

# Workplace Investigations: When to conduct them, how to conduct them and who should conduct them

**Authors: Jennifer S. Hanson**

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Employers (including municipalities) are required to provide a workplace free from harassment. Part of this obligation is implementing a written harassment prevention policy. Under *The Workplace Safety and Health Regulations*, your policy must outline a procedure for employees to make a formal harassment complaint and the steps that the employer will take to investigate the complaint.



*What types of complaints are typical?*

In our experience, the vast majority of harassment complaints fall into the following categories:

- Complaints of harassment/bullying between staff members
- Complaints of harassment/bullying of a Chief Administrative Officer (“CAO”) by council members
- Complaints of harassment/bullying of staff from ratepayers

Complaints of harassment/bullying may relate to one isolated incident (often serious) or several more minor forms of harassment/bullying taken over time.

*When should you investigate?*

Any time that a formal complaint is received from a complainant, you should investigate. The nature and seriousness of the complaint will dictate whether an informal resolution may be all that is required or whether a further formal investigation should occur.

However, there may be times when no formal complaint is received but allegations of harassment come to the employer’s attention. For example, an employee comes to you and says, “I want this to be confidential, and I don’t want you to do anything about it, but so-and-so has been harassing me.”

Depending on the seriousness of the information that comes to your attention, the employer may have an obligation to commence an investigation even where no formal complaint is submitted. This is part of the employer’s general duty to maintain a safe workplace.

## *How do you investigate?*

The following are some key considerations for your investigation:

- What questions should you ask the complainant? Do you clearly understand what the issues/allegations are and who was involved?
- What questions should you ask the respondent? Have you ensured that your questions will give them a full opportunity to understand and speak to the case against them?
- Were there any witnesses to the alleged harassment? If so, are they available to be interviewed?
- Are there any records that may be relevant to the alleged harassment – policies, documents, emails, notes, logs, video recordings, etc.? If so, these materials may need to be collected and reviewed.

Following your investigation, you should be able to answer the “who, what, when, where and how” of the complaint.

Making these findings can be difficult because a complainant, respondent and/or witnesses may have differing versions of events that can't be reconciled. In those cases, you will be called upon as an investigator to make findings of credibility. In other words, why is one person's recollection of events more believable than someone else's?

If you have concluded that the alleged incident(s) indeed occurred, the next step is to ask whether the incidents amount to harassment. For this step, you must review any relevant definitions of harassment or bullying under your policy and under *The Workplace Safety and Health Regulations* and whether the facts fall within those definitions.

Finally, if you have found that harassment has occurred under your policy and/or *The Workplace Safety and Health Regulations*, how will you communicate the results to the complainant and to the respondent? What will be communicated? What will be the consequences to the respondent, if any? Recall that all parties, even respondents, have an expectation of privacy. Great care should be taken as to how the results of the investigation are communicated and to whom.

## *Who should conduct the investigation?*

Some investigations may be conducted in-house. Often, they are carried out by HR (common in large workplaces), but for many municipalities, it is not uncommon for the CAO (or their delegate) to be tasked to carry out such investigations.

However, there are times when you may wish to consider hiring an external investigator. This is recommended when:

- there may be bias or an appearance of bias on the part of an internal investigator.
- the incident(s) complained of are complex, very serious or sensitive in nature.
- there are many witnesses to be interviewed.
- there are many materials to be reviewed.
- the findings will come down to credibility (in other words, picking one person's version of events over

another).

There are many sources of trained workplace investigators, including both human resource professionals and lawyers. Ideally, your investigator will have expertise in crafting and asking questions, assessing credibility, and applying the relevant law to come to a decision. It is also important for your investigator to have emotional intelligence, as a good investigator will ensure that each complainant, respondent and witness feels comfortable, heard and ultimately treated fairly. An investigator who is familiar with the particular dynamics and considerations important to a municipality is also an asset.

We encourage engaging with legal counsel early in the process if you have questions or concerns during your workplace investigation.

For helpful resources such as events, news and more articles like this, visit the **Knowledge Centre** of our website.

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