

Responding to EEOC Charges and Conducting Internal Investigations

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WHAT DO I DO NOW THAT I
HAVE RECEIVED A CHARGE OF
DISCRIMINATION.....

Review all forms included in the Charge Packet

- Notice of Charge of Discrimination
- Charge of Discrimination
- Request for Information
- Mediation Invitation and Information
- Settlement Invitation
- Jurisdictional Information
- Effective Position Statements – What should a position statement include

Analyze the facts as presented in the charge document

- Why are charges written so different?
- What do these differences mean for you?

Since 1/1/05, I have been denied promotions to the position of Headwaiter. Whenever the position became available I advised my supervisor that I was interested in being promoted to that position. On 10/20/05, I found out that John Hanson was promoted to Headwaiter. I complained to Mary Jane in Human Resources who told me that John was better qualified than I but that I would be considered for the next opening.

On 12/17/05, I found out that the restaurant was expanding into the banquet business and that they needed an additional Headwaiter. Although the position was not posted, I gave my resume to my supervisor and let him know that I wished to be considered for this position. On 12/20/05, I was interviewed by the Director of Food Services. On 12/27/05, I received a letter advising me of my non-selection. I talked to my supervisor to find out why I was not selected and was told that the Director of Food Services felt that he had difficulty understanding me and that they were seeking a different image for this position. I believe Jean Pierre Jacques, who speaks with a French accent and who has little fine dining or banquet experience was selected.

I believe I have been discriminated against because of my national origin, Mexican, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Personal Harm: Since 1/1/05, I have been denied promotions to the position of Headwaiter.

Respondent's Reasons: The persons selected were better qualified.

Discrimination Statement: I believe I have been discriminated against because of my national origin, Mexican, and sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Next steps.....

- Conduct an effective internal investigation
- Make a decision
 - Defend
 - Position Statement
 - Request for Information
 - Resolve
 - Mediation
 - Settlement

Conduct Internal Investigation

- Why
 - The Supreme Court expects you to
 - It benefits the company

Conduct an Internal Investigation: Preliminary steps

- Make an investigative plan
- Secure all evidence, documents and records relevant to the allegations raised in the charge
- Identify relevant witnesses
- Take precautions that the investigation will not be perceived as harassment or retaliation
- Check EEOC's web site

Decision Time

- Defend the allegations raised in the charge

OR

- Seek Resolution

Seeking Early Resolution

- Why?
- Why not ?
- If I seek early Resolution, do I still need to investigate?

So you have decided to ...

- Defend the allegations raised in the charge.....
- And you need to prepare a position statement

Conducting an Effective Internal Investigation

What types of complaints do you investigate?

Investigative Strategies

- Select the investigator
- Types of evidence
- What to do with the parties
- Investigative plans
- Communication
- Remedies

Qualities of a Great Investigator

- Neutral – perceived as
- Trained in EEO Laws
- Able to think critically
- Not intimidated by witnesses
- Able to gather, assess evidence and statements

Characteristics of an Effective Investigator

- Tact, Professionalism, Focus
- Empathy, Ability to establish rapport
- Sensitivity, Patience, Persistence
- Prepared
- Asks right questions at the right time
- Paraphrases responses
- Sufficient authority, not subordinate to either party

Investigation Strategies

- Secure and examine documents
 - Hiring documents
 - Performance evaluations
 - Reprimands/Discipline/Discharge
 - Promotions
 - Written Complaints
 - Salary information

Investigation Strategies

- Secure/examine other information sources
 - E-mails
 - Medical Documents
 - Internet
- Know the record keeping requirements

Investigation Strategies

What to do with Parties involved?

- Advise alleged harasser
 - Any and all harassment of Complainant or any other employee must stop
 - Further harassment and/or retaliation – grounds for discipline, termination
- If necessary, advise harasser
 - Not to make contact with the Complainant unless absolutely necessary for work or production purposes

Investigation Strategies

What to do with Parties involved?

- Separate Alleged Harasser and Complainant
 - Move Alleged Harasser's desk, office, cube
 - Change Alleged Harasser's shift
- Do not stigmatize or isolate Complainant

Investigation Strategies

Confidentiality

- How much confidentiality is enough?

Investigation Strategies

Timing is Everything

- Delay = Liability
- No excuses

Investigation Strategies

Planning the Investigation

- Maintaining pace; develop a time line
- Decide order of witness interviews
- Decide when and what documents to get
- Determine impact of CBA or company policy
- Establish Investigative file separate from personnel file
- Consider team investigations

Investigation Strategies

Communicate

- Keep parties informed about status, results and conclusions
- Offer opportunity to rebut any information received
- Inquire if any further harassment and/or retaliation by anyone

Investigation Strategies

Conclusion

- Be flexible
- Pick the best strategy for each investigation

Interviewing

Why Conduct Interviews

- Get the Facts: Who, What, Where, When
- Acquire information not documented in files
- Find out where documentary and other information can be obtained
- Corroborate information obtained from others

Interviewing

Why Conduct Interviews

- Check accuracy of documents
- Get explanations or interpretations of policies, practices, procedures, documentary evidence
- Check credibility of Complainant/Witnesses

Conducting Effective Interviews

- Establish control and rapport
- Conduct/document the interview
- Closing
 - Give brief summary of interview
 - Review your notes
 - Obtain names of other people to interview
 - Answer interviewees questions
 - Leave relationship open for further contact
 - Explain next step, if appropriate
 - Thank the interviewee

Conducting Effective Interviews

- Non Verbal Communication

Conducting Effective Interviews

Interviewing the Victim - Strategies

- Why
 - Obtain information, leads, witnesses, victims
 - Obtain copies of any physical evidence
 - Reassure the complainant
 - Open line of communication

Conducting Effective Interviews

Interviewing the Victim - Strategies

- How
 - In detail
 - In private
 - In their primary language

DO NOT

**SUSPEND, MOVE, TRANSFER,
ISOLATE OR IN ANY WAY AFFECT THE
COMPLAINANT IN AN ATTEMPT TO
STOP DISCRIMINATION OR
HARASSMENT.**

Conducting Effective Interviews: The Alleged Discriminating Official

- Assure that any discrimination/harassment will stop now
- Assure that the Alleged Discriminating Official (ADO) will not retaliate
- Review allegations with ADO and allow ADO a chance to respond
- Obtain witness names and other evidence
- Speak to ADO as soon as you become aware of the allegations

Conducting Effective Interviews: The Alleged Discriminating Official

- Interview the ADO privately
- Assure that ADO understands that the allegations are taken seriously
- Direct ADO to keep the investigation confidential
- Do not allow the ADO to “face my accuser”
- Ask if there have been any prior complaints against the ADO

Conducting Effective Interviews

The Witnesses

- Who to interview
 - Witnesses named by the Complainant
 - Individuals who previously complained
 - Former employees
 - Random sampling

Conducting Effective Interviews

- Ask open-ended questions followed by **SPECIFIC** questions
- Ask if they have **SEEN, EXPERIENCED** or **HEARD** about discrimination/harassment
- Ask if they know anyone else to speak to and why

Documenting the Investigation

- Investigative Logs
- Interviews
- Legal Requirements
- Confidentiality of Records

Documenting the Investigation

What EEOC will look for

- Evidence of prompt action
- Evidence of retaliation prevention
- Documentation of interviews
- Documents supporting conclusions
- Evidence of follow through

Making a Determination

- Based on all available evidence
- Allow parties an opportunity to rebut
- Lack of witnesses is not sufficient to discredit a victim
- Investigator should be able to articulate how credibility findings and final determination was made

Communicate the Findings

- Inform complainant, victims and ADO of findings
- Inform all parties that you are dedicated to remedying the situation

Substantiated Allegations

- What are the company's policies?
- What does the law require?
- Where your policies effective?

Unsubstantiated Allegations

- Reinforce policies
- Maintain records
- Were other areas impacted, or other concerns discovered i.e. professionalism, favoritism

Remedies

- Case by case basis
- Making the victim whole
 - Restore lost benefits or opportunities
 - Counseling or referrals
 - No reference in personnel files of victims
 - Inform victim of action you have taken

Remedies

- Policies & training
 - Review/revise non-discrimination and other applicable policies and practices
 - Provide training to managers/employees regarding non-discrimination policies
 - Individualized training on harassment, tolerance or anger management to ADO
 - Re-issue non-discrimination and other applicable policies with appropriate management cover memorandum

Remedies

- Discipline
- ADO
 - Verbal counseling for harasser appropriate only as a first resort
 - Document disciplinary action and reasons in personnel file
- Managers/Supervisor
 - Discipline appropriate if manager/supervisor failed to take action in response to complaint

Remedies

- Long Term
 - Periodically inquire if further discrimination and/or harassment occurred regardless of your findings
 - Be mindful and monitor for possible retaliation

Questions ?