

00:09

welcome to today's webinar everyone

00:12

best practices for harassment prevention

00:14

i'm anna hopson from hr simple and i

00:16

just have a few announcements before we

00:18

get started today

00:19

today's webinar is in partnership with

00:22

constanti

00:23

if you do have any questions for robin

00:25

we will get to them throughout the

00:26

webinar

00:27

just go ahead and answer them in the

00:28

question box and we will get to those

00:30

throughout the presentation

00:32

if you would like to watch more webinars

00:34

or watch the recorded version of this

00:36

webinar

00:36

you can go to [hrsimple.com](https://hrsimple.com) forward slash

00:40

events we also post webinars for

00:42

incredible sources like kim sanji

00:44

i will be sending out a recording of the

00:46

webinar along with the slides within 24

00:49

hours so be checking your inbox for that

00:54  
hr simple provides federal and state  
00:56  
specific manuals written  
00:58  
by top labor attorneys vacation policies  
01:01  
cover 19 in the workplace and how to  
01:03  
fill out the i-9 form are just a few of  
01:05  
the topics the manuals cover  
01:07  
you can view these credible resources at  
01:09  
[hrsemples.com](http://hrsemples.com)  
01:11  
before we get started i just wanted to  
01:13  
go over rap and style  
01:21  
robin has 30 years experience in  
01:23  
employment litigation  
01:26  
she provides preventatives or advice to  
01:28  
employers and conduct training for hr  
01:30  
professionals  
01:31  
management and employees on a wide  
01:32  
variety of topics she's also  
01:34  
editor-in-chief of constituencies  
01:36  
legal bulletins and its three law blogs  
01:38  
affirmative action alert  
01:40  
california snapshot and employment and  
01:42  
labor insider

01:44

she also produces constantia tv's

01:46

close-up on workplace law

01:48

she's also written a couple blogs for us

01:50

so i'd highly recommend to check those

01:51

out

01:52

at hrsimple.com forward slash blog

01:55

so on that note i'm going to go ahead

01:58

and hand things over to robin so we can

02:00

go ahead and get started

02:20

foreign

02:23

okay can everybody see that

02:28

it looks good i think if you hit display

02:31

settings and then slot presenter at the

02:33

top

02:33

it will full screen

02:39

i couldn't understand what you said

02:42

if you hit display settings at the top

02:46

oh it was kind of hearing the pi

02:48

position yes there you go

02:50

okay thank you perfect it looks great so

02:53

we're good

02:54

okay okay hi everybody thank you for

02:56

joining us today

02:58

um we're going to talk about harassment

03:00

best practices

03:02

how to handle harassment claims and i

03:04

think a lot of employers are probably a

03:06

little rusty on this because

03:09

uh many of us have been shut in

03:12

for a year and a half and um

03:15

that really reduces the chances of

03:17

harassment it's still possible

03:19

to harass somebody over a zoom

03:22

conference or something like that

03:24

but it's going to be a lot easier to get

03:27

back to

03:28

mischief now that people are coming back

03:30

into offices

03:31

in person again so we'll talk about some

03:35

of the things

03:36

that employers should be doing to

03:39

prevent harassment claims and also to

03:42

address them appropriately

03:44

and uh we've got a little bonus session

03:47

at the end about some of the

03:49

special precautions that i think

03:50

employers need to take

03:53

post-pandemic in in our current world

03:56

which is a little bit different from

03:58

what we were advising

03:59

two years ago so um

04:03

as anna said uh feel free to ask

04:06

questions at any time you don't have to

04:08

wait till i'm at the end of a slide or

04:10

at the end of a section

04:12

just go ahead and send any questions you

04:14

have to her

04:15

and she will read them off to me and

04:18

hopefully

04:18

we can get everything answered that you

04:20

might have

04:24

uh why we care about all of this uh of

04:26

course

04:27

as most employers know harassment claims

04:30

are difficult to defend they have often

04:34

very complicated facts which requires

04:36  
a lot of witness interviews uh  
04:40  
review of other types of evidence to  
04:42  
determine whether  
04:44  
um the harassment actually took place  
04:47  
what how severe it was etc  
04:50  
and if any of you are following now  
04:54  
the allegations against governor cuomo  
04:56  
in new york  
04:58  
the report that the law firm put  
05:00  
together on his allegations which were  
05:02  
made by i believe  
05:03  
11 women is  
05:07  
168 pages long without exhibits  
05:10  
and then there i think there's something  
05:12  
like 400 pages  
05:14  
worth of exhibits that that law firm  
05:15  
reviewed in single space too i should  
05:18  
add  
05:19  
um so the facts are often very complex  
05:23  
and that makes them harder to defend and  
05:26  
also  
05:26  
expensive to defend which is the next

05:29  
point  
05:30  
they're almost always expensive for  
05:32  
employers because you  
05:33  
do have so much factual detail you have  
05:37  
to dig  
05:37  
into and a lot of times it may be one  
05:40  
employee's word against the alleged  
05:43  
alleged harasser or there may be  
05:45  
multiple claims against one person  
05:48  
which requires a great deal of time and  
05:51  
a great deal unfortunately of billable  
05:53  
attorney time  
05:56  
again now that the pandemic is easing up  
06:01  
as workers get back together in person  
06:04  
we do  
06:04  
expect to see a boom lit at least if not  
06:07  
a boom  
06:08  
in harassment claims uh just because  
06:11  
people  
06:11  
have been separated for so long and  
06:13  
they're back together um  
06:15  
and it's possible people will be a

06:19

little overly enthusiastic when they get

06:21

back together which could result in more

06:23

harassment claims

06:25

um so having your ducks in a row at the

06:27

very beginning

06:28

will help you avoid claims and also

06:31

help you do the right thing when you do

06:33

get a claim so that the

06:35

liability to your company will be at a

06:37

minimum

06:42

so we're just going to go through best

06:43

practices uh and

06:45

and i'll be happy to talk about anything

06:48

any questions you have related to each

06:50

one of these

06:52

number one if you don't already have it

06:55

make sure your harassment policy is in

06:57

plain language

07:00

it you should use regular words that

07:03

people

07:03

normally use avoid legalese

07:06

avoid quoting the supreme court



07:10  
definition  
07:10  
of hostile work environment harassment  
07:13  
um  
07:15  
and and just to use plain language and  
07:17  
use examples that people can relate to  
07:20  
in their everyday lives um telling a  
07:23  
joke  
07:24  
that has a sexual component to it  
07:27  
uh telling a racial or ethnic joke  
07:30  
at work um that type of thing if you  
07:33  
give examples like that in your policy  
07:36  
it'll make it much easier for the  
07:37  
employees to  
07:38  
first off read the policy and not tune  
07:41  
out  
07:42  
second to understand oh okay this is the  
07:45  
type of thing i shouldn't be doing  
07:47  
or if somebody's doing it to them uh  
07:50  
this is this is what the company means  
07:52  
by harassment and so  
07:53  
you know i need to look into how to make  
07:55  
a complaint um

07:57

also if you have a multilingual

07:59

workforce

08:01

make sure that policy is published in

08:03

the languages that your employees are

08:06

fluent in

08:07

if it's english spanish that's usually

08:09

really easy to do

08:11

but a lot of workplaces are more diverse

08:13

than that and may have

08:14

people who speak vietnamese or other

08:17

types of languages

08:19

just make sure that policy is available

08:22

to

08:23

employees in the languages they speak so

08:26

they

08:26

understand how they should conduct

08:29

themselves at work

08:30

and also will understand when they're a

08:32

victim of harassment

08:36

i think we did just have a question come

08:37

in oh great okay

08:41

it says is there a statute of limitations

08:43

on workplace sexual harassment claims

08:47

oh i could the person asking that

08:51

uh give us their state what state

08:54

they're in

09:02

georgia georgia okay

09:07

i'm not sure what the georgia statute of

09:09

limitations would be it might be

09:11

i'm i'm guessing it this is a guess

09:13

because i'm in north carolina

09:14

it would be three years probably under

09:18

state law under federal law and this

09:20

would apply to everybody

09:22

if the employee is asserting a federal

09:24

claim of sexual harassment

09:28

you have to file a charge with the equal

09:30

employment opportunity commission

09:34

depending on the state you're in i

09:35

believe in georgia it would be within

09:37

180 days or six months

09:39

from the last harassing act

09:42

that would be the case in north carolina

09:44

as well uh in

09:46  
other states that have their own human  
09:49  
human  
09:49  
rights agencies it would be 300 days so  
09:53  
almost a year  
09:54  
from the last harassing act and you file  
09:57  
that  
09:58  
charge the eeoc or the state agency  
10:02  
you know presumably will do an  
10:04  
investigation  
10:06  
they'll make their determination and the  
10:08  
agency can either file suit against the  
10:10  
company  
10:11  
or they can issue what's called a right  
10:14  
to sue letter  
10:15  
to the person making the allegation  
10:18  
and uh if they do that the person making  
10:21  
the allegation has  
10:23  
90 days from receipt of that letter to  
10:25  
file a lawsuit  
10:26  
in federal court kind of complicated  
10:30  
i'm sorry about that  
10:33  
generally most people are using

10:37  
federal law to file harassment claims  
10:40  
except maybe in states like california  
10:42  
which have much  
10:44  
more employee friendly state laws  
10:48  
and so most of the time  
10:51  
as an employer you can count on that  
10:54  
180 data 300 days statute of limitations  
10:57  
to file a charge  
10:59  
of course there's no telling how long  
11:00  
the charge is going to sit there at the  
11:02  
agency before  
11:03  
the right to see letter is issued so it  
11:05  
can still be a long time before  
11:09  
the employee's deadline kicks into place  
11:16  
anything else okay  
11:21  
okay uh number two conduct  
11:24  
training on a regular basis and if  
11:26  
you're like most employers right now  
11:29  
you may be behind on your training only  
11:31  
because you haven't had anybody in the  
11:33  
workplace for a while  
11:36  
so do check on that it should be

11:38  
conducted on a regular basis and  
11:40  
in normal times my recommendation is do  
11:42  
it about once a year  
11:44  
um  
11:47  
management definitely should get  
11:49  
training at least once a year on  
11:51  
harassment and we'll talk  
11:52  
some as we go along about why that's so  
11:54  
important but i also think it's  
11:57  
important for employees to get training  
11:59  
non-management employees  
12:02  
because they need to understand what  
12:04  
kind of behavior can get them in trouble  
12:06  
and they also need to understand what do  
12:09  
i do  
12:10  
if i'm a victim of harassment in the  
12:11  
workplace and  
12:13  
if you have regular training that's the  
12:16  
best way to make sure everybody  
12:17  
understands what they're supposed to be  
12:19  
doing  
12:20  
the other nice thing about having

12:21

regular training is it really does win

12:23

you brownie points with the eeoc and

12:26

other

12:26

agencies who enforce these laws

12:29

if you conduct regular training on

12:32

harassment and you're unfortunate enough

12:34

to get a claim

12:36

the fact that you had that training and

12:38

that it's relatively fresh

12:40

um and hopefully high quality too which

12:43

we'll talk about in a minute

12:45

will help you defend yourself in that

12:48

claim

12:50

ideally and this is a recommendation

12:52

from the eeoc

12:53

the training should be interactive if

12:56

possible

12:57

and that could include having a live

12:59

person come do the training

13:02

and the audience is able to ask

13:03

questions and express their opinions

13:06

about things

13:08  
if you can't do that or you may have you  
13:10  
know depending on what kind of a  
13:12  
business you're in you may have  
13:14  
you know one or two employees scattered  
13:15  
all over the united states  
13:18  
interactive computer training is another  
13:20  
good alternative  
13:21  
because it requires the employee to do  
13:24  
something to indicate they're paying  
13:26  
attention to the training  
13:27  
um and it doesn't require people to get  
13:31  
together in a central location for  
13:33  
training  
13:34  
so that's another good alternative  
13:36  
probably the  
13:37  
least ideal of the options would be to  
13:40  
have it  
13:41  
by uh you know having the employees  
13:44  
watch a video or something like that  
13:46  
where there's no interaction going on at  
13:48  
all  
13:49  
although i must say there have been some



13:51  
videos some training videos that have  
13:53  
been very  
13:54  
good and sometimes they're entertaining  
13:56  
enough that you think people would  
13:58  
probably prefer this to a computer  
14:00  
program  
14:02  
the training should be appropriate to  
14:04  
the audience  
14:05  
for managers and supervisors i would  
14:08  
recommend at least two hours and  
14:10  
and sometimes a little more than that  
14:11  
maybe two and a half  
14:14  
employees don't need nearly that much  
14:16  
time and they'll probably start getting  
14:17  
bored  
14:18  
if you go on too long so for employees  
14:21  
who are not in management roles i would  
14:23  
suggest  
14:23  
roughly 45 minutes or so for the for  
14:26  
that training  
14:30  
uh and and i would say i i've had some  
14:34  
clients

14:34  
who were shut down uh during the  
14:37  
pandemic  
14:38  
and they're bringing people back and  
14:41  
they really do seem to be  
14:42  
trying to catch up on the training that  
14:44  
they missed during the time that  
14:46  
everybody was remote so  
14:48  
this is a good time to get that done if  
14:50  
you are able  
14:57  
uh what rank and file non-management  
14:59  
employees need to know  
15:00  
in their harassment training they need  
15:02  
to know what kind of behavior is going  
15:04  
to get me in trouble  
15:06  
what's going to get me fired what's  
15:08  
going to cause me to be disciplined  
15:10  
um they need to understand that they  
15:13  
have the right  
15:14  
to be in a workplace that's free from  
15:16  
harassing behavior  
15:18  
they need to know how to make an  
15:20  
internal complaint of harassment into

15:22  
whom  
15:23  
so even if you don't want to designate a  
15:26  
specific individual you can at least  
15:28  
designate a department like the hr  
15:30  
department  
15:31  
um go there they need to know what to do  
15:36  
and they need to understand that they  
15:37  
will not be retaliated against  
15:40  
for making a good face harassment  
15:42  
complaint  
15:44  
good faith sounds like i'm leaving a big  
15:46  
loophole there  
15:47  
but they need to understand that  
15:51  
this really isn't a loophole because  
15:53  
we're going to assume that any complaint  
15:55  
an employee makes  
15:57  
is made in good faith in other words  
15:59  
they had an honest belief that something  
16:01  
inappropriate was going on  
16:03  
or might have been going on even if they  
16:06  
turn out to be wrong and the only time  
16:09  
we would recommend considering somebody

16:11  
to be making a complaint in bad  
16:13  
faith is if we catch them red-handed  
16:16  
saying i'm you know my manager wrote me  
16:19  
up yesterday i'm gonna  
16:21  
falsely accuse him of sexual harassment  
16:23  
it would have to be about that strong  
16:25  
for us to say it was a bad safe  
16:27  
complaint  
16:30  
and that's kind of a tricky point is  
16:31  
does anybody have any questions or  
16:33  
comments about that before i go on  
16:38  
you don't have anything yet okay all  
16:41  
right  
16:42  
uh now supervisors and managers need to  
16:45  
know everything that the rank and file  
16:47  
employees need to know  
16:49  
what harassment is  
16:52  
how to make a complaint that that we do  
16:55  
not condone harassment in the workplace  
16:57  
but in addition to all those things they  
17:00  
need to know what to do if they get a  
17:02  
complaint of harassment

17:04  
or if they observe a situation in their  
17:06  
department  
17:07  
that doesn't look right to them  
17:11  
they need to know what to do when that  
17:13  
happens  
17:15  
so that is why the management training  
17:17  
is going to be a lot longer  
17:19  
they also need to understand that they  
17:21  
cannot retaliate against  
17:24  
an employee who makes a good faith  
17:26  
complaint of harassment  
17:27  
and that's true even if the complaint is  
17:29  
against them individually  
17:32  
so they need to really understand all  
17:34  
that that's why that management  
17:36  
training takes two and a half hours and  
17:39  
the employee training takes only 45  
17:41  
minutes  
17:42  
because we usually have a lot of  
17:44  
discussion about what do we do  
17:46  
what if we see something what if  
17:47  
somebody just makes a casual comment

17:50  
about an inappropriate thing that a  
17:51  
co-worker said they're not even really  
17:53  
complaining they're just  
17:54  
referencing it what do we do the  
17:57  
training ought to cover  
17:58  
all those topics so that managers feel  
18:01  
very comfortable  
18:03  
dealing with harassment issues as  
18:06  
as they come to their attention  
18:09  
and the other thing that and this is  
18:11  
another eeoc  
18:12  
recommendation and i think it's a good  
18:16  
one  
18:16  
supervisors and managers should  
18:18  
understand that the policy  
18:20  
is endorsed by senior leadership and it  
18:23  
is a priority for the employer  
18:27  
if the ceo or president can actually  
18:30  
come in and make a little  
18:31  
couple of introductory remarks before  
18:33  
the training begins  
18:34  
i think that's great because people will

18:37  
really take it seriously if they hear  
18:39  
that  
18:40  
um if that's not possible it may be  
18:42  
possible to get somebody you know the  
18:44  
most senior person at the facility  
18:46  
to um do the introduction  
18:49  
and stay for the session i think that's  
18:52  
important too  
18:53  
um and they may have to do it for more  
18:55  
than one if they're live sessions they  
18:57  
may have to  
18:58  
unfortunately sit through several  
19:00  
harassment training sessions  
19:02  
but i think that sends such a good  
19:04  
message to employees that this really is  
19:06  
something we're serious about we're not  
19:08  
fooling around here  
19:14  
best practice number three is an  
19:17  
accessible  
19:18  
complaint procedure um and and what we  
19:21  
mean by that  
19:22  
way back in the old days when i first

19:24  
started practicing law  
19:26  
um harassment policy and harassment was  
19:29  
kind of a new  
19:30  
legal concept when i started practicing  
19:32  
um  
19:35  
policies would say you know if you feel  
19:37  
like you're being harassed at work  
19:39  
tell your supervisor and that  
19:43  
wasn't really a very good  
19:46  
way to handle it because what if the  
19:48  
supervisor was the one doing the  
19:50  
harassing  
19:51  
and the policy just says go to the  
19:53  
supervisor  
19:55  
so what we've done you know over the  
19:57  
years as we  
19:58  
learning about harassment claims is give  
20:01  
employees multiple avenues to make  
20:03  
complaints  
20:04  
yeah sure going to your supervisor is  
20:06  
great if you have a good relationship  
20:07  
with your supervisor



20:09  
then that's probably the best place to  
20:11  
go if you feel  
20:12  
you're being harassed but maybe you  
20:15  
don't  
20:16  
have a really good rapport with your  
20:18  
supervisor or maybe the supervisor is  
20:21  
one of the harassers or you feel like  
20:23  
he or she is complicit in what's going  
20:26  
on  
20:27  
in that case people ought to be able to  
20:29  
go to hr  
20:30  
with a complaint and there may be other  
20:32  
places they may be able to bypass the  
20:34  
supervisor and go directly to their  
20:36  
department head  
20:38  
um years ago  
20:41  
we started recommending that employers  
20:43  
tell employees you can go to any member  
20:45  
management in this company  
20:48  
and they will make sure the complaint  
20:50  
goes to the right  
20:51  
place and of course we cover that in the

20:54

management and supervisory training so

20:56

that they all know

20:57

okay if i get this what do i do and they

21:00

know

21:00

to take it to the right spot uh so make

21:03

it as easy as possible for employees to

21:06

make

21:06

complaints if they feel they're being

21:08

harassed in the workplace

21:10

and one thing we learned with me too

21:13

a few years ago is

21:16

companies also need to have a way to

21:20

let employees make harassment complaints

21:23

when the person doing the harassing or

21:25

the alleged harasser

21:27

is very high up uh

21:30

maybe a ceo maybe a very high

21:34

senior vice president uh or it may be

21:38

what we also see is extremely talented

21:41

people their

21:42

their title may not be quite that lofty

21:45

but

21:45  
they have certain skills or talents that  
21:49  
are  
21:49  
almost irreplaceable which means the  
21:52  
company isn't going to want to terminate  
21:54  
them  
21:56  
employees need to have a place to go if  
21:58  
that if harassment is coming from  
22:01  
somebody like that  
22:02  
and again i'm picking on governor cuomo  
22:04  
again i shouldn't  
22:05  
probably but um you know he's the  
22:08  
governor of the state of  
22:09  
new york who else are you going gonna go  
22:11  
to if if you feel like you're being  
22:13  
harassed  
22:14  
um the president of the united states i  
22:17  
you know who knows  
22:19  
so you you need some type of independent  
22:22  
person who can receive those complaints  
22:26  
and since we've been making that  
22:28  
recommendation to employers  
22:30  
um some solutions they're coming up with

22:33

is

22:33

you know if they have a board member

22:37

who's very sophisticated you know maybe

22:40

it's a lawyer or

22:41

or a human resources person who's very

22:43

sophisticated about

22:45

uh harassment law and and what an

22:48

employer's obligations are

22:50

it may be possible if the ceo is the

22:52

alleged harasser it may be possible to

22:54

take that complaint to

22:56

a member a designated member of the

22:58

board of directors

23:00

um that needs to be in your policy

23:03

so that employees know that that's where

23:04

they should go if it's

23:06

somebody very high up in the

23:07

organization or somebody with

23:09

irreplaceable talent um another

23:13

solution people have come up with is

23:15

they have just designated an

23:16

outside third party to receive that type

23:19  
of complaint and they put that person's  
23:21  
name and contact information  
23:23  
on the policy so that could be uh you  
23:26  
know a law firm  
23:28  
or an hr consultant somebody like that  
23:30  
who's  
23:31  
outside the company entirely and  
23:34  
employees if they are being harassed  
23:37  
from somebody high level can go to that  
23:38  
individual  
23:40  
report the complaint and then an  
23:42  
investigation can take place  
23:44  
hopefully by people who aren't afraid  
23:46  
they're going to get fired if they don't  
23:48  
pull their punches  
23:56  
practice number four is have  
23:59  
disinterested  
24:00  
unbiased investigators who know what  
24:03  
they're doing  
24:04  
and  
24:08  
we want somebody investigating the  
24:10  
complaint

24:11

to have the authority to let the chips

24:14

fall

24:15

you know to do a fair investigation if

24:18

it turns out the ceo

24:19

is harassing somebody then we want an

24:22

investigator who

24:23

isn't going to be afraid that there

24:26

could be adverse

24:27

consequences for them if they if they

24:29

tell the truth

24:31

so um ideally

24:34

you know if it's a lower level member of

24:36

management who's the alleged harasser

24:38

like a supervisor or a manager

24:40

uh that should be pretty easy to do you

24:42

can get

24:43

you know somebody maybe at the director

24:45

level hopefully in human resources

24:48

or in-house counsel to conduct the

24:51

investigation

24:52

they would outrank the person who's

24:54

accused so they would have the authority

24:56

to

24:59

let the facts go where they may uh

25:04

the other possibility is to have

25:05

somebody who's completely independent

25:07

and again i'd say you know maybe an

25:09

outside law firm or

25:11

a an hr consultant he's not part of the

25:14

company

25:15

and if they're independent it'll be much

25:18

easier for them to just

25:19

follow the leads where they go find

25:21

whatever facts are appropriate

25:24

and not be worrying about their career

25:26

security their

25:27

job security depending on what they find

25:31

so that's very important

25:36

and then next the investigator ideally

25:40

should not already know the parties it's

25:43

nice

25:44

and in a big company that's pretty easy

25:45

to do in small companies it can be very

25:48

difficult

25:49

but what we would prefer ideally would

25:52

be an investigator who didn't know

25:54

anybody before they got into this

25:56

investigation

25:58

um had no relationship prior with the

26:01

accuser

26:02

or the accused or with any of the

26:05

at least the key witnesses and again

26:09

that's just a way of making sure that

26:11

that person doesn't have preconceived

26:13

notions

26:15

um that might influence the outcome of

26:18

the investigation

26:20

uh in a small company of course that may

26:22

not be possible

26:24

maybe everybody knows everybody and

26:26

that's a time when you might want to

26:28

look at possibly bringing in an

26:29

outside third party to conduct the

26:32

investigation

26:33

or if if somebody high up enough

26:39

can do it maybe get somebody at least



26:41

who's high up enough that they can

26:44

feel free to be fair and objective

26:49

uh the next one is extremely important

26:52

too the investigator should know how to

26:54

conduct an

26:54

investigation this is not something

26:58

anybody can do it's difficult

27:01

years ago i had a harassment case

27:05

a woman had made some accusations that

27:07

her

27:12

lead person had sexually harassed her

27:16

and she reported those allegations to

27:19

the department manager who was over both

27:22

her and in the lead person well

27:26

the department manager went back to the

27:28

lead person

27:29

and said did you do this stuff and he

27:32

said no i'm not crazy

27:35

and that was the end of the

27:36

investigation

27:38

and and the department manager found

27:40

that no harassment took place

27:42

um that is an extreme example

27:45

even though it's a true story that is an

27:47

extreme example of a

27:49

very poor investigation no follow-up no

27:52

nothing

27:53

uh just taking the guy's word for it

27:56

and it turned out of course you know we

27:58

ended up our client got sued we ended up

28:01

spending a lot of time digging into the

28:03

facts and although the accuser was not

28:05

perfect there was neither was the

28:08

accused

28:09

person so there was a lot more to it

28:12

than

28:13

the department managers investigation

28:16

would have led us to believe

28:19

and again if you don't have anybody

28:20

in-house

28:22

who has the expertise or who has the

28:24

lack of bias

28:26

to be able to conduct a good

28:27

investigation then consider going

28:30  
outside there are  
28:31  
lots of independent human resources  
28:34  
consultants  
28:36  
who do very good work and  
28:40  
they might be less expensive than going  
28:42  
to an outside law firm  
28:43  
but of course going to an outside law  
28:45  
firm is another option  
28:49  
so just make sure it's somebody who  
28:51  
knows what they're doing and they're not  
28:56  
biased  
28:58  
all right number five an investigative  
29:01  
process oh excuse me  
29:03  
let's see okay  
29:07  
uh an investigative process that's fair  
29:09  
to the accuser and the accused  
29:13  
we hear the slogan believe all women  
29:18  
that's okay to some extent but that's  
29:21  
really not a good  
29:22  
philosophy to have if you are doing a  
29:24  
harassment investigation  
29:27  
i cannot tell you the number of times

29:29  
we've done investigations  
29:31  
and found that  
29:34  
the person making the accusation may  
29:37  
have had  
29:38  
ulterior motives and and many of you may  
29:40  
have been in that boat as well  
29:42  
um a lot of times what we'll find and  
29:45  
and this is probably the most common  
29:47  
scenario when there  
29:49  
actually wasn't harassment going on the  
29:52  
accused harasser and the accuser were  
29:55  
actually  
29:56  
in an extramarital affair uh  
29:59  
it broke up usually it's the he decides  
30:02  
he wants to stay with his wife  
30:04  
and his family so he breaks up uh  
30:08  
she's hurt she may have already left her  
30:10  
husband  
30:11  
um and so she accuses him of sexual  
30:16  
harassment  
30:17  
using the things they did when they had  
30:19  
a consensual relationship going on

30:22  
that is more common than i would like to  
30:24  
have to admit that it it really is a  
30:26  
fairly common scenario  
30:28  
um so you can usually get at that  
30:33  
and if  
30:37  
again i'm using the term man it could be  
30:38  
the other way around but  
30:40  
in my experience it's usually the man  
30:41  
who's accused of  
30:43  
harassment after a scenario like that  
30:46  
um if he will fess up quickly to the  
30:50  
affair  
30:51  
and share whatever proof he has  
30:55  
that there was a consensual relationship  
30:57  
going on  
30:58  
then it's not that hard to find out  
31:02  
that there was no actual harassment  
31:04  
taking place  
31:05  
that it was uh you know  
31:09  
things he did in the context of the  
31:11  
consensual relationship are you  
31:13  
being used against him as evidence of

31:16  
sexual harassment um other things that  
31:20  
can happen is you might have two people  
31:21  
who were buddies and they used to talk  
31:23  
about everything together  
31:24  
and they had a falling out and then um  
31:28  
you know for whatever reason one party  
31:30  
to the friendship  
31:32  
starts using comments that were not  
31:34  
offensive at the time  
31:36  
and suddenly become offensive after the  
31:38  
fact  
31:39  
there can be other ulterior motives you  
31:41  
know i talked about a supervisor who was  
31:43  
getting ready to discipline an employee  
31:47  
that is not unheard of either that  
31:49  
sometimes  
31:51  
the employee you know may know she's in  
31:54  
trouble  
31:55  
her job is in jeopardy for legitimate  
31:58  
performance related reasons or  
32:00  
disciplinary reasons  
32:01  
and

32:05

to protect her job she will

32:08

accuse the supervisor of sexual

32:10

harassment or

32:12

some other type of harassment so

32:15

i'm not saying don't believe all women

32:18

definitely not because many times the

32:20

complaints are legitimate

32:22

but do be a little skeptical and don't

32:25

just automatically assume that if

32:27

a man is accused of sexual harassment

32:29

but

32:30

you know it must have happened

32:33

these false claims occur more often than

32:36

you'd think

32:43

uh once the investigation is over uh

32:46

either you as an hr person or

32:49

maybe with the help of your in-house

32:51

counsel or

32:52

others you have to determine what

32:55

happened to the best of your ability

32:57

you may or may not be able to do that

33:01

i mean you may not be able to

33:02  
definitively know  
33:04  
whether harassment had actually taken  
33:06  
place  
33:08  
but some of the things i would look at  
33:09  
is were there other were there witnesses  
33:13  
um were there emails or text messages  
33:19  
that indicate you know that would push  
33:21  
you one direction or the other  
33:24  
was there any other evidence that would  
33:26  
cause you to go one way or the other  
33:28  
and who was more credible you usually  
33:31  
want to save that till the end  
33:34  
but when you're done with reviewing all  
33:36  
the other evidence that's been gathered  
33:38  
during the investigation  
33:40  
uh you can look at how credible  
33:45  
the accuser and the accused were during  
33:48  
their interviews  
33:50  
or based on whether um things that they  
33:53  
told you were corroborated by other  
33:56  
witnesses or by other types of evidence  
33:59  
um and so you're you're sort of really



34:02  
making your best  
34:02  
guess as to what actually happened  
34:04  
unless  
34:06  
unless the accused person just admits to  
34:08  
it right off the bat in which case you  
34:10  
don't even have to do an investigation  
34:12  
but otherwise you're really doing the  
34:15  
best you can  
34:16  
and fortunately for employers the legal  
34:19  
standard  
34:20  
doesn't require you to find the accused  
34:22  
person guilty beyond a reasonable doubt  
34:25  
as long as you have a reasonable basis  
34:28  
for believing  
34:29  
that the policy was violated  
34:32  
and you take appropriate action based on  
34:35  
that belief you are gonna be okay  
34:38  
legally  
34:39  
and i'm not gonna say you won't get sued  
34:40  
because people can see you about  
34:42  
anything  
34:43  
but you should win eventually

34:51

um figure out what you're going to do

34:53

about it and be fair

34:55

you may conclude when the investigation

34:57

is over that no harassment occurred at

34:59

all

35:00

maybe somebody made an inappropriate

35:02

comment but it's not really

35:04

an unlawful harassing type of comment

35:07

uh or maybe there really is just

35:10

no evidence at all that any

35:13

inappropriate behavior occurred

35:16

you may also find that there was a

35:18

violation of your policy and most

35:20

employer

35:21

harassment policies are pretty strict

35:27

so so it would be easy to find that

35:29

somebody violated the policy but maybe

35:32

it wasn't a severe violation

35:34

for example maybe an employee who's been

35:37

with you a long time has a good record

35:40

told a dirty joke to the wrong person

35:42

one day

35:43

that is a violation of the policy

35:45

absolutely and i do think they should

35:47

get formal discipline over that but um

35:52

i think firing them would be a little

35:54

harsh

35:56

under those circumstances so um

35:59

you know it may be a violation of the

36:01

policy that can be dealt with through

36:03

counseling or through lesser

36:04

disciplinary action

36:06

um or you may find that the harassment

36:09

occurred and termination really is the

36:12

appropriate remedy for it

36:14

and then we come to the one i

36:18

hate the most that he said she said

36:25

if you think you have a he said she said

36:29

uh make sure you really do

36:35

don't just you know if if the accuser

36:38

tells you one thing

36:39

and the accused denies it

36:42

yes that's what he said she said

36:45

but that isn't the end of the

36:47

investigation

36:50

you should try to talk to witnesses if

36:52

you think there were any witnesses

36:55

uh and and you should follow up with

36:57

witnesses identified by the accuser

36:59

as well as the witnesses identified by

37:01

the accused party

37:03

review all other relevant evidence

37:07

again because that may sway you in one

37:09

direction or the other

37:12

and i would confer with legal counsel

37:15

and you may have in-house attorneys and

37:16

you can talk to them

37:18

or if you have outside employment

37:20

lawyers

37:21

you can talk to them and just go over

37:24

everything with them

37:25

to make sure you didn't miss something

37:29

before making a determination because

37:32

uh people who do this all the time will

37:37

possibly have suggestions of things you

37:40

could follow up on

37:42  
to get a little closer to deciding who's  
37:44  
telling the truth  
37:46  
so i think that's a good idea when  
37:48  
you've got you know  
37:50  
somebody makes an accusation the other  
37:52  
person vehemently denies it  
37:54  
and you've got to figure out who's  
37:55  
telling the truth  
37:57  
but one thing i would say is if you  
38:00  
follow all your leads  
38:02  
you still can't figure out who's telling  
38:03  
the truth there's no corroborating  
38:05  
evidence one way or the other  
38:07  
um it's okay to say that the  
38:09  
investigation is inconclusive  
38:12  
and if you do that just let both parties  
38:15  
know the accuser and the accused  
38:17  
that you were not able to determine  
38:20  
whether  
38:20  
any harassment occurred and  
38:23  
you know thank them for cooperating in  
38:26  
the investigation

38:27  
and let the accuser know that if  
38:30  
anything happens in the  
38:32  
future to please be back in touch and  
38:35  
we'll look into that as well  
38:48  
okay best practice number eight  
38:52  
at least in my experience with  
38:54  
harassment investigations  
38:56  
and also defending employers in  
38:58  
harassment lawsuits  
38:59  
there is always room for improvement  
39:04  
when the investigation is over or when  
39:06  
the case settles or the  
39:09  
grant summary judgment i hope to you to  
39:12  
your side  
39:13  
uh it's always a good idea to look back  
39:16  
and see what could we have done better  
39:19  
what could we have done that might have  
39:20  
prevented this from happening altogether  
39:23  
um and usually there are some things  
39:26  
that could be done better  
39:27  
i i think i can't even think of a case  
39:30  
where we didn't have that happen

39:32  
so some of the things you might want to  
39:34  
look at is were are existing policies  
39:36  
adequate should they be adapted or  
39:38  
updated  
39:39  
maybe they're out of date do the  
39:42  
employees need to have more training  
39:44  
on how to behave in the workplace  
39:48  
do any of our practices need to be  
39:50  
changed  
39:51  
i deserve you know  
39:54  
our reporting or harassment reporting  
39:57  
options  
39:58  
adequate there are all kinds of things  
40:00  
you can look at and maybe everything was  
40:02  
perfect and you just got really unlucky  
40:05  
but um we usually do find that there are  
40:08  
some things that could be improved  
40:10  
and then once you find those things go  
40:12  
ahead and make the changes right away  
40:14  
because it's best to do this while it's  
40:18  
fresh in your mind  
40:19  
you're going to move on everybody's

40:21

going to forget about it

40:22

and a few years later you'll get a

40:25

harassment claim again

40:27

and you'll still have all these old

40:28

policies in place that you should have

40:30

fixed

40:32

years before so um go ahead and do it

40:35

while it's all still fresh in your mind

40:37

and do whatever you need to do to adapt

40:39

your policies

40:40

and of course in consultation with your

40:43

employment council

40:50

follow up this is number nine put it on

40:53

your calendar

40:54

and what i mean here is follow up with

40:56

the accuser

40:58

um especially if there was an

41:02

inconclusive

41:03

resolution or if there was a resolution

41:07

short of termination of the alleged

41:09

harasser

41:11

and maybe they're still working together



41:14  
just go ahead and mark on your calendar  
41:16  
for the next couple of years i would say  
41:18  
you know every couple of months  
41:20  
check in with the accuser and ask  
41:23  
whether everything's all right  
41:25  
any concerns that  
41:29  
she i'm going to say she because the  
41:31  
accuser usually is a she but  
41:33  
any concerns that he or she needs to  
41:35  
bring to your attention  
41:36  
um and document the answers you get  
41:40  
and that will help you defend against a  
41:43  
claim  
41:43  
if anything else happens later on  
41:46  
so uh and and again it's one of those  
41:48  
things that will also  
41:50  
win you browning points with the eeoc or  
41:52  
with agencies or juries or courts  
41:55  
that you cared enough to follow up and  
41:57  
it's probably going to also mean a lot  
41:59  
to the  
42:00  
employee who made the complaint that

42:01

you're doing that

42:05

if you don't put it the reason i say put

42:06

it on your calendar is because if you

42:08

don't

42:08

time will get away from you we all know

42:10

how that works at least

42:12

that's the way it is for me if i just

42:14

thought to myself oh i need to follow up

42:16

with her

42:17

two months from now if i didn't put that

42:19

down on my calendar

42:21

i'd probably never do it and two years

42:22

later i'd be thinking

42:24

oh you know no i never did follow up

42:27

with that

42:27

person about how things were going

42:30

um so it's easiest to just put it on the

42:34

calendar

42:34

at certain intervals every couple of

42:36

months i would say

42:38

and that way you won't forget to do it

42:46

okay what are some new breast best

42:48

practices for the times we live in now

42:51

um i'll talk about these and then if we

42:54

have uh

42:55

if anybody has questions based on

42:57

anything we've talked about today i'll

42:59

be happy to stay as long as you

43:01

want to answer them

43:05

number one if you are doing an

43:08

investigation yourself

43:10

and you're having to do this by zoom or

43:12

some other video conferencing

43:14

product or by telephone

43:18

make sure that the people you're talking

43:20

to are not recording the interview

43:24

and make sure they're not hi

43:28

this really happens hiding somebody in

43:31

the room or in the next room

43:33

who's listening in and taking notes uh

43:36

because they can hear everything that's

43:37

going on

43:39

now they could lie to you and tell you

43:41

nobody's here i'm all by myself

43:43  
and they can still have somebody there  
43:44  
and you'll never know  
43:47  
but if you get them to  
43:53  
certify that over the call i  
43:59  
i think it probably will have a chilling  
44:02  
effect on that type of secret activity  
44:05  
in most cases the other thing and i  
44:08  
should have put this on the slide and  
44:10  
didn't  
44:10  
but if you are going to record the  
44:13  
interview  
44:14  
be sure you tell the person you're doing  
44:18  
it  
44:19  
if you're in a state where you have to  
44:20  
ask for permission  
44:23  
ask for permission and have that on the  
44:25  
recording and have the person grant the  
44:28  
permission on the recording before you  
44:30  
start asking any questions  
44:32  
um and even if you're in a state like  
44:34  
mine where  
44:36  
in north carolina we have one party

44:38

consent so

44:40

i could call somebody and record a

44:41

conversation without telling them

44:43

anything

44:44

that's legal but as an employer i think

44:46

it's better to hold yourself to a higher

44:48

standard so even in a state like mine

44:51

i would recommend that the employer get

44:53

the employee's permission

44:56

for recording the interview and get it

44:59

on the recording

45:01

and then proceed with the interview

45:05

if you're in a state that doesn't have

45:07

one party recording you know where both

45:08

parties have to consent

45:10

you're actually probably committing a

45:13

criminal

45:14

violation by doing a one-sided recording

45:18

without consent

45:20

this is one that i have

45:25

oh my gosh text messages are the

45:28

greatest things in the world

45:29

i thought they were going to be bad for

45:31

employers but

45:32

so far they could be bad for employers

45:36

but so far the ones i'm finding are so

45:39

helpful to employers so don't forget to

45:43

ask

45:43

for text messages there are

45:47

apps available that can let you dump

45:49

your text messages into a nice little

45:52

tidy file or you can just take

45:56

screenshots from your cell phone

46:00

we had a harassment case

46:06

where a woman accused her

46:09

manager of sending her

46:13

a

46:16

photo through a text message

46:19

of his private part

46:23

or should i say private part anyway

46:26

he did that we got a copy of it from her

46:29

lawyer

46:31

it was very clear what that picture was

46:33

of

46:34

we asked the manager the manager said

46:36

yes that's me

46:38

i admit it and then he said but look at

46:42

the stuff she sent me

46:44

and he sent us his text messages which

46:47

were much more complete and not

46:49

selective like hers was

46:52

and she had actually sent him videos of

46:55

herself

46:59

in very obscene poses so

47:03

you know if you don't think to ask about

47:06

text messages

47:08

you may miss that kind of thing it's

47:10

very helpful in determining who's

47:12

telling the truth and who isn't

47:14

uh the other thing you know in other

47:16

cases you may have some people just

47:18

saying the boss made inappropriate

47:20

comments

47:21

and you get the text messages and you

47:23

know the two of them are going at it all

47:25

the time

47:26  
very mutual very friendly nobody's  
47:30  
expressing any concern about anything  
47:33  
and uh you know of course if people were  
47:35  
just talking to each other in person you  
47:36  
would never have that kind of  
47:38  
evidence but the pandemic has really  
47:40  
helped us in that regard because people  
47:42  
were having to communicate  
47:44  
via text and email a lot of the time and  
47:47  
those texts have saved a couple of  
47:49  
accused individuals  
47:50  
in harassment cases so don't ever forget  
47:54  
that  
47:54  
and they're much better than email  
47:56  
because people are  
47:57  
generally more professional i think now  
47:59  
in their email communications  
48:01  
but with the text messages anything goes  
48:04  
and  
48:06  
people have not caught on to the fact  
48:08  
yet that  
48:09  
they need to be careful about what they



48:11  
say in texts as well especially with  
48:13  
people they work with  
48:14  
um also uh hopefully everybody's already  
48:18  
done this but number  
48:20  
three is if you haven't already done so  
48:22  
update your harassment and eeo  
48:25  
policies to include sexual orientation  
48:28  
and gender identity in uh the summer  
48:32  
of 20 20  
48:36  
i think 2019 or 2020 the united states  
48:39  
supreme court  
48:40  
decided that sexual orientation  
48:43  
discrimination and harassment  
48:45  
and gender identity discrimination and  
48:48  
harassment  
48:49  
are forms of sexual you know sex  
48:51  
discrimination or sexual harassment  
48:54  
in violation of title vii which is the  
48:56  
federal law that prohibits  
48:58  
discrimination and harassment so  
49:02  
if you haven't already done it when  
49:04  
you're listing the

49:05  
protected categories in your policy  
49:08  
make sure they do include sexual  
49:10  
orientation and gender identity  
49:12  
and do take those complaints seriously  
49:15  
too if you see  
49:16  
that going on for example if you have a  
49:19  
transgender employee who's  
49:22  
being harassed by co-workers because of  
49:25  
their transgender status  
49:27  
by all means follow up with that just as  
49:29  
urgently and seriously as you would  
49:32  
if a biological woman claimed that a  
49:35  
biological male  
49:37  
supervisor was harassing her  
49:41  
and then finally be aware of the law in  
49:43  
your state  
49:46  
georgia and north carolina are pretty  
49:48  
loose  
49:49  
and we pretty much just follow what the  
49:51  
federal law says  
49:53  
but other states like california have  
49:56  
adopted standards for finding workplace

49:58  
harassment  
49:59  
that are more and sometimes much more  
50:03  
victim-friendly  
50:04  
than federal law so watch out for that  
50:07  
if you have  
50:07  
operations in those other jurisdictions  
50:10  
or if you're based in those  
50:11  
jurisdictions  
50:12  
it may be more important to be worrying  
50:14  
about complying with your state law  
50:16  
than it is to worry about federal law  
50:18  
because if you're in compliance with  
50:19  
your state's law  
50:20  
you'll automatically be over compliant  
50:23  
with federal law which is  
50:25  
probably a good thing so um  
50:29  
that's all i have in the way of prepared  
50:31  
comments but again  
50:32  
if you all have any questions uh  
50:36  
i i will caution you  
50:39  
that this isn't an attorney-client  
50:40  
privileged session because we have lots

50:43

of different

50:44

companies represented here but um so

50:48

so do be careful if you have a specific

50:49

situation try to

50:51

disguise it a little bit and not provide

50:54

individually identifiable information

50:56

but

50:57

with that caution i'd be happy to answer

50:59

any questions you may have

51:06

i think we answered all the questions

51:08

that came in today

51:11

if anyone does have any additional

51:13

questions please go ahead you can email

51:15

me

51:16

at