When you are called upon to investigate a sexual harassment complaint, there are steps that can be followed to ensure professional handling of the matter. This is important whether you are a consultant for the client company or have been called in specifically to investigate these charges.

The area of sexual harassment is one of the most perplexing to many investigators. The question of what exactly is sexual harassment is often a difficult one to answer. In addition, it is one of the few areas of employment law that could impose liability on a company for not only the actions of supervisors but actions of co-workers.

Investigation of a Sexual Harassment Complaint
Let’s take a closer look at the investigative procedure.

Documenting the Investigation
Make notes as to each step of the investigation, including dates and names of persons present. Do not ask the complaining employee or any other witnesses to give written statements. Make notes of what witnesses saw, heard and claim to know, but save your conclusions for the final report. In other words, do not mix your impressions with those of the witnesses.

Interviewing the Complainant
Confidentially and expeditiously interview the complaining employee.

Obtain all relevant facts surrounding the alleged harassment. Get as much specific detail as possible. If the employee has already put his/her complaint in writing or insists on doing this, accept the written version; do not, however, ask for or demand the complaint in writing.

Determine who the complaining employee states participated in or is in some way connected with the events.

Determine who, if anyone, witnessed the events.

Tell the employee that the company will look into the matter promptly, and will talk to the employee again soon. Assure the employee that he/she is secure from retaliation for raising the complaint, but is expected to continue doing his/her job while the matter is investigated.

Interviewing the Accused
Whether the accused individual is a supervisor or an employee, he/she should be interviewed privately and objectively. Advise the individual that an employee has complained of harassment by him/her, and that the company takes all such complaints seriously and investigates them to find out if they have any merit. Tell the individual that no decision has been made that the claims are true, and that this interview is to determine the facts.

If the accused individual refuses to discuss the matter, or insists on having a representative present, terminate the interview immediately and consult with the Director of Human Resources. Remind the accused individual that the company prohibits any retaliation against an employee who has made such a complaint.

Interview Other Witnesses.
If interviews of the complaining employee and the alleged aggressor result in inconsistencies on important points, other supervisors or employees who are likely to have knowledge of the incidents in question should also be interviewed. Again,
confidentiality should be a primary concern and, whenever possible, the complaining employee’s identity should not be revealed to third party witnesses.

Since it is not possible to insist that non-supervisory employees keep such discussions confidential, you should avoid expanding the investigation to non-supervisory employees unless it is impossible to develop important information from any other source. Your goal is to get the important facts established clearly, while involving as few people as possible.

Continuing the Investigation
It may be necessary to re-interview the complaining employee and/or accused employee to ask for more facts, or to check information heard from other sources. Try to keep confidential the source of contradictory information; just tell the employee the facts as you heard them and ask them to comment.

After Concluding the Investigation
If, after the investigation has been concluded, there is sufficient evidence to believe that the alleged harassment has occurred, the Director of Human Resources (or other designated company representative) should be contacted immediately. Depending upon the severity of the conduct, disciplinary action up to and including discharge should be considered.

If upon completion of the investigation it is determined that there is insufficient evidence to conclude that the alleged acts occurred, the Director of Human Resources (see above) should be advised of the investigation’s outcome.

In such a case, the accused individual should be advised of the determination, but reminded that the company’s policy prohibits sexual harassment as well as retaliation against complainants. If appropriate, the accused individual might be cautioned against engaging in the particular conduct complained of so as to avoid similar misunderstandings in the future.

Reporting Back to the Complaining Employee
The complaining employee need not be informed of the nature of any discipline imposed. However, he or she should be advised that the matter has been investigated, appropriate action has been taken, and it is expected that such conduct will not recur.

Thank the complaining party for coming forward and reassure him/her that retaliation arising from that action will not be tolerated. Encourage the employee to report any conduct that is contrary to this understanding.