

LEADING WITH TRANSPARENCY: RECOMMENDED PRACTICES FOR EMPLOYERS WHEN A HIGH-PROFILE INDIVIDUAL IS ACCUSED OF SEXUAL HARASSMENT

STOP THE HARASSMENT AND PROTECT EMPLOYEES:

The first priority guiding decision making should be keeping employees safe and ending the threat of harassment or retaliation. When credible allegations of harassment against an organizational leader appear to have no impact on business as usual while the investigation proceeds, a message is sent to employees and to the outside world that such allegations don't matter. Consider how risky it seems to an employee to share information about harassment with investigators while the harasser remains in a position of power over her or him. If initial allegations appear to meet a baseline of credibility, relieve the alleged harasser of supervisory duties or place the alleged harasser on leave while the prompt investigation proceeds.

BE VIGILANT ABOUT PREVENTING RETALIATION:

Make clear that retaliation will not be tolerated and hold leadership at every level accountable for enforcing this policy. Create a mechanism for employees to report retaliation, including avenues for anonymous reporting, and ensure reports of retaliation are addressed immediately and that those engaging in retaliation face discipline up to and including termination. Monitor work conditions during and after the investigation through the use of climate surveys and act if employees state that they fear retaliation.

USE AN INDEPENDENT INVESTIGATOR:

When a leader in your organization is accused of harassment, the independence and objectivity of an internal investigation can be reasonably called into doubt. Retain an independent entity to conduct the investigation, rather than the Human Resources Department or a law firm that regularly represents your company and depends on your ongoing favor and business. This is especially important if complaints have been made before and have been ignored or inadequately addressed or workers fear retaliation. Give the independent investigator access to the necessary documents and individuals. Make clear that the scope of the investigation includes anyone with relevant information, including independent contractors and former employees.

CREATE AN OMBUDSPERSON OFFICE THAT REPORTS TO THE BOARD OF DIRECTORS:

Many employees hesitate to report harassment or retaliation implicating a high-profile harasser in the company because they believe that Human Resources' first loyalty is to the company and, by extension, to the harasser. Individuals also fear coming forward because of questions about what will happen to them if they make a formal report. An ombudsperson, outside these chains of authority, can be a source for independent, confidential information that can help individuals feel more comfortable making a formal report.

FOCUS ON DETERMINING FACTS:

The focus of the investigation should be determining the facts and who within the company knew the information. The focus of the investigation should not be protecting the employer from legal liability. The investigation should investigate all allegations of harassment that violate corporate policy or the company's expectations of professionalism from its employees, not only those that potentially constitute a violation of law.

LOOK AT THE ENTIRE SYSTEM:

Ensure the scope of the investigation includes whether other supervisors knew of the problem and did not report it. In the case of a high-level executive, also look at what the board and other leadership knew and their actions.

CONDUCT THE INVESTIGATION EVEN IF THE ALLEGED HARASSER RESIGNS OR RETIRES:

The fact that the alleged harasser is no longer there is not a reason to skip the investigation. The investigation may show flaws in the reporting or accountability system that should be resolved to prevent another occurrence and can show whether supervisors or other officials with responsibility acted appropriately.

BE TRANSPARENT:

Provide regular updates about the status of the investigation, the outcome, and the corrective action to the person who made the complaint. To the extent possible, make the same information public—especially if the harassment allegations are public. If complete transparency is not possible, explain why.

DISCIPLINARY MEASURES SHOULD REFLECT THE PARTICULARLY TOXIC NATURE OF SEXUAL HARASSMENT BY CORPORATE LEADERSHIP.

Appropriate disciplinary measure should take into account at a minimum the following: the severity of the conduct; the frequency of the conduct; the effect of the conduct on those who were harassed; and the difference in power between the harasser and those who were targeted. Recognize the message that is sent by allowing a harasser to remain in a position of power and the harm that flows from that message. Be consistent: if a lower-level employee would be terminated based on his or her behavior, the same behavior should not be forgiven because someone is a high earner or famous. Rather than investing in golden parachutes for harassers, use those resources to begin to address the harm to those who experienced harassment or retaliation and to the company's culture as a whole.

DO NOT USE OR ENFORCE NON-DISCLOSURE AGREEMENTS (NDAS) OR OTHER SECRECY IMPOSING MEASURES ON THOSE REPORTING HARASSMENT OR RETALIATION:

Do not impose any NDAs, confidentiality requirements, or arbitration requirements regarding the matter on those alleging harassment or retaliation. Make clear that you will not enforce any existing NDAs, arbitration requirements or other secrecy measures that could be understood to bind individuals who experienced harassment to secrecy.

LOOK FORWARD:

Reevaluate harassment policies, training, and workplace culture that allowed workplace harassment to continue, and make sure employees have a voice in this process. Revise hiring, promotion, and retention policies to insure that the workforce that is created is inclusive and diverse at all levels. Revisit provisions in employment contracts that have the effect of ensuring organizational leaders receive payouts if they have to leave because of harassment or other unlawful behavior.

INVEST IN AND WORK WITH ORGANIZATIONS THAT SUPPORT THOSE WHO HAVE EXPERIENCED HARASSMENT:

Organizations that empower and support individuals who have experienced harassment, including survivors of sexual violence, are a necessary part of the response to harassment; employers should support these organizations to address the broader social harms created by harassment.

SUPPORT INDIVIDUALS WHO COME FORWARD TO REPORT HARASSMENT OR RETALIATION:

- Issue public statements saying that allegations of harassment and retaliation will be taken seriously. Public statements should discourage attacks on those who come forward and refrain from criticizing those who come forward.
- Create an employee benefit plan to provide funds to support employees who have experienced workplace harassment, ensuring counselors, therapists, and medical treatments are available without out-of-pocket cost to the employee, and to connect employees to independent advocates without cost. The plan should be designed so it has a fiduciary duty to act solely in the best interests of the employees.
- Give workers time off as necessary to attend counseling and treatment.
- Ensure that employees receive an appropriate list of referrals and that any Employee Assistance Program is appropriately trained and equipped to handle any such requests for assistance.
- Pay for services that address internet-based harassment or threats that employees or former employees may be experiencing as a result of having spoken up.
- If those who suffered the harassment were forced out of a job or career or lost the opportunity to work on high-visibility projects, provide career assistance to put these people back on their former career trajectory.