





Responding to Harassment Complaints

Zachary Florent
EEOC Seattle Field Office




 U.S. Equal Employment Opportunity Commission

1



Receiving the Complaint

Guidance for First Responders

 U.S. Equal Employment Opportunity Commission

2

Understanding Employee Complaints

- ▶ Harassment is fundamentally perceived as unfair treatment
- ▶ Most employees wait months before ever complaining – and the worse the situation, the longer they wait
 - Cost/Benefit (Safety) Analysis – will complaining making things better or worse?
- ▶ Employees that perceive FAIRNESS in the process are more likely to accept the outcome, even if it's not the outcome they wanted
- ▶ Doing it right from the beginning



U.S. Equal Employment Opportunity Commission

3

Active Listening

- ▶ When a person files a complaint about harassment or discrimination, they are seeking help. They have experienced a hurtful and often dehumanizing event. Such events can be emotional so they deserve your full attention and proper respect.
- ▶ Listening is essential to obtain their confidence and document the case. Rude behavior can be detrimental in such a situation.



U.S. Equal Employment Opportunity Commission

4

Receiving Complaints – First Contact Guidelines

- ▶ Thank them
- ▶ Express appreciation and prompt for more
- ▶ Name the feelings, e.g. empathy
- ▶ Get the contours of the issue
- ▶ Determine safety
- ▶ Finish with action
- ▶ Listen. Listen more.
- ▶ Give them all the time they need and then some more.



U.S. Equal Employment Opportunity Commission

5

First Contact – What Not to Do

- ▶ The initial complaint is about them; not the time for “full investigator mode” more.
- ▶ No hot potatoes. You are “it.”
- ▶ Don’t judge. Ask an open-ended question until the impulse goes away.
- ▶ Don’t debate or argue.
- ▶ Don’t cast blame or assign responsibility
- ▶ Avoid
 - “Why” questions
 - “What was your part in it?”
 - Closed ended questions, e.g. Did you tell them to stop?
 - Directly asking what they want



U.S. Equal Employment Opportunity Commission

6

Tip: Lead by Example

- ▶ Walk the walk – it's not enough to hire trainers and implement great policies. There has to be real buy-in from senior leadership.
- ▶ Magnifying Effect – the higher you are in organization, the more people look to you to signal how they should behave.
 - Prioritize respectful interactions
 - Recognize that rude behavior requires intervention



U.S. Equal Employment Opportunity Commission

7



Tip: Welcome Complaints

- ▶ Goal is to get employees to raise concerns as soon as they arise, when the issue is likely smallest and most manageable
- ▶ Which means we must try to get the best results while problems are most manageable
- ▶ Counter productive to label those raising early issues as “whiners” or “thin skinned”



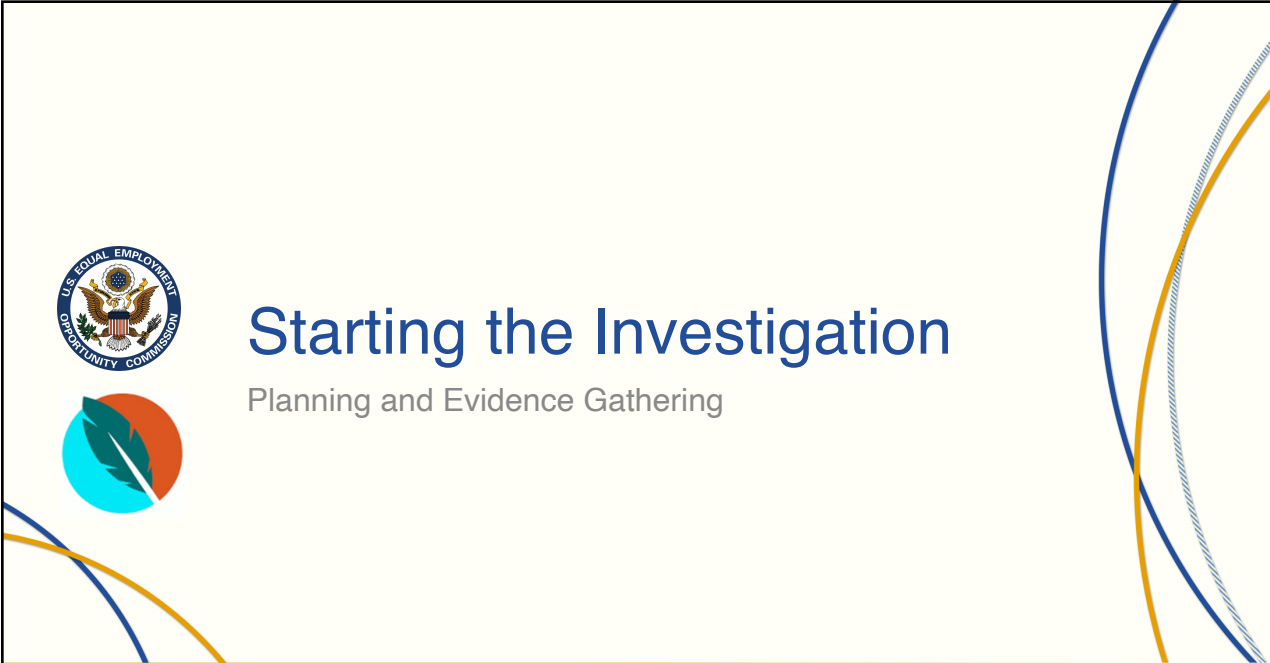
U.S. Equal Employment Opportunity Commission


8



Starting the Investigation


Planning and Evidence Gathering




 U.S. Equal Employment Opportunity Commission

9

Map Your Investigation



- ▶ Planning Tool
- ▶ Working Document Throughout Investigation
- ▶ Offers Efficiency/No need to Re-review Cases
- ▶ Works in Conjunction with Theories of Discrimination and Models for Analysis
- ▶ Can use it to draft recommendations
- ▶ Come in many forms/Substance is most important

 **EEOC Training Institute**

10

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)

**INVESTIGATION
MAPPING TOOL**

11

Sarah – Part I

- Sarah is a tribal member and works for a tribal government entity. She has been employed there for two years and is well-regarded for her work ethic and contributions.
- Recently, she started experiencing unwanted attention from a co-worker, John, who has been making inappropriate comments and gestures. Over the past month, Sarah noticed that John frequently makes comments about her appearance, such as saying she looks "really good today" or asking her if she "dresses up for him."
- Initially, she brushed it off, thinking he was just being friendly. However, the comments escalated to more personal remarks, including asking if she has a boyfriend and suggestions that they should "hang out" outside of work.

CASE STUDY 1

12

Sarah – Part II

- In addition to the comments, after some time, John began invading Sarah's personal space, standing too close to her desk and leaning over her while she works. Sarah now feels uncomfortable and anxious, especially when she is alone in the office with him.
- Sarah decided to speak to her supervisor about the situation. The supervisor acknowledged her concerns but suggested that she should try to "ignore" John and that he might just be "joking."
- Unsatisfied with this response, Sarah reached out to the TERO to file a formal complaint.

CASE STUDY 1

13

Now What?

- Identify the Basis and Issues
- Identify what evidence we have and what we need
- Strategize where/how to get the evidence you need to make a determination

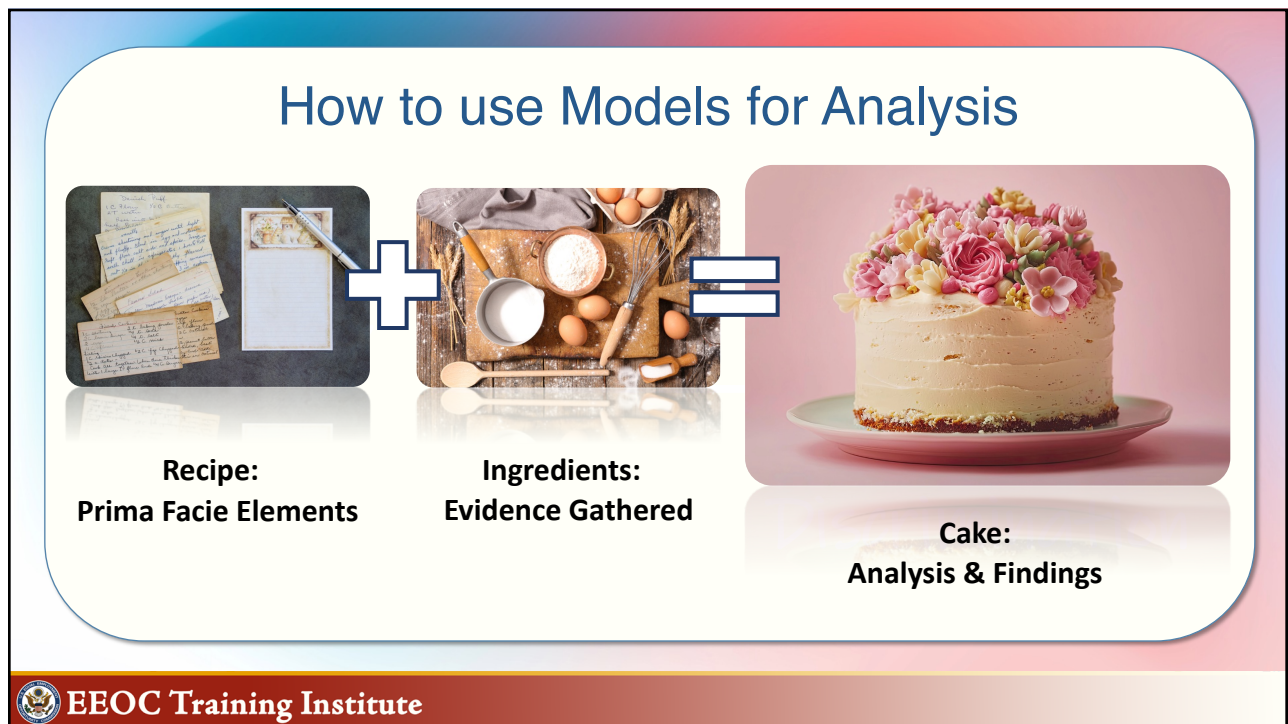
CASE STUDY 1

14

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)
<i>Sexual Harassment</i>	<i>Sex</i>	

CASE STUDY 1
MAPPING TOOL

15



16

Prima Facie Case: Harassment

1. Complainant was subjected to unwelcome comments/conduct based on protected class
2. Conduct resulted in tangible employment action **or** was sufficiently severe or pervasive to establish hostile work environment

Possible Defenses:

1. Harassment didn't happen
2. Conduct was welcome
3. Not sufficiently severe or pervasive
4. Employer did not know about harassment

Essence of an investigation is
VERIFYING
allegations
TESTING defenses

Hostile Work Environment

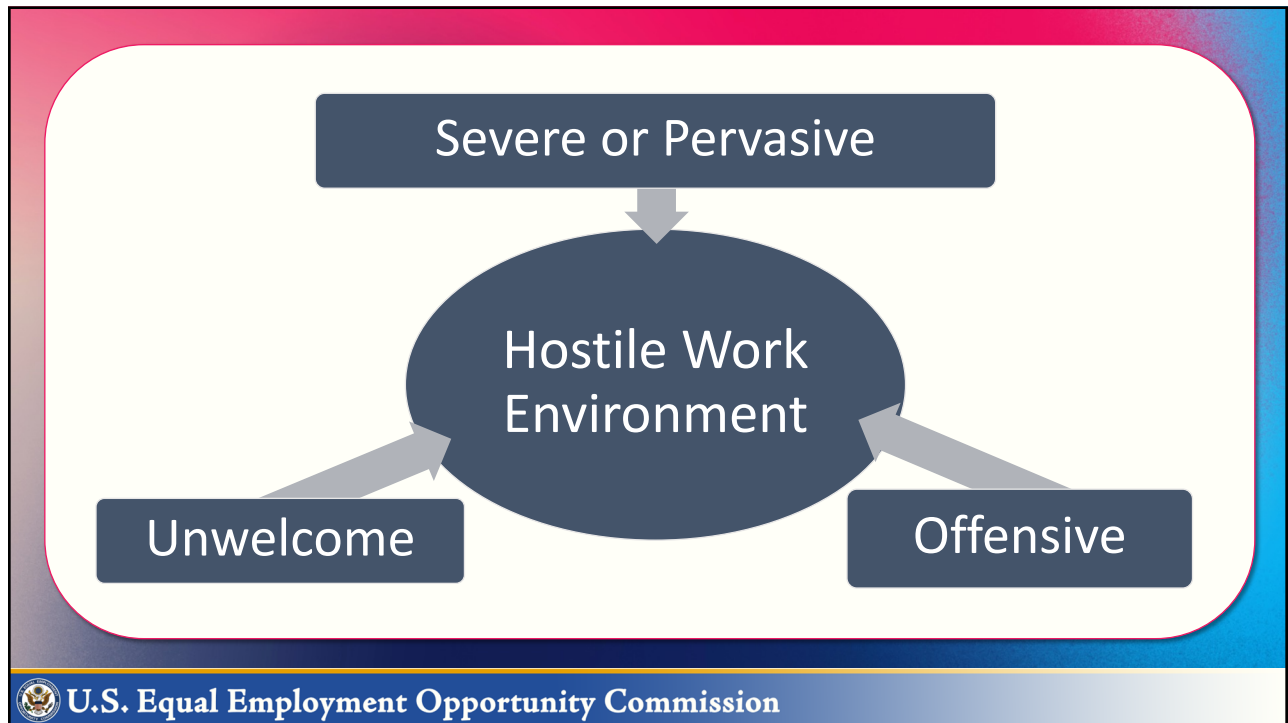
Unwanted conduct either so **severe** or **pervasive** it unreasonably interferes with a person's work or creates an intimidating, hostile or offensive work environment.

Severe

A reasonable person's sense of safety would be shattered by a single occurrence

Pervasive

Culmination of occurrences over time gradually creates hostile environment



19

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)	CASE STUDY 1 MAPPING TOOL
<i>Sexual Harassment</i>	<i>Sex</i>	<i>Interview Sarah</i> <i>Interview John</i> <i>Interview Supervisor</i> <i>ID/Interview wits and others subjected to similar treatment</i>	

20

Reasonable person standard

- To decide whether a reasonable person would find the work environment hostile or abusive, you must look at all the circumstances. These circumstances may include:
 - frequency of the conduct
 - its severity
 - its duration
 - physically threatening or humiliating
 - unreasonably interfered with the complainant's work performance
- No single factor is required in order to find a work environment hostile or abusive.
- Reminder: Reasonable person *in the complainant's shoes!*

Interview Preparation

- Know the facts of the case (basis, issue, theory/approach for investigation)
- Determine who should be interviewed and why (CP, R witnesses, CP witnesses, 3rd party witnesses)
- Know the witnesses' alleged role in CP's allegations
- Prepare relevant topics (pre-prepared questions/outline of topics)
- Decide where the interview will be (telephone, in-person at office, another location)

Starting the Interview

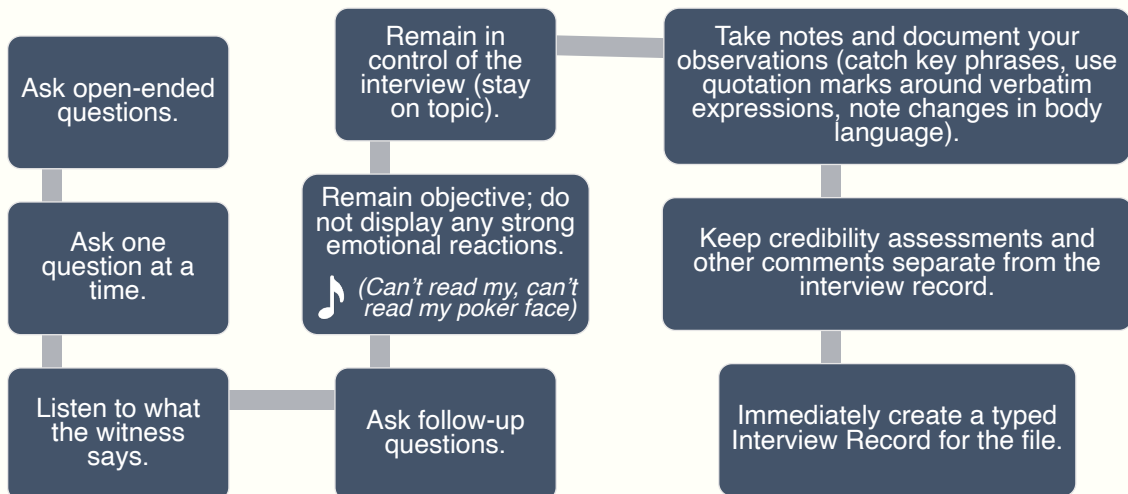
Introduce	Introduce yourself – Name/Role/Agency
Identify	Identify your Witness - Are you talking to the right person?
Establish	Establish Rapport, Address Concerns, and Maintain Control
Explain	<div> <div>Explain the purpose of the interview</div> <div> <ul style="list-style-type: none"> • Purpose of TERO, your role/authority • Explain role as a neutral fact finder • Explain how the information obtained will be used • How the record of the interview will be maintained • Address confidentiality concerns </div> </div>



EEOC Training Institute

23

Conducting the Interview: Traditional Method



U.S. Equal Employment Opportunity Commission

24

Two Types of Interview Questions

Closed Questions

- ▶ Can usually be answered "Yes" or "No"
- ▶ Discover little new information
- ▶ Are used for wrapping up and confirming a subject
- ▶ Limit the information flow

Open Questions

- ▶ Cannot be answered "Yes" or "No"
- ▶ Require a narrative
- ▶ Discover new information
- ▶ Keep the person talking



U.S. Equal Employment Opportunity Commission

25

Assessing Credibility

- Consider potential observations of victim's demeanor before / after harassment
- Serial harasser's reputation: Testimony of others may help show track record of similar conduct.
- Past discipline of harasser: Did employer take appropriate action on previous complaints? Was it effective?

- **Can't determine credibility by physical appearance, dress, or personal hygiene, or other characteristics.**
- **Poor management or skills are not harassment unless CP was targeted because of a protected characteristic.**
- **An equal opportunity harasser can expose employer to liability.**



EEOC Training Institute

26

TIPS for Investigating Hostile Work Environment Cases

- Get the explicit/detailed information
- Don't gloss over egregious stuff out of discomfort
- Record the details / don't give only conclusionary descriptions in your notes
- Be sensitive, not judgmental or overly sympathetic



EEOC Training Institute

27

Ken – Part I

- Ken has been working at the tribal casino for about a year. He enjoys his job and has built good relationships with colleagues and regular patrons.
- During a night shift, Ken was serving drinks at a table when a patron, Mike, began to make inappropriate comments on his appearance.
- Despite Ken's attempts to deflect and maintain professionalism, the comments became more overtly sexual and culminated with Mike groping Ken from behind while he was walking away.
- After this, Ken decided to report the behavior to his supervisor, explaining the situation and expressing his discomfort.

CASE STUDY II

28

Ken – Part II

- The supervisor told John that he should take it as a complement, and this just was part of working at casinos. Still, someone else was assigned to take over the table and Mike was given a warning about his behavior toward staff.
- During Ken's next shift, he was startled to find Mike again seated in his section. Mike apologized for his behavior and asked Ken for his phone number so he could take him out for a drink to make it up to him. Ken politely declined, but Mike kept on.
- After complaining to his supervisor again, Ken was sent home and the next day, found he was moved to morning shifts and his hours were dramatically reduced.
- Ken then reached out to the TERO to file a complaint.

CASE STUDY II

29

Now What?

- ▶ Identify the Basis and Issues
- ▶ Identify what evidence we have and what we need
- ▶ Strategize where/how to get the evidence you need to make a determination

CASE STUDY II

30

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)
<i>Sexual Harassment</i>	<i>Sex</i>	
<i>Sent home, reduced hours</i>	<i>Retaliation</i>	

CASE STUDY II
MAPPING TOOL

31

Prima Facie Case: Retaliation

1. Complainant engaged in protected activity:
 - Opposition: reasonably and in good faith opposed what they believed to be unlawful practice
 - Participation: participated in the EEO process
2. Complainant was subjected to adverse treatment
3. There is a causal connection between protected activity and adverse treatment



U.S. Equal Employment Opportunity Commission

32

Retaliation: Rebuttal and Pretext

Rebuttal:

There is a legitimate, non-discriminatory reason for the treatment

Pretext:

- Above reason is not believable
- Similarly situated individuals who did not engage in protected activity were treated differently



EEOC Training Institute

33

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)
<i>Sexual Harassment</i>	<i>Sex</i>	<i>Interview Ken, Interview Supervisor</i>
		<i>Interview Mike, Review Footage, ID/Interview other wits if needed</i>
<i>Sent home, reduced hours</i>	<i>Retaliation</i>	<i>Interview Ken, Interview Supervisor</i>

CASE STUDY II
MAPPING TOOL

34

Alex – Part I

- Alex is Native American and a subcontractor for a construction company hired to do plumbing work on a large weeks-long project for the tribe. He is not a tribal employee.
- Early on, Alex noticed that a supervisor named Tom was making derogatory comments and jokes about the Native American workers. He heard Tom tell someone they should be “dancing around a fire” and that another person should go hunting “and leave the real work to more qualified people.”
- The remarks escalated as the project went on, most of them from Tom, but coming from other non-Native workers on site too. Alex himself was called a “drunk Indian” by another plumber. He also overheard Tom making rude comments about the reservation and people who live there.

CASE STUDY III

35

Alex – Part II

- Feeling disrespected, Alex decided to report the behavior to the construction company's project manager. He explained the situation in detail, including specific comments and incidents targeting him and that his colleagues felt uncomfortable and marginalized.
- The project manager laughed off the complaint, said that's just how Tom is and if Alex can't handle it, he should quit because he has no rights on a reservation. The next day, Tom's remarks toward Alex became more aggressive and threatening.
- Alex then decided to contact the TERO.

CASE STUDY III

36

Now What?

- Identify the Basis and Issues
- Identify what evidence we have and what we need
- Strategize where/how to get the evidence you need to make a determination

CASE STUDY III

37

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)

CASE STUDY III
MAPPING TOOL

38

ISSUE/HARM	BASIS/MOTIVE	EVIDENCE (HAVE/NEED)	CASE STUDY III MAPPING TOOL
Harassment	Race (Native American)	Interview Alex, Interview Tom Interview other native and non-native workers on site	
Harassment	Retaliation	Interview Project Manager	

39



Questions?



 U.S. Equal Employment Opportunity Commission

40

