



TEN MISTAKES YOU ARE MAKING HANDLING EMPLOYEE COMPLAINTS
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YOU DON'T KNOW THAT EMPLOYEE COMPLAINTS ARE OFTEN LEGALLY PROTECTED



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A LOT OF LAWS PROTECT COMPLAINERS

- **Occupational Health and Safety Act** - identifying hazards, asking for inspections, or refusing to engage in unsafe acts
- **Sarbanes Oxley**-- expose fraud and misconduct in the financial industries or by publicly-traded companies, such as disclosures related to consumer financial products and deception of company shareholders



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NATIONAL LABOR RELATIONS BOARD



- Non-supervisory Employees Have a Legal Right to Come Together to try to Improve their “wages, hours, terms and conditions of employment”
- Who is a supervisor is a really technical test and may not be who you think is a supervisor
- “Terms and conditions of employment” means almost everything



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EXAMPLES


- Employee posts on Facebook “my supervisor gets the a—hole of the year award.” A co-worker “likes” the post.
- An employee discloses their hourly rate to another employee who comes to the supervisor complaining about why they are paid less than the first employee.
- Two employees complain to a manager that their supervisor isn’t allowing them their 15 min. breaks



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OTHER STATUTES PROHIBIT RETALIATION FOR MAKING COMPLAINTS

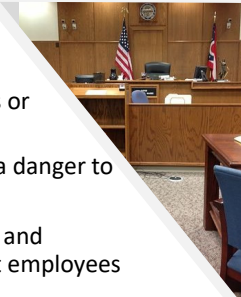
- Paid Sick Leave
- Paid Family Leave
- Wage and Hour
- Discrimination/ Harassment Laws
- New York Whistleblower Law



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PROVISIONS OF THE NY LAW

- Applies to employees who report actions or conditions they **reasonably believe** are
 - (i) violations of law, rules or regulations or
 - (ii) conditions that pose a danger to public health and safety
- Applies to former employees and contractors as well as current employees
- Retaliation is broadly defined



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YOU DON'T TAKE EMPLOYEE COMPLAINTS SERIOUSLY



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WHAT TO DO WITH A COMPLAINT

HINT: DON'T IGNORE IT

- Take the Statement, Complaint, Information
- Gather Other Information
 - Interviews
 - Documents
- Make Credibility Determinations
- Make Decisions
- Circle Back Around

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A FEW TIPS

- Make a Decision about Where the Complaint Goes Early
 - Is it a legal issue? => HR or High Level Manager
 - Is it a workplace personality issue? => Can supervisor handle it?
- Start the Investigation within 48 hours
- Neutral Party Investigates
- Take Even the Small Complaints Seriously

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YOU DON'T KNOW YOUR POLICIES AND PROCEDURES



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WHY DOES THIS MATTER?

- Policies provide the basis for your decision-making and discipline
- Policies might determine what kind of investigation you need and who should do it
- Your failure to follow your policies could result in additional complaints or liabilities
 - *Did you know? Bad investigations have been the basis for retaliation complaints*



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YOU GET FRUSTRATED WITH THE COMPLAINERS —AND IT SHOWS



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WHAT KIND OF COMPLAINER DO YOU HAVE?


- The One Time Complainer
- The Rule Follower
- The Chronic Complainer
- The Purpose Driven Complainer
- The “Conflict Entrepreneur”



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EASIER SAID THAN DONE

- Can you reframe the conversation or get the person into a position where they are productive with their concerns?
- Can someone else handle the person for a while?
- Is something else going on?
- Is it just them?
(Is it just you?)



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YOU DON'T MAKE CREDIBILITY DETERMINATIONS (or you don't think you do)



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WHAT TO CONSIDER

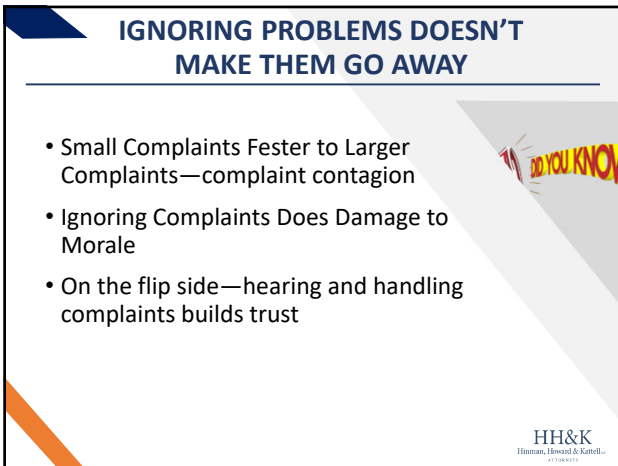
- Does the story match the documents and other witnesses?
- Does the person seem credible?
- What's the history of the person?
- **REMEMBER**—*if you say you aren't taking action because the accused denies it and you don't have other evidence, you made a credibility determination that the accused's denial was more credible*



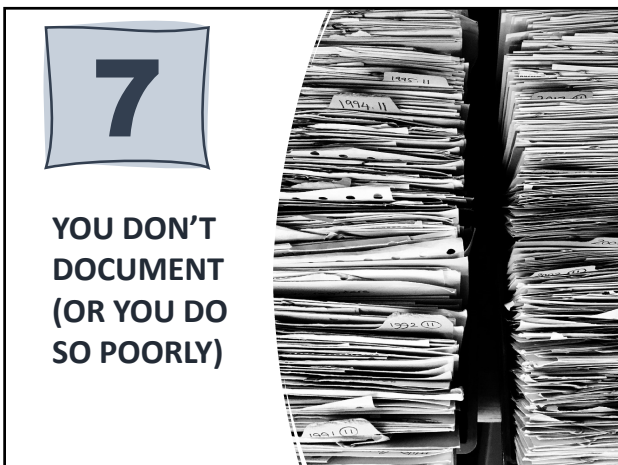
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WHY DOES IT MATTER?

- Memories Fade
 - The Statute of Limitations is 3 years for most discrimination claims and 6 years for pay related claims
- Lack of Documentation = Lack of Seriousness
- Documentation Is Your Best Defense
- The Right Documentation Is Good for Getting Everyone on the Same Page



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WHAT TO DOCUMENT


- The Complaint
- Any Investigation
- Witness Statements
- Actions Taken During the Investigation
- Outcome or Resolution
- Discipline



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DOCUMENTATION TIPS

- Be Careful of Abbreviations no one will understand
- Be Careful of Extraneous Notations
- Don't include unnecessary information in formal discipline
- Discipline that there Is No Record of the Employee Seeing Is not Helpful—Use email to follow up or have them sign the form
- Documentation We Can't Find Is Not Helpful—Where Is It Kept?

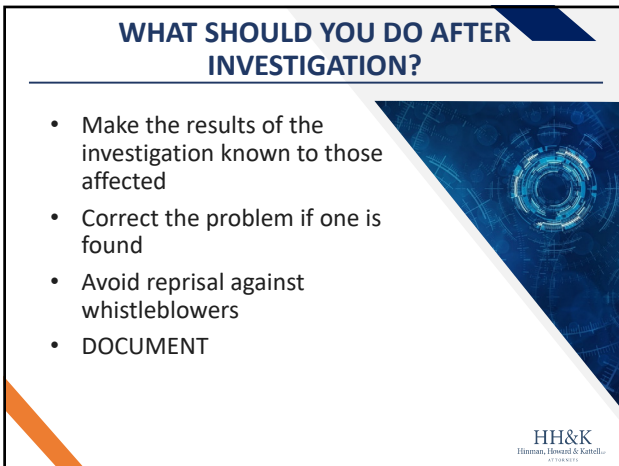


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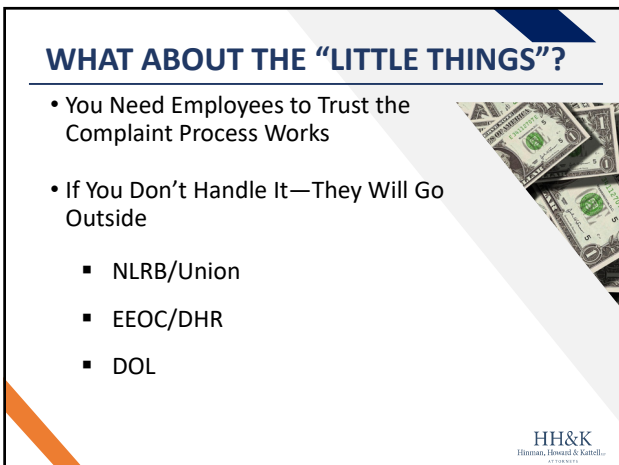
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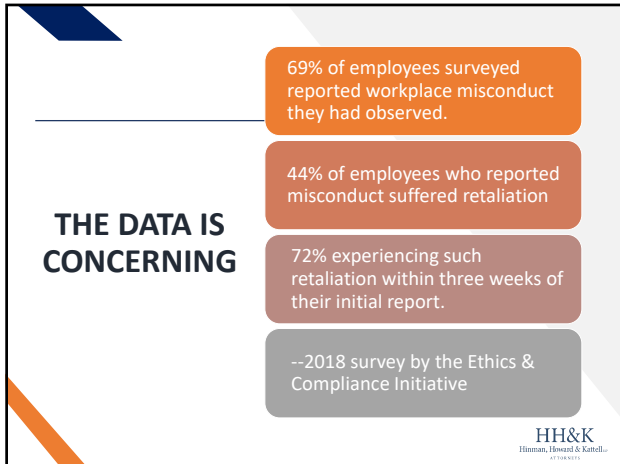
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- EXAMPLES OF RETALIATION**
- Dismissal from employment
 - Cut in work hours
 - Reschedule for less desired hours
 - Reassign to less desired work location
 - Cut in pay
 - Disciplinary action
 - More intensive or critical supervision
 - Demotion or transfer
 - Withdrawal of previously allowed privileges
 - Assignment to more difficult duties
 - Demanding increased production
 - Threats to take such actions, and/or threats to subject the employee to a lawsuit or criminal authorities, or deportation authorities.
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WHAT SHOULD YOU DO?

- Talk to those in a position to retaliate—Do They Know Their Legal Obligations?
- Check in regularly to see if there is retaliation and stop it cold
- Discipline Retaliation if Warranted
- Remember—an internal complaint is a chance to fix things. It is not a negative



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YOU DON'T TRAIN YOUR SUPERVISORS TO HANDLE COMPLAINTS



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WHAT SHOULD THEY KNOW?

- How to Do an Intake
- Where to Take Legal Complaints
- How to use Conflict Resolution for Complaints
- Handling Complaints Is Part of the Job

We train employees to do “the thing”.
We NEED to train supervisors to manage people




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YOU DON'T GET PROFESSIONAL ADVICE WHEN YOU NEED IT

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WHEN TO CALL THE LAWYER

- Someone Threatens Legal Action
- Someone Who Never Did Before Starts Talking Like a Lawyer
- You Are Uncertain
- You Need to Vent (or Hear Another Perspective)
- Before You Put Things in Writing
- The Person Potentially at Fault is Higher Up the Food Chain

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ASK

YOUR QUESTIONS

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UPCOMING EVENTS

- February 22—HH&K Lunch with a Lawyer; Paid Sick Leave and Paid Covid Leave
- March 7—STAHR HR & AI Monique Akanabi, SHRM-CP; Field Services Director for Society for Human Resource Management <https://stahrshrm.com/about.php>



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