employer is obligated to investigate.

Distinguishing Between a Complaint About Job Dissatisfaction and a Harassment Complaint

It's important to differentiate between general job dissatisfaction and allegations of harassment. Complaints about job duties, management style, or workplace policies might not meet the threshold for harassment under the OHSA. However, if the complaint includes specific allegations that suggest a pattern of vexatious behaviour or conduct that could be considered harassment, it should be treated seriously and likely triggers the need for an investigation.

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First Three Steps an Employer Should Take

When an employer becomes aware of a statement or complaint, whether it seems to be a general grievance or a potential harassment issue, the following steps should be taken immediately:

- 1. Acknowledge and Document the Complaint :** The first step is to acknowledge the complaint promptly. This shows the employee that their concerns are being taken seriously and creates a record that the employer is responsive. Documentation is crucial from the outset. Record the details of the complaint as provided, noting the date, time, and context in which the complaint was made. Even if the statement appears to be a general dissatisfaction, documenting it is essential, as it may form part of a pattern that emerges later.
- 2. Assess the Nature of the Complaint:** After documenting the complaint, assess whether it potentially involves harassment or workplace violence under the OHSA. This involves reviewing the specifics of the complaint: Does the behaviour described fit the OHSA's definition of harassment? Is there a course of conduct that could be considered vexatious? If the answer to these questions is "yes," the employer has an obligation to investigate further. If the complaint seems more related to general job dissatisfaction, the employer may still want to address the concerns but not necessarily under the formal investigation process mandated by the OHSA. However, be cautious—initially minor complaints could escalate or reveal underlying harassment issues later. Note that you do not need to be certain whether this is for sure harassment – rather, an investigation obligation is triggered when the fact of the complaint *may* be harassment if some or all of the facts were found to be true. You don't need to run an investigation to decide whether to have an investigation.
- 3. Determine the Appropriate Response and Communicate with the Employee:** Once the nature of the complaint is assessed, determine the appropriate course of action. If it's a harassment complaint, the employer must initiate an investigation in line with their workplace harassment policy. If it's not harassment, the employer should still respond to the employee, acknowledging their concerns and outlining any steps that will be taken to address the issue. Communication is key to ensuring the employee feels heard and that the employer is taking their concerns seriously.

Conclusion

A structured process in workplace investigations protects the rights of both the employer and employees, ensuring that all complaints are treated fairly and in compliance with legal obligations. By promptly acknowledging complaints, carefully assessing their nature, and determining the correct response, employers can maintain a safe and respectful workplace while minimizing their legal risks under the OHSA.

We're in a changing world and workplace stress and harassment claims since the pandemic continue to evolve swiftly. If in doubt, lean into your process, beef up your paperwork and give everyone the benefit of the doubt without prejudging situations.

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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