

MODEL QUESTIONS FOR INVESTIGATING A SEXUAL HARASSMENT COMPLAINT

(August 9, 2021)

Interview the Complaining Employee

Complaining Employee's Background

- How long have you worked for [EMPLOYER]?
- Did anyone recruit you? If so, who?
- If not, how did you hear about the position?
- Who interviewed you before you began working here?
- Did anyone else interview you for any other positions you have held here? If so, who, when, and what position?
- Who hired you for the position you now hold?
- Did anyone promote or rehire you during your employment here? If so, who?
- What is your current job title?
- Who is your current supervisor?
- What are your job responsibilities?
- What is your current compensation (including regular pay and any bonuses)?
- What other job titles have you held in the past and when did you hold them?
- Who were your past supervisors and when did they supervise you?
- What were your past job responsibilities in these prior positions?
- What was your compensation in prior positions here (including regular pay and any bonuses)?
- Have you received any promotions, raises, or other acknowledgment for your work during your employment here? If so, please describe it and the circumstances leading to it.
- Who nominated or supported you for the promotion, raise, or acknowledgment?
- Have you received any sort of counseling or workplace discipline during your employment here? If so, please describe it and the circumstances leading to it.
- Who carried out that counseling or discipline?
- Apart from this instance, have you filed an internal complaint during your employment here?
- If so, what did your prior complaint allege and how was it resolved?
- Have you filed an external complaint during your employment here?

- If so, what did your prior complaint allege and how was it resolved?

Complaining Employee's Relationship with the Alleged Harasser

- How long have you known [ALLEGED HARASSER'S NAME]?
- Did you know [ALLEGED HARASSER'S NAME] before you joined [EMPLOYER]? If so, in what capacity (business, personal)?
- Do you work with, work for, or supervise [ALLEGED HARASSER'S NAME]? If so:
 - how long have you worked with [ALLEGED HARASSER'S NAME]?
 - how much time do you spend in direct contact with [ALLEGED HARASSER'S NAME] and where does this contact occur (inside and outside the office)?
 - if the contact occurs at work, who else typically works in this area?
 - has [ALLEGED HARASSER'S NAME] ever disciplined you or threatened to discipline you in any way?
 - has [ALLEGED HARASSER'S NAME] ever enhanced or promised to enhance your job duties, salary, employee benefits, or quality of work life in any way?
 - has [ALLEGED HARASSER'S NAME] ever unfavorably changed or threatened to unfavorably change your job duties, salary, employee benefits, or quality of work life in any way?
 - are there relevant documents (for example, notes you have taken, text messages, or e-mails exchanged)? If so, may we have a copy?
- Have you ever socialized with [ALLEGED HARASSER'S NAME] outside of work? If so, provide details of timing, location, and witnesses.
- Have you ever socialized with [ALLEGED HARASSER'S NAME] on any social media platform including Facebook, Instagram, Snapchat, or LinkedIn?
- Has [ALLEGED HARASSER'S NAME] contacted you outside of work? If so, provide details of timing, method of communication, and witnesses.
- Have you ever been intimately involved with [ALLEGED HARASSER'S NAME]? If so:
 - when did the nature of your relationship change?
 - what happened as a result of that change?
 - how did you feel about that change?
- Have you experienced any performance problems during the past year? If so, provide details of their nature and timing.

Complaining Employee's Allegations

- In your own words, please identify each of the events and circumstances that prompted you to initiate this complaint. Please explain:
 - what happened to you that you believe rose to the level of sexual harassment;

- who was involved (for example, who engaged in inappropriate behavior, who made any adverse employment decisions, who communicated those to you);
- anything said or done by the individuals you have identified that prompted your complaint (or that relates to your complaint), including any instances where someone has spoken to you, touched you, or otherwise treated you inappropriately at work or during any work-related activity (for example, work-related social function, business trip, or client visit);
- precisely what the individuals involved said and/or did (for example, making propositions, making requests for sexual favors, flirting, joking, acting abusively, threatening, displaying written materials, or touching);
- when these events took place;
- where these events took place;
- exactly when you found this conduct objectionable;
- what makes you believe that this event is harassment on the basis of your sex;
- what you said or did immediately before [ALLEGED HARASSER'S NAME] acted in this manner (for example, did you initiate, instigate, or otherwise demonstrate that [ALLEGED HARASSER'S NAME]'s actions were welcome);
- what you said and/or did immediately after [ALLEGED HARASSER'S NAME] acted in this manner (for example, did you participate in the behavior or indicate, by word, facial expression, or conduct, that you felt the behavior was inappropriate and wished it to stop);
- the [ALLEGED HARASSER'S NAME]'s response to your reaction;
- the names of any and all witnesses who may have information relevant to the situation at issue; and
- any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
- Please confirm that you have listed all instances of sexual harassment against you.
- Have you reported the events, circumstances, or your concerns about them to anyone affiliated with [EMPLOYER] (supervisors, managers, or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone, or other means); and
 - when you communicated with them.
- Did you discuss any of the reported events with any coworkers? If so, for each person you identified, provide details of:

- who you told;
- how many times you communicated with them;
- what you told them;
- how you told them (via e-mail, telephone, or other means); and
- when you communicated with them.
- If you did not report the events, circumstances, or your concerns about them to anyone affiliated with [EMPLOYER] (supervisors, managers, or human resources professionals), why not?
- If you made a prior report, did anyone provide you with a response to any prior report of your concerns?
- If so, what was that response?
- Did you believe that the response was adequate?
- If you believe that the response was inadequate, why was it inadequate?
- If you believe that the response was inadequate, did you follow up? If so, how and what happened?
- Did any of the incidents you have described have any impact on your job performance? If so, when and what is or was the impact?
- For any of the above questions, are there relevant documents? If so, may we have a copy?

Alleged Sexual Harassment Against Others

- Are you aware of any other instances of possible sexual harassment against another employee?
- If so, in your own words, please explain:
 - which employee experienced this possible sexual harassment;
 - what happened to the employee that you believe was sexually harassed;
 - who acted inappropriately;
 - how that individual acted inappropriately;
 - when these events took place;
 - where these events took place;
 - what makes you believe that this event is sexual harassment;
 - who may have information relevant to these matters (please provide their names);
 - how you became aware of this possible harassment; and
 - any additional facts that would help explain the context in which the situation arose (for example, discussions before or after the event giving rise to this matter).

- Please confirm you have listed all instances of sexual harassment against other employees.
- Have you reported the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers, or human resources professionals)? If so, for each person you identified, provide details of:
 - who you told;
 - how many times you communicated with them;
 - what you told them;
 - how you told them (via e-mail, telephone, or other means); and
 - when you communicated with them.
- If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers, or human resources professionals), why not?
- For any of the above questions, are there relevant documents? If so, may we have a copy?

Restate the Employer's Policy and Procedure

- We will discuss your concerns with the individuals you have identified as being involved in the subject matter underlying your complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]
- [EMPLOYER] does not tolerate harassment and will not allow any form of retaliation against you for voicing your concerns.
- Please immediately report any further incidents of inappropriate behavior that you experience, observe, or hear about.

Interview All Potential Witnesses

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting sexual harassment in the workplace.
- A coworker has made a complaint that is being investigated under the policy.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].
- You have been identified as a potential witness to the events or circumstances described in the complaint.
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Witness' Background

- How long have you worked for the employer?

- What is your current job title?
- What are your current job responsibilities?
- If you have had other job titles with this organization, please describe them (when and what).
- If you had other job titles, what were your job responsibilities in those positions?
- How long have you known [COMPLAINING EMPLOYEE]?
- How long have you known [ALLEGED HARASSER'S NAME]?
- Describe the nature of your relationship with [COMPLAINING EMPLOYEE] and [ALLEGED HARASSER'S NAME] (for example, business only or personal friends).
- Do you socialize with either [COMPLAINING EMPLOYEE] or [ALLEGED HARASSER'S NAME] outside of work? If so, provide details of how often, location and other participants.
- Do you supervise the work of [COMPLAINING EMPLOYEE] or [ACCUSED]?
- Have [COMPLAINING EMPLOYEE] or [ALLEGED HARASSER'S NAME] ever supervised your work?
- If so, has either [COMPLAINING EMPLOYEE] or [ALLEGED HARASSER'S NAME] ever disciplined, threatened to discipline, rewarded or promised to reward you in any way?
- Are you involved in making decisions about hiring, firing, promotions, compensation or other terms and conditions of employment? If so, for whom?
- Have you made or been involved in decisions about the terms and conditions of employment of either [COMPLAINING EMPLOYEE] or [ALLEGED HARASSER'S NAME]? If so, describe:
 - the decision that was made;
 - when that decision was made;
 - other individuals involved in the decision-making process; and
 - your role in the decision-making process.

Witness' Thoughts on the Work Environment

- How would you describe your working environment (for example, supportive or hostile or abusive)?
- What are examples of this characterization of the working environment?

Complaining Employee's Allegations

- Do you have any knowledge about the allegations of the complaint? If so, please fully describe:
 - exactly what you saw or heard;

- when you witnessed this;
- who you saw or heard; and
- your reaction to this occurrence (what you thought of it and what you did about it).
- Are you aware of any documents relating to what you saw or heard (for example, notes you have taken or e-mails exchanged)? If so:
 - do you know where they are maintained;
 - do you have a copy or access to copies; and
 - if so, please provide us with a copy or let us know how to obtain one.
- Are you aware of other parties who are knowledgeable about these allegations? If so, please identify them and describe their knowledge to the best of your ability.
- Can you provide any context to help us better understand these events or circumstances? Are there relevant events that occurred before or after the situation about which your coworker complained that would provide a more complete picture of the events alleged? If so, please describe them.
- Did you ever discuss this situation or any other concerns about sexual harassment with anyone else? If so, provide details of:
 - the people to whom you spoke;
 - the people about whom you spoke;
 - when you discussed this situation with these individuals, including all occasions if there were several;
 - location of each of these discussions;
 - what was discussed; and
 - any and all witnesses.

Alleged Harasser's Behavior to the Witness

- Has [ALLEGED HARASSER'S NAME] ever spoken to you or otherwise treated you in a manner that you felt was inappropriate (at work, during any work-related activities or otherwise)?
- If so, provide details of:
 - the inappropriate behavior;
 - timing;
 - location; and
 - witnesses.
- Did you ever report this incident to a manager or anyone else? If so, provide details of:
 - who you told;

- when you told them; and
- what occurred as a result?
- If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
- Did you ever discuss this incident with anyone else apart from management? If so, provide details of who you told and when.
- Did you ever prepare notes to describe the incident? If so, please provide a copy.

Alleged Sexual Harassment Against Others

- Have you ever seen or heard others in your workplace speak to or otherwise treat anyone else in a way that you believe suggests sexual harassment (at work, during any work-related activities or otherwise)? If so, please fully describe those instances, including:
 - what was said or done;
 - by whom;
 - whether that person is a supervisor or manager;
 - why you found it suggested sexual harassment;
 - when this incident took place;
 - where this incident took place; and
 - the identity of any witnesses.
- Did you ever report these incidents to a manager or anyone else? If so, provide details of:
 - who you told;
 - when you told them; and
 - what occurred as result.
- If you did not report the matters you have just identified to anyone affiliated with [EMPLOYER] (supervisors, managers or human resources professionals), why not?
- Did either you or anyone else prepare notes describing that incident? If so, please provide a copy. If someone else prepared notes, what did they do with them?

Restate the Company's Policy and Procedure

- We will not allow any form of retaliation against you for participating in the investigation. [REVIEW POLICY]
- You are also strictly prohibited from retaliating against others for involving you in the investigative process. [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY]
- Please immediately report any further incidents of inappropriate behavior that you experience, observe or otherwise learn about to [HUMAN RESOURCES OR OTHER IDENTIFIED PARTY].

Advise the Witness on Returning to Work

- Thank you for participating in the interview.
- [Please do not discuss the investigation or the information you disclosed with anyone else at work, including any individuals identified in this investigation.]
- Please maintain a professional demeanor when dealing with the individuals identified in this investigation and all other employees.
- This investigation is ongoing and we have not made any determination about the merits of the complaint at this time.

Interview the Alleged Harasser

Explain the Purpose of the Discussion

- [EMPLOYER] has a policy prohibiting sexual harassment.
- A coworker has made a complaint that involves you and we are investigating those allegations.
- Briefly, these allegations are [EXPLAIN ALLEGATIONS].
- The employee who has made the complaint is [COMPLAINING EMPLOYEE]. [IF POSSIBLE, DO NOT IDENTIFY THE WITNESSES WHO PARTICIPATED IN THE INVESTIGATION.]
- We will strive to maintain confidentiality by limiting disclosure to those parties who need to know and to the extent that it does not hinder our investigation. [IF THIS IS QUESTIONED, EXPLAIN THAT YOU CANNOT GUARANTEE CONFIDENTIALITY.]

Review the Employer's Anti-Sexual Harassment Policy

- It is useful for us to review the employment policies to be sure we are on the same page.
- [EMPLOYER] has a policy and practice of prohibiting sexual harassment and a commitment to investigating and resolving all complaints that are made in accordance with the policy.
- Are you aware of the policy?
- Were you provided with a copy of the policy when you began your employment?
- Did you sign an acknowledgment of having received the policy?
- As a reminder, our policy is as follows: [REVIEW POLICY].
- Examples of prohibited behavior under the policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].
- [EMPLOYER] also strictly prohibits retaliation. Our policy is as follows: [REVIEW POLICY].
- Examples of prohibited behavior under the anti-retaliation policy include: [DESCRIBE EXAMPLES PROHIBITED BY THE POLICY].

Background of Individual Alleged to Have Engaged in Sexual Harassment

- How long have you worked for [EMPLOYER]?
- What is your current job title and what job titles have you previously had?
- What are your current job responsibilities and what responsibilities have you previously had?
- What dates did you hold each prior job?
- Do you supervise anyone in this organization? If so, who do you supervise?
- Do you supervise [COMPLAINING EMPLOYEE]?
- Do you make decisions or instruct others on making decisions about hiring, firing, promotions, compensation, or other terms and conditions of employment? If so, describe:
 - instances in which you have been involved in that decision-making process in the past five years (excluding circumstances specific to this complaint, which will be discussed later);
 - when these decisions were made;
 - who else was involved in the decision-making process;
 - the role that you played in the decision-making process;
 - the decision that was ultimately made;
 - whether you supported the decision ultimately made (and if not, why not); and
 - any reaction from the parties involved at the time the decision was made.

Review the Allegations and Evidence

- We have gathered some evidence in our investigation so far and the facts that we have gathered that have caused the most concern to date are as follows: [CORROBORATING EVIDENCE].

Relationship Between Alleged Harasser and Complaining Employee

- How long have you known [COMPLAINING EMPLOYEE]?
- Describe the nature of your relationship with [COMPLAINING EMPLOYEE] (for example, supervisor of the complaining employee).
- Do you have a social or any other kind of relationship with this individual outside of work? If so, please describe.
- If that relationship is or was a romantic relationship, is it now a romantic relationship?
- If it was a romantic relationship and is not currently a romantic relationship, how did it end?
- Have you ever experienced any work-related, disciplinary, or other problems with [COMPLAINING EMPLOYEE]? If so, describe these problems and when they occurred.
- Describe how any problems were resolved and when that resolution occurred.
- If problems did exist and are still ongoing, please describe their current status.

Request a Response to the Allegations

- Please provide your account of the events alleged. Include your thoughts on:
 - the complaint's validity;
 - the reasons the complaining employee may have made this complaint;
 - facts and circumstances underlying the complaint;
 - discrepancies between the facts and circumstances as they exist and as alleged;
 - any evidence to support your view of the events; and
 - any additional facts that would help us understand the context in which the situation arose (for example, discussions before or after the event giving rise to the complaint).
- Have you made, been involved in making, or instructed others on making decisions about the terms and conditions of [COMPLAINING EMPLOYEE]'s employment? If so, please identify:
 - instances in which you have been involved in that decision-making process in the past five years;
 - when these decisions were made;
 - who else was involved in the decision-making process;
 - the role that you played in the decision-making process;
 - the decision that was ultimately made;
 - whether you supported the decision ultimately made (and if not, why not); and
 - any reaction from the parties involved at the time the decision was made.
- What factors did you consider in the decision-making process you described?
- Did the employee's sex relate at all to the decision-making process you described?
- For any of the above questions, are there relevant documents? If so, may we have a copy?

Advise the Alleged Harasser of the Next Stages

- Once the investigation is complete, the company will review all of the evidence and make a final determination.
- If the investigation reveals harassment, we may find that disciplinary action is appropriate.
- We will not allow any form of retaliation against [COMPLAINING EMPLOYEE] or any witnesses who may have participated in the investigation.
- Please maintain a professional demeanor when dealing with [COMPLAINING EMPLOYEE] and with all employees.
- [Please do not discuss the investigation or the information you disclosed with [COMPLAINING EMPLOYEE] or anyone else at work, including any other individuals identified in this investigation.]

- As always, do not engage in any verbal or physical conduct that could be considered a violation of [EMPLOYER]'s sexual harassment policy.