

7 Steps to Investigate Alleged Employee Misconduct

Hypo 1: What should I do if the alleged victim asks that I keep the matter confidential and not investigate? (slide 1 of 2)

Marta is your best friend and is also an employee whom you supervise. One day she tells you that a co-worker, Richard, often hugs her and strokes her hair against her will at work. Whenever Richard tries to hug or touch Marta, she pushes him away, but he always just makes a joke out of it. When you ask Marta if she wants to file a sexual harassment complaint against Richard, she tells you she doesn't think he's really sexually harassing her. Marta thanks you for listening to her, and asks you not to tell anyone what she told you. She says she wants to keep the matter confidential and take care of it herself. What are you going to do?

**Hypo 1: What should I do if the alleged victim asks that I keep the matter confidential and not investigate?
(slide 2 of 2)**

- a. Immediately report Marta's allegations.
- b. Do not report the harassment, but immediately meet with Richard to counsel him about the organization's harassment prevention policy and expectations for employees.
- c. Give Marta an opportunity to handle the problem on her own, but report the harassment if it continues.
- d. Do nothing. Marta said that she didn't think that Richard's actions amounted to sexual harassment and she asked you not to tell anyone about the issue.

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Hypo 5: What should I do if an employee brings a lawyer, co-worker, or friend to an investigative interview?

Andrea is accused of misusing her business credit card for personal reasons. An audit reveals the problem. When you tell Andrea that you want to interview her about her business credit card usage, she demands to have her attorney, a co-worker, and her mom present at the interview. Who must you allow to attend the interview?

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Hypo 6: What if an employee refuses to be interviewed or to otherwise cooperate in the investigation?

Alicia and George are warehouse workers. Alicia reports that she and George saw another warehouse worker, Sam, selling goods stored in the warehouse to his cousin. You notify Sam and George that you need to interview them. However, Sam and George refuse to be interviewed as part of your investigation. What should you do?

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Hypo 7: What if a public employee refuses to answer questions on the grounds that he or she has a Fifth Amendment right to remain silent? (*Garrity* Rights)

Tom is in charge of the county revenue department. A recent audit indicated that several checks were issued to nonexistent people and cashed. When you try to interview Tom about the checks, he tells you that he will “take the Fifth” and assert his right not to answer questions that may tend to incriminate him in criminal activity. What do you do?

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Hypo 8: Avoid certain types of questions

Are there problems with any of these questions?

1. Tom, have you ever seen Bob racially harass someone?
2. Did you see Fred go into the office and steal the plasma television?
3. Do you recall whether Janet took her laptop with her last Thursday night?
4. Do you have any documents related to this issue?
5. What did Lucy tell you about the argument she overheard between Albert and George?
6. Tom, you say Amy is lying about Joe falsifying his expense reports. Why do you think she is lying?

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Hypo 9: How do I deal with “he said/she said” situations?

Tony complains that he overheard his manager, Betty, make a phone call during which Betty offered a bribe to a government official in order to win a contract with the State Department of Housing. You are assigned to conduct the investigation and interview Betty, who categorically denies offering the official a bribe. You cannot find any other witnesses who overheard the conversation that Tony reported.

After you complete your investigation, could you legitimately conclude that Tony is telling the truth and that Betty offered a bribe to the government official? If so, on what basis?

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**Hypo 10: Judge if the witness is being truthful
(slide 1 of 2)**

Is anything suspicious about these responses?

Q: Governor Clinton, have you ever smoked marijuana?

A: I have never violated the drug laws of my country.

Q: Governor Bush, have you ever used cocaine?

A: The White House security check asks about prior drug use, and I could pass that security check.

Q: Alice, have you ever run your fingers through Ronald's hair?

A: Not that I recall.

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**Hypo 10: Judge if the witness is being truthful
(slide 2 of 2)**

Q: Henry, have you ever told an ethnic joke in the workplace?

A: Not really. Speaking of jokes, you should hear the ethnic jokes that Todd and Mark tell around here.

Q: Susan, what did you do to lock up the building last Monday night?

A: I always I check that the security cameras are turned on and working, set the alarm, then exit the building within 60 seconds.

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Hypo 11: Should I discipline employees if they discuss the investigation with other employees?

Rashid files a complaint against Aaron accusing him of making derogatory comments to Rashid about Jews. You are in the process of investigating the matter when a witness tells you that Aaron is discussing the investigation with other employees, including Rashid. Your policy prohibits employees from discussing investigation details with anyone.

Which of the following behaviors may be unlawful?

- a. Disciplining Aaron for discussing the investigation with his co-workers
- b. Disciplining Aaron for discussing the investigation with Rashid
- c. Both
- d. Neither

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Hypo 12: How much detail about the complainant's and witnesses' statements should I give the accused?

Isabel informs you that Alice has been using time off that she has claimed under the Family and Medical Leave Act to run her own greeting card business from her home during work hours. Isabel tells you that Alice told her and Jerry (another employee) about this scheme. When you talk to Jerry, he corroborates what Isabel has reported but asks that you keep his name out of the investigation. Alice denies abusing FMLA time and demands to know who accused her.

Before you conclude your investigation, whose name(s) should you provide Alice?

- a. Isabel's
- b. Jerry's
- c. Isabel's and Jerry's
- d. Neither

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**Hypo 14: How would you improve upon this report?
(slide 1 of 3)**

Overview

On January 5, 2009, Maria filed a complaint alleging that her supervisor, Brandon, grabbed her rear end and kissed her against her will while they were dancing at the holiday party. I investigated the allegations. The facts I uncovered and my conclusions are described below.

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**Hypo 14: How would you improve upon this report?
(slide 2 of 3)**

Facts

The office holiday party was held at a local hotel on December 18, 2008. At the party, Brandon became very drunk and started dancing with Maria. It seemed clear that Maria enjoyed dancing with Brandon at first. However, when a slow song came on, Brandon pulled Maria close to him, grabbed her rear end, and kissed her. Maria pushed Brandon away and ran off the dance floor, crying and yelling.

Another female employee told Maria after the party that Brandon had done the same thing to her at the 2007 holiday party.

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**Hypo 14: How would you improve upon this report?
(slide 3 of 3)**

Conclusions reached

Although Brandon denied that he grabbed Maria's rear end and tried to kiss her, I conclude that he in fact did these things. Brandon's actions at the holiday party violate our organization's policies and constitute unlawful sexual harassment. Because Brandon also touched another female employee against her will in 2007, I recommend that he be terminated.

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**Hypo 17: Can I be sued successfully if I mistakenly
discipline an innocent person?
(slide 1 of 2)**

Vanessa complains that Antonio threatened to terminate her in retaliation for her refusal to join in a kickback scheme with a vendor. Antonio denied the allegation and says that, in fact, he overheard Vanessa discussing a kickback with a vendor. You conduct a thorough investigation and decide that Vanessa is telling the truth. Based on your conclusion, Antonio is fired and the vendor's contract is terminated.

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**Hypo 17: Can I be sued successfully if I mistakenly discipline an innocent person?
(slide 2 of 2)**

Six months later, your organization's attorney calls and tells you Vanessa has been caught soliciting a kickback from another vendor and has admitted soliciting a kickback from the first vendor. The organization's attorney also tells you that Antonio is now suing the organization for wrongful termination and defamation. What do you tell the attorney?

- a. "Um...I'm sorry, but you've reached the wrong number."
- b. Hey, I did a good job. Mistakes happen. We'll see them in court!"
- c. "Settle the case!"

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Thank You!

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