

How to Deal With Employee Complaints and Concerns

Term	Definition	Introduced in:
Arbitration	The hearing and resolution of a business dispute by an impartial third party	Module 5
Code of Ethics	A guide that documents an organization's principles when it comes to conducting business with honesty and integrity	Module 2
Complainant	A person who lodges a complaint	Module 3
Discrimination	Unjust or prejudicial treatment	Module 3
Documentation	Original or official evidence or information that serves as a record of an event	Module 5
Employee Handbook	A compilation of an organization's procedures, code of conduct, policies, and expectations that guide employees' behavior in a particular workplace	Module 2
Formal Complaint	Used when informal attempts have failed or allegations are serious	Module 1
Harassment	Irritating or tormenting behavior	Module 3
Hostile Work Environment	Exists when a workplace creates a harassing, offensive, intimidating, or oppressive atmosphere	Module 1
Impartial	Fair and just; unbiased	Module 4
Informal Complaint	Used for quick problem solving in situations where the triggering event is not severe or complex	Module 1
Misconduct	Unacceptable behavior that does not conform with prevailing standards	Module 4
Whistleblower	An employee who alerts authorities to alleged dishonest or illegal misconduct	Module 1

EMPLOYEE COMPLAINTS AND CONCERNS

MODULE ONE – FAILING TO ACT ON EMPLOYEE COMPLAINTS

Module One – Failing to Act on Employee Complaints. At some point in your career as a manager, you will have to deal with complaints from your employees. Of course there are complaints, and then there are complaints. There's a difference between the employee complaining that the thermostat is set too high or too low, and an employee who says he is being threatened or harassed. Although you need to deal with all types of complaints, some require formal investigation and documentation, and some can be handled informally. Let's go back a little bit to that common complaint about the thermostat being set too high or too low. In my experience in the environment that I worked in, this was one of the number one complaints from employees. It was easy for me to empathize with my employees about the temperature because none of us had any control over the settings. The building managers controlled the heating and cooling centrally and there was no way for anyone but them to change the settings. The building managers fielded complaints about the temperature on a constant basis. And for every complaint that it was too hot, there would be an equal number of complaints that it was too cold. So I was glad that I was not the one in charge at those thermostat settings. There was no way to win. Most of the complaints that you will get will be about something that you can and must act on. It can be hard to know just what you should say to your staff when someone complains. You should remember that for most people, gathering up the resolve and going to the boss with a complaint is not an easy matter. It might be helpful to know that every manager has struggled with the same problem. You are not alone in

wondering what to do or what to say when someone complains. But I do know that the worst thing that you can do is nothing. If your staff feels as though you are not concerned with their well-being, they are not going to respect your ability as a leader. And that's why it's important to show your concern when someone complains. Even if the situation isn't going to change, like the temperature in the room, it's important to show that you hear their frustration and that you know why they feel the way that they do. While you might dread fielding complaints, you should know that those complaints can be a window into a significant issue at the company. In fact, complainers can be carrying valuable messages about your organization. The issue could be manageable - a problem that you could address and solve - or it could be a major issue where the complainer is a whistle-blower, uncovering a colossal problem. You should try to look on your employee complaints as sort of a gift. It's feedback from your employees. Remember that complaints are there whether you hear them or not. Actively seeking feedback opens a channel of communication with your employees that can get issues out into the open and lead to process improvements that otherwise might not have been made. So what happens when you don't act on your employees' complaints? If your employees see that you don't take complaints seriously, it can lead to low employee morale. If you don't care about them or about their concerns, it can certainly lead to resentment. Remember, it wasn't easy for that employee to come to you with that complaint. You need to show your respect for your employees by listening to their complaints and by acting appropriately. You should never trivialize a complaint. I remember years

ago, we were changing the layout and the structure of our cubicles. And when I went to look at my new area, I had been placed at the end of a long corridor of cubicles with no outlet - like I was the last cubicle at the end of a long, dead end street. Well, I went to my supervisor, and I told her that the configuration made me feel uncomfortable. I felt claustrophobic in that cubicle because there was no way to quickly get out of the area. My supervisor walked with me to my perspective area and looked around and said, "Huh. It doesn't bother me at all and I'm claustrophobic. So it'll be fine." And that was the end of it. I know that I felt resentment, and that I felt let down. Fortunately for me, I wasn't the only one who wasn't comfortable with that cubicle arrangement and it was changed to allow access to the main hall. But not because I had gotten any response to my own complaint. It absolutely affected my attitude toward my supervisor and toward the organization. You should keep in mind that the issue might not be important to you, but it is important to the person who complained. Ignoring complaints will not make them go away, and it could affect the morale and productivity of the entire team. When you disregard a complaint, the outcome could be a disgruntled employee and a manager who no longer engages that employee. It can create an uncomfortable situation for the rest of the people in the workplace who have to work in that negative atmosphere. Worse than not doing anything, some managers will make a bad situation worse by joking about the incident with others, or rushing to judgment and taking sides. In the worst case, you can be held legally liable for failing to act or ignoring employee complaints. Ignoring worker concerns or objections could land you in deep

trouble – both legal and otherwise. But speaking of legally, what do you legally owe your employees? Well you know what? That's kind of a tricky question. There are many federal laws that protect employees. Each state also has laws that protect employees under certain conditions. Whether or not an employee is protected by law, and whether or not you owe your employee something depends on the size of your company, the laws of your state, and what was promised to the employee in the employee handbook or the hiring agreement. The ins and outs of employee law would take a lot more than we have time to go into in this audio conference. So of course you should consult an attorney for legal advice. Don't just assume that you know the law. I was amused by one of my Facebook friends recently that was going on a rant about her company that was not giving the employees the two 15-minute breaks that they are required by law to give their employees. Well, I'm sorry to tell her that there is no law that I know of that says employers are required to give their employees two 15-minute breaks a day. A lot of companies do this. And if your employee handbook or your union contract states that, then employees do have the right. But not by any law. So what you owe your employees also depends not just on the law, but on your employee agreement or handbook or your union contract. But I'll be very general in saying that there are some things that you do owe to your employees. You owe all of your employees fair and equal treatment without discrimination. State and federal laws protect workers from discrimination based on their race, their age, their sex, their national origin, or their disabilities. You owe women equal pay for doing equal work as men. And you owe your employees the

amount that you agreed to pay them for the time that they worked. You owe your employees as safe a workplace as you can manage to give them. This includes a workplace that's safe from physical hazards as well as safe from other employees. It also includes safety from a hostile work environment, unwelcome conduct or discriminatory practices by managers, by customers, or other employees. You owe it to your employees to obey the law. You should obey all safety laws and employee laws. But in addition, if an employee comes to you with a complaint that the company is acting illegally, you should act on that complaint with a full investigation and you must not retaliate against the complaining employee. You owe your employees correct information about their rights. If you're required to post safety laws and precautions or equal opportunity information, you owe your employees that information in a language that they can understand. You owe your employees a reasonable opportunity to have their complaints heard and looked into. As a manager, you should be careful in dealing with your complaining employees. Here's a rule. Assuming that the employee is not complaining about your personal behavior, when an employee makes a complaint, you should treat that employee exactly the same as if the complaint had not been made. Don't even give the impression of retaliation. Don't discuss the complaint with other employees, and you must take appropriate action. In the next module, we'll talk about what is the appropriate action to take on employee complaints.

[End of recording.]

EMPLOYEE COMPLAINTS AND CONCERNS MODULE TWO – DEVELOP POLICIES AND PROCEDURES FOR EMPLOYEE COMPLAINTS

Module Two – Develop Policies and Procedures for Employee Complaints. How you respond to employee complaints could mean the difference between promptly and effectively solving the problem, and fighting an expensive and lengthy lawsuit. Most employee handbooks contain some sort of reference to the organization's open door policy and most managers like to think of themselves as approachable and willing to listen if an employee has a complaint. The fact of the matter is, though, that managers don't really want to listen to disgruntled employees. Let's face it – it isn't any fun and it can ruin an otherwise good day. But how you respond to complaints will set the tone. If you discourage employees from making complaints, the complaints will go underground, and they're bound to surface later as much bigger problems. Good managers actually want their employees to complain to them. No matter how satisfied employees seem, from time to time, they will disagree with the way things are going in the organization. And if they're not addressed, discontent can be infectious and spread among employees until it becomes a major problem. So rather than having employees complain to each other, you should make it easy for employees to complain to managers. They're the ones who can do something to fix the problem. And that's the key – make it easy for your employees to complain. You should treat every complaint with respect. Take all complaints seriously, no matter how minor or insignificant the issue may seem to you. It is important to the person who is complaining. Your employees want to

be heard, so you should give them every opportunity to be heard. Give the employee your full attention. Remember that dealing with employee problems and concerns is not an interruption to your work. It *is* your work. Don't take telephone calls or continue to work on your computer when your employee is talking to you. That will give the impression that the employee's concerns are not that important to you. Listen to their explanation without interrupting. Unless the person is just endlessly rambling on, let them finish their story. And if they are just endlessly rambling on, use your active listening skills and say something like, "Let me stop you for a minute and make sure that I understand." Remember that a lot of people are not good at explaining things. If you have trouble following a story, say, "How can I help?" Don't say, "What do you want me to do about it?" Be sure to phrase it in such a way that shows your concern and your willingness to help. You want to be empathetic and show that you understand the problem. But remember at this point, you've only heard one side of the issue. At this point, agreeing with your employee's position could be the exact wrong thing to do. You should not say, "Oh, that's terrible. We'll have to do something about it." Instead, you should say something like, "I can understand why you'd be upset about that." Or, "We are going to look into this." You should remain natural about issues that involve other people. If your employee is making a complaint about another person, make sure that you don't jump to any conclusions about the other people's behavior until you've actually talked to them or learned more about the situation. This is really important. When other people are involved, remember that there are two sides to the story. You should ask questions to get

a complete picture. Sometimes people who are angry or upset don't provide all the relevant information. They are usually focused on their own point of view to the exclusion of everything else. Try to understand the whole situation before you decide what to do next. Don't try to satisfy complaints with a one-size-fits-all solution. You should listen to the employee with this particular complaint at this particular time. After you've gotten a good picture of the story, what the complaint is and who's involved, you need to decide if you can handle this complaint informally or if it needs to be documented as a formal complaint. We're going to talk about formal complaint process, but not every employee complaint needs to go through the formal process for a resolution. If your employee comes to you and complains that a coworker has the radio on too loud, and for whatever reason the employee is reluctant to ask them to dial it down, that should be a relatively simple complaint to resolve. Once you have all the information, you can discuss the matter with the employee with a loud radio and let them know that they're disturbing the other workers. It would be even better if your employee handbook had a reference to noise levels and the use of headphones. But this type of complaint rarely warrants a formal investigation. You can handle it informally and get the problem solved quickly. I've often been surprised by people's tendencies not to confront a coworker with a request to stop an annoying habit. They either don't want to cause any trouble, or they don't want the coworker to know that they're the ones who complained. So they put up with the annoying behavior until they can't stand it before coming in to complain to the manager. Sometimes I would ask, well did you just ask them to

stop? And the answer was often no, they didn't. So by the time the complaint is made to the manager, it may have been ongoing and building up for some time, and not just a one-time thing. Choosing whether to handle a complaint formally or informally isn't always your choice. If the employee wants to make a formal complaint, they should always be able to do so, even if you don't agree that the issue is serious. And there are some kinds of complaints that should always be handled through a formal process, even if you think you can handle the problem informally. Employee complaints of organizational wrongdoing should always go through a formal process, and complaints of discrimination or harassment should be handled formally. A formal process for handling complaints can be included in your company's employee handbook. The process should include multiple reporting methods. Remember, you want to make it easy for your employees to complain. You should include procedures for making a complaint against an immediate supervisor to someone other than that same supervisor so your employees will not feel that they are stopped before they even start. If your organization has a Human Resources Department, they should be included in the complaint process. The process should also include avenues for appeal if an employee does not agree with the company's resolution. Your employee complaint process should be consistent. And it should be followed consistently. If employees see that the policies are not uniformly applied, you might as well not have the policies at all. The way around accusations of favoritism, pleas of ignorance, or similar unrest is by creating and following the policies in a formal employee manual. Many small businesses feel that they can't be bothered with

writing a formal employee manual. But it certainly would be in their best interest to do so. Business owners can't remember everything that they have told to every employee. It's much better to formalize the rules and give copies to everyone so that everyone is operating under the same rules. You should consider in addition to the employee handbook having a code of ethics for your company, stating in plain language the company's policy on behavior for employees and for management. The code of ethics should state clearly that the organization does not condone violation of the law or unethical business practices. It should clearly state that the organization does not permit any activity that fails to stand the closest possible public scrutiny. The code can lay out appropriate employee behavior with a statement that the organization expects its employees to conduct themselves in a business-like manner. They should not engage in sexual harassment or conduct themselves in such a way that could be construed as such by using inappropriate language, keeping or posting inappropriate materials in their work area, or accessing inappropriate materials on their computer. The company code of ethics should help make your employees feel safe in making a complaint, safe from reprisals, and safe from the original concern. You need to send the right message. To truly create an atmosphere that rewards employees for coming forward, you need to make it comfortable. Lip service won't do. In the end, the exact procedures for employee complaints are not as important as whether the employees are comfortable in using them.

[End of recording.]

EMPLOYEE COMPLAINTS AND CONCERNS

MODULE THREE – MOST COMMON EMPLOYEE COMPLAINTS

Module Three – Most Common Employee Complaints. Complaints are a normal part of working life. It's a mistake to think that if you run an efficient organization, and you relate well to your employees, that you'll never have any complaints. It's human nature to complain, even when there isn't much to complain about. Complaints vary in content and in importance, and the nature of the complaint will change depending upon who the employee is complaining to. The most common complaints that employees make in employee satisfaction surveys, which are almost always anonymous and in which you can rarely name any names, are different from the complaints that employees make to their supervisors through formal employee complaint processes. In employee surveys, pay and pay equity usually comes out on top. Employees complain that they don't make enough money, but more than that, they complain that someone else does less work for more money than they get, and that the basis for pay raises is not clear or is not followed. Also close to the top of the list on surveys is micro management or over management, and unfair distribution of duties and responsibilities, and favoritism. But these are not the type of complaints that I would expect to see when employees make direct complaints to their supervisor and identify themselves as the complainant. I don't want to minimize these complaints. Surveys can reveal system management problems that need to be addressed. You should take a good look at your management practices and make sure that you are fair and consistent in dealing with your employees, and the rules are being applied across the board. But these are not the type of

complaints that you can investigate. Survey results or anonymous complaints don't in general give you enough information to get to the bottom of the complaint and effect the corrective action. One thing you can do to encourage complaints is use your formal complaint process so that at least one of the ways that employees can report complaints can retain some level of discretion with the identity of the complainant. In my career with the Marine Corps, employees had access to the Department of Defense Waste, Fraud, and Abuse hotline where they could submit complaints without going through their supervisory chain. The complainants did have to give their information to the hotline personnel so that they could get clarification and information about the complaint. But the complainants could request that their identity be concealed from everyone connected to the complaint and to the investigation. The complaints would go from the managers of the hotline to the director of the organization that was named in the complaint. And that director would assign an independent investigator to do the investigation and the report. I served as an investigator on several complaints and I was never given the name of any of the employees who had filed the complaint. The hotline personnel kept that information confidential. So that's one way that you can help employees feel comfortable in making complaints that you can resolve. The type of complaints that are most common when complaints are made through the supervisors or through a formal complaint process are somewhat different from those that are gathered through surveys. All of these next types of complaints should require a formal investigation and resolution. Again, while I don't want to minimize other types of complaints, I'm

going to categorize these as most common serious employee complaints. At the top of the list are harassment and discrimination complaints. Harassment is any type of behavior that creates a hostile work environment. The harasser can be a man or a woman, can be the victim's supervisor, coworker, or customer. It's important to remember that harassment is illegal. Laws like the Civil Rights Act and the Americans with Disabilities Act prohibit harassing behavior on the basis of race, gender, religion, pregnancy, and disability. Employees can file harassment or discrimination complaints with the Equal Opportunity Employment Commission, which will enforce those laws by filing charges and providing remedies to the complainants. When you do receive a complaint of discrimination or harassment, first keep an open mind. Many employers have a hard time believing that discrimination or harassment is happening under their noses, and that they're not even aware of it. They often have such a hard time believing it that they dismiss the complaints out of hand and don't do an investigation because in their minds, it simply can't be true. But the thing is, it can be true. And as a manager, it's your job to provide a harassment free and discrimination free workplace. Keep an open mind. When the employee comes to you with a complaint about harassment or discrimination, you should be understanding and let the employee know that you will investigate the charges. You have to let your employees know that regardless of the outcome of the investigation, there will be no recriminations and there will be no retaliations for the complaint. Sometimes an employee will work up the nerve to come to you with a complaint, and it's hard for them. They feel vulnerable and they feel

afraid. They'll work up the nerve to complain to you, and then they'll ask you not to reveal to anyone who made the complaint. In cases of harassment or discrimination, you cannot promise confidentiality to the complainant. In order for you to investigate and to take corrective action, you have to have all the facts. You can tell your employees that you will not give out any unnecessary personal information, and you can let your employees know that you will not tolerate any retaliation. But you can't tell them that the complaint will remain confidential. One of the best practices for dealing with harassment and discrimination is to be prepared in advance of any complaints. You should make sure that all employees know that you will not tolerate that kind of behavior, and you should encourage them to come to you immediately if someone is harassing or discriminating against them. Make sure that your employees are educated in company policies and the laws concerning harassment and discrimination. The next most common serious complaint is a complaint of theft. This could be a complaint that someone has experienced a loss of their own personal property, or it could be that one employee has observed or more often, has reason to believe that another employee is guilty of stealing from the company. Again, it's important to have a written policy regarding the disciplinary actions if an employee is found to be stealing. That policy should clearly define what is stealing. While you might think that that's clear, what you call stealing might be called borrowing by someone else. As an example of the statement in a policy that you would use words like "the unauthorized removal of company assets, both tangible or intangible." That phrase doesn't use the word theft at all. And it

also doesn't indicate that the removal of the assets is intentional. Make sure that the policy is followed consistently. For example, if a manager takes home a laptop without bothering with a property receipt or a sign-out, it would be hard to say that an employee couldn't do the same thing. Your written policy should include your policy regarding searches of vehicles and personal articles, and also what to do if the employee refuses to allow a search to be conducted. Your policies should clearly state that searches are limited to anything outside of the body. An employee should never be touched in the process of a search. Again, your best practice is to be prepared with a comprehensive policy that lays out the definition of theft and the consequences. As with other serious complaints, complaints of theft should be investigated and a determination made as to the appropriate action. Another common serious complaint made to supervisors is the threat of violence in the workplace. Workplace violence can occur at or outside the workplace and can range from threats and verbal abuse to physical assaults. However it manifests itself, workplace violence is a growing concern nationwide. Workplace violence can strike anywhere. No one and no one workplace is immune. Some workers, however, are at increased risk. Among them are workers who exchange money with the public, deliver passengers, goods, or services, or work alone or in small groups during the late night or early morning hours. The best way that you as a manager can protect your employees from violence or the threat of violence is to adopt a zero tolerance policy for workplace violence against or by employees. You should also make sure that all employees know the policy and understand that claims of workplace violence will

be investigated and remedied promptly. You should secure the workplace where appropriate, install extra lighting and surveillance cameras and alarm systems. You should minimize access through identification badges, electronic keys, and guards. You should encourage employees to report all incidents and threats of workplace violence. And you should report violent incidents to the police. Make sure that victims know that they have a right to prosecute the perpetrators. The last type of common serious complaints that I want to talk about is complaints about pay and working conditions. Just like we've talked about before, your best practice in regards to complaints about pay is to be consistent in following your own policies. Just about everyone thinks they should make more money. But what really triggers the complaints is when people think that someone else is making more money for the same amount or less work. Remember that employees are protected from discrimination based on their race, their gender, religion, national origin, and disabilities. If you have two people who do the same type of work with the same amount of responsibilities and the same amount of seniority, they should be making the same amount of pay. If one employee in the same circumstances is paid more than the other, you have to be able to justify it. If the person who makes less money is a member of a protected class under the discrimination laws, it's very hard to prove that discrimination played no part in the pay difference. You could easily lose a lawsuit in this scenario, even if you had no intent to discriminate.

[End of recording.]

EMPLOYEE COMPLAINTS AND CONCERNS MODULE FOUR – IMPARTIAL INVESTIGATION

Module Four – Impartial Investigation. Investigating a complaint should be done with an open mind, a commitment, and a concentrated period of time, and some good planning. The goal of an investigation is to determine what happened. It will hopefully result in good information so that the organization can make some good decisions and make a good resolution. The person who investigates an employee's complaint should be impartial and have no personal interest in the outcome of the investigation. As I told you, I've been tasked to investigate several employee complaints that were made through the Department of Defense Waste, Fraud, and Abuse hotline. Department of Defense policy requires that an investigator be of a manager level, and not be associated with either the location of the complaint or any of the people involved in the complaint. Each time I was called on to investigate a complaint, I studied the complaint itself and the regulations that were supposed to have been violated. Then I made a list of the information that I needed to present in my report and who would be likely to have that information. I then sent a message to the director of the location of the complaint, introducing myself and my task, and asked to schedule time to interview the people that I needed to speak with, and specified the documentation that I would like to see. For example, one complaint that I investigated was in regard to worker's compensation. An employee complained that another employee, who was restricted to half-days following a work-related accident, was working and getting paid for overtime work done weekends, and by

doing so was depriving other employees from being offered the overtime work. I interviewed the employee who was receiving the worker's compensation, that employee's supervisor, the Human Resources Department, and I requested attendance and pay records for the periods for which the employee was receiving the worker's compensation. It turned out that the complainant had the story exactly correct. The employee was working four hours each day, each work day, and collecting four hours of worker's compensation for each work day as well. The employee also worked four hours on Saturday, and was getting paid overtime for those hours. But the employee had violated no rules or policies. Her restriction from her doctor was only that she could work no more than four hours per day. During the regular work week, she worked four hours a day, and she got worker's compensation for four hours a day. There was no rule in the worker's compensation laws or anywhere else that said she couldn't work four hours on the weekend. And that's what went in to my report. I included wording from the worker's compensation portion of the Federal Employees' Personnel Laws to show that the complainant had violated no laws. We did take the complaint seriously. It cost about a week of my time and a few days of travel to determine that the complaint was unfounded. But we showed the complainant that we performed due diligence in looking into the matter. Of course not every business has the resources to send an independent investigator from one location to another to look into every complaint. But you should think through thoroughly very, very carefully about the implications of who should conduct an investigation. If the person who conducts the investigation has any personal

interest in the outcome of the investigation, then the investigation might as well not have taken place. If, for example, a complaint is made against a supervisor, Mr. Jones, the last thing you want is to have Mr. Jones investigate the complaint. Think carefully about who else might have an interest in the outcome. Another employee of Mr. Jones would also be a bad choice for an investigator since that person would have to continue to work for Mr. Jones and with the complainant. The investigator should have no personal connection with anyone involved in a complaint. A good investigation starts with a good intake process. Someone has raised an issue, and someone has determined that if the issues are substantially as reported that it might be a violation of policy or law. The investigation, then, should determine whether the behavior has actually transpired, what the context of the behavior was, and other information that would clarify the event or events in question. This is called the scope of your investigation. You should be very careful to draw the lines around the scope of your investigation and avoid asking any questions that are unrelated to the facts or the issues in question. Remember that you're investigating an event or events – not people. Focus on what happened, not on the character of the people involved. Remember that there's no such thing as too much planning. Inexperienced investigators tend to dive into an investigation following their nose from witness to witness. Remember when I told you about my own investigation experiences? First, you should research the incident; research the policies or rules being violated; and make a list of what you want to know and who might have that information. All of this occurs before the investigation starts. You should also make a list of

investigative questions – questions that you have to have answered in order to complete your investigation. For example, if the investigation is in regard to a theft from a desk drawer, an investigative question would be who had access to that drawer? And have there been similar thefts? And what was the time period in which the theft took place? These types of questions about the context, the circumstances, and the facts will help you to plan to get the information that you need. So make a plan and revise it as necessary. Consider logistical and practical things that might interfere with your investigation. Make sure that the right people have been notified of a need to interview people. You should absolutely, without exception, apply a need-to-know to your investigation. Investigations are bound by the rule that no one who does not need information gets information. That might mean standing up to managers who feel that they are entitled to detailed information about investigations or managers that insist on having updates to your progress during the course of an investigation. While managers or executives may feel that the status of an investigation is their business, discussing the investigation with them could compromise or appear to compromise your standing as a neutral, independent investigator. If someone doesn't need the information to advance the investigation, then they should not be provided with any details. Most of the time, managers will need to know only that allegations call for an immediate response. Witnesses and respondents need to know enough to provide statements, but no more than that. You should never provide any information that does not immediately contribute to the investigation. You should tell witnesses if they're asking questions, "I've been

asked not to discuss that.” When managers ask for information that’s not necessary for the investigation, just say, “All of that information will be in my final report.” While as we said, planning is critical prior to an investigation, don’t wait too long to complete an investigation. Don’t unnecessarily delay in starting the investigation. Discipline too long after a serious misconduct is discovered suggests that the problem is either not important, the evidence is not that compelling, or it took that long to manufacture the correct evidence to support the conclusion. In harassment investigations, delay gives the impression of indifference, and might actually subject the complaining employee to further harassment. Balance is the key. Don’t be so hasty that you conduct a shoddy investigation or so slow that you give the impression of indifference. What do you do when an employee comes to you with a serious concern and says that he wants to make sure you’re aware of the concern, but does not want anything done or said about it at this time? I’ve had this happen. An employee has come into my office and said that I want to let you know that another employee is acting inappropriately. But I don’t want you to do anything about it just now, either because they want to try to handle it on their own first before it becomes official, or because the other employee who would know who it was who made the complaint. You can’t simply listen to complaints and not act. Imagine yourself testifying in a lawsuit, “Well, I didn’t do anything about it even though I knew of the violation because my employee asked me not to.” It’s not a good defense, and it’s not a good excuse. You have to go ahead with an investigation, especially in cases of harassment or discrimination. As a manager, you can help

your employees by teaching them productive complaining. One way to do this is to take every complaint, no matter how small, seriously. You should run every complaint through the productive complaint process to help you weed out the lesser complaints and provide a starting place for dealing with legitimate and serious issues. Here's how it works. First, define the problem. Work with the employee to pinpoint and define the complaint. Ask probing questions, such as is there something brewing that I should be aware of? Why is this bothering you? What made you come to me? You help them help you to figure it out. Next, identify the motivation. Why is this person complaining? Is it personal? Or is the employee speaking for a group? What is at stake? Then suggest solutions. Push the employee to come up with ideas to move the issue from a complaint to something more constructive. What action will help in this situation? Who needs to be involved? What is a reasonable timeline for implementing a solution? Then, resolve the issue. Once you come up with a solution, implement immediately. By putting it off, you risk having the issue grow and continue to plague the individual and the organization. And last: document, document, document. When a complaint is handled with this process, it empowers the employee to take responsibility for the situation and allows them some control over the outcome because they're encouraged to contribute. The process helps to weed out complaints and the complainers who just want to gripe or blow off steam. It also gives some consistency to the way that you handle complaints. It can also stop problems before they have a chance to snowball into something

much bigger. When so much is riding on issues that your employees bring to you, it's important to take each one seriously and treat each employee fairly.

[End of recording.]

EMPLOYEE COMPLAINTS AND CONCERNS MODULE FIVE – DOCUMENTATION AND FOLLOW-UP

Module Five – Documentation and Follow-Up. If it's not in writing, it didn't happen. How many times have you heard that old phrase? There's only one reliable way to counteract that phrase, and that is to document all incidents and complaints. Many people believe that keeping records regarding workplace investigations leads to greater risk, because it becomes challenging to hide the fact that you were aware of an important issue that should have been given attention. And that is just simply not the case. Documentation is your best friend in any employee complaint or incident. If an incident becomes a legal issue, jurors, EEOC investigators, unemployment insurance judges, and everyone in between expect employers to keep good records, and to be able to produce them when there's an issue about the actions that were taken and the reasons for doing so. So you can't avoid responsibility for your actions by not documenting them. And not documenting issues can be the quickest way to lose a case. Your position is built on nothing if it's not documented. I was involved in an employee disciplinary action that had reached the point of arbitration. The union officer who was a representative of the employee had one line of defense and one line only. And that was, "Where's the documentation?" Once it reached arbitration, whether or not we won the case came down to not so much did the employee do what we claimed that she had done, but whether we, the organization, had followed all of our own employment rules, and whether we had documentation to prove it. At any point during the arbitration had my documentation been missing or incomplete, the opposition could have claimed that my case was a matter of my

word against the employee's, with no proof to back me up. There are a growing number of rules and regulations that businesses have to adhere to in order to demonstrate that sufficient action was taken regarding workplace complaints. One of the easiest ways to create evidence to improve your case is to document all of the steps taken from the time an incident was reported to the conclusion and decision made after the completion of the investigation. Documentation can be used as a key tool for legal defense. Good documentation by supervisors and managers can mean the difference between a company winning and losing an employment- related lawsuit. For example, good documentation of an employee's pattern of poor performance and discipline can establish that an employee's termination was not related to discrimination when an employee is a member of a protected class. A manager may have a much more difficult time proving that without such documentation. A lot of managers recoil at the thought of all that documentation. They say, "I don't have time for all that. I have deadlines to meet or missions to complete," or anything else that's more important in their minds than documenting employee complaints. But the question might just be, "can you afford NOT to take the time to document incidents and the investigation process?" If taking the time to record incidents and the information means the difference between winning or losing a case in court, wouldn't it be easier to start documenting these issues now? Documentation can also benefit your business should an employee lodge a complaint after having been terminated by your company. The longer it takes for an incident to be reported, chances are that your recall of specific events when

left to memory alone will likely lead to a poor account of the events and the reasoning behind the decisions that were made, which could make your statements invalid. There are also practical reasons for good documentation. When business organizations are dynamic and individuals come and go, documents remain. So even if some of the people involved are no longer available to make a statement, the record will still be there as a written history of events. You should document all complaints. You can set up a file to keep records of all relevant documents and correspondence in regard to the complaints. Records should include factual written summaries of incidents noting time, date, location, and persons involved. It should include memos and letters, relevant work documents, meeting notes, performance evaluations, and any other relevant paperwork to document your workplace problem, investigation reviews, interviews, reports, witness statements, etc. Keeping a paper trail is essential for providing needed evidence should legal action be needed down the road. It's impossible to have too much information regarding an incident. You would much rather be safe than sorry when it comes to legal matters. It's certainly advisable to document the investigation process such as when the complaint came to the employer's attention, who was interviewed and what was disclosed, and when and where the interviews took place as well as who was present, what remedial action was taken, and why it was taken. This step is important because the employer may be required to demonstrate when and how it investigated the employee's complaint at a later time – perhaps during an Equal Opportunity Commission investigation or at a trial. There are a number of

simple steps that a company can take to ensure that the documentation related to an investigation is appropriate. First, the person drafting the notes should review them for accuracy and make sure that there are no inconsistencies. Second, the notes should be taken at the same time or soon after each interview so as to be reliable. Investigation notes drafted long after the relevant events, or worse, only after a discrimination lawsuit is filed, are less reliable than those taken at the time the employee first complained. Third, the notes should clearly identify when they were drafted and who drafted them, as well as whether anyone else was present. This step is important since the company will want to ensure the identity of who conducted the investigation and whether anyone else can corroborate the events of the notes if that investigator is no longer employed by the company or is unavailable. Fourth, if the notes are in handwriting, make sure that they are legible. If not, it's prudent to have the interviewer transcribe them into a computer version. And last, at the conclusion of each interview, or as soon as possible thereafter, the investigator should review with the witness the points contained in the notes to confirm their accuracy and, if possible, get the witness to sign and date the notes indicating their accuracy. One final issue of key importance in documenting an investigation is where and how long to maintain investigation notes. Under federal e-discovery rules, big penalties can result if a company permits the destruction or deletion of relevant documents, such as investigation notes, after the company has notice of a potential claim. To avoid such a possibility, it's generally advisable to keep any documents related to an investigation for a minimum of two years following the relevant

employee's termination and/or separation from the company. If the company reasonably anticipates litigation either by the recipient of a formal charge or by a verbal threat by an employee, all potentially relevant documentation relating to either the events or the employees should be preserved, even if the company maintains a document destruction policy. When in doubt, the safest practice for the company is to preserve the relevant documentation, including any documentation notes.

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