



and 5 Bmsainh



is a national and international speaker, trainer, consultant and a recognized expert on workplace and school harassment and bullying. She conducts harassment and bullying investigations and functions as a consultant to attorneys as well as an expert witness in harassment lawsuits. Her clients are from business, education, healthcare, law, and government organizations from both the public and private sector.

D: Strauss has conducted research, written over 30 books, book chapters, and

- **Thinks clearly and analytically**



_____ - If possible, investigators should be of
a higher rank than the highest level person being investigated

_____ - should be widely regarded by all
employees as fair and trustworthy.



- **Confidentiality**
- **Retaliation**
- **Voluntary participation**
- **Provide policies**
- **Taking notes—why**
- **Who “will know”**
- **Explain process—how they fit**
- **No conclusions—fact finding**
- **My need to talk again**



Start with easy questions

Their background

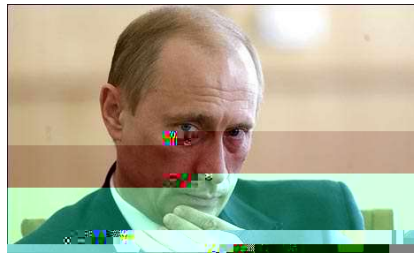
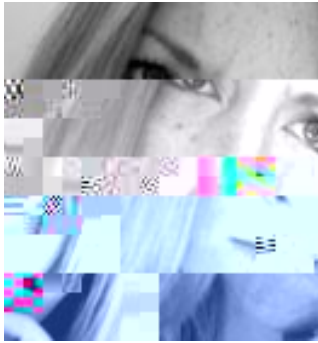
Length of time in organization

Their position

Who they work with

Do they like their job?

Questions about the organization's climate





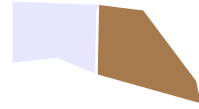
- **Ask if willing to participate**

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1. Do not unnecessarily disclose details of complaint.
 2. Avoid answering employee questions, engaging in gossip or speculation.
 3. Tell those being interviewed that confidentiality is required and document it.
 4. Don't label the alleged harasser as a harasser.
 5. If harasser is found to have engaged in the behavior – any written or oral communication should conclude only that the harasser violated the organization's policy.
 6. Do not announce that the alleged harasser has harassed.
 7. Tell harasser that he/she is being disciplined for violating the organization's harassment policy – not because he/she harassed.
 8. Stick to the facts in the final report.
 9. Consider two people for interviewing alleged harasser.

Most common circumstances for a defamation claim include:

- Discussing actions of harasser in a conclusory manner
- Making judgments regarding harasser
- Failing to limit dissemination of information gathered

Don't



1. *If possible, do not initially identify the alleged recipient or the alleged harasser. Say to the witness: "Your name has been given to us as a person who may have observed*

Occasionally, it is in the investigator's best interest to have the interviewee sign her/his statement, verifying that the information received is accurate. A formal signed statement should be considered if any of the following situations exist:

The interviewee will not be available in the future (relocating, changing companies, imminent death, etc).

You have reason to believe the interviewee may change her/his story.

The interviewee has a terrible memory or is a bad historian.

The interviewee has significant first-hand knowledge and evidence related to the case.

1 Will you tell anyone what I tell you? If so, who? Why do they need to know?

2 What happens if I refuse to talk to you?

3



Don't Create "Bad" Documents

What are "bad" documents? Document that

Are ambiguous, easily misinterpreted

Include factual errors or opinions

Do not consider consequences of statements made

Creating "Good" Documents

Threshold issue: Does it need to be created?

What purpose does the document serve?

Are there possible negative consequences?

Should the documentation be retained?

Writing Good Documents

State facts, not opinions. Where possible, cite specific incidents or behavior

Ask yourself – Did I believe the people interviewed? Does the story sound fabricated?
Would a jury believe . . . ?

Credible impression?

Denial?

Admit or deny?

Contradict?

Story changes?

Story makes sense/logical?

Reputation?

Concocting evidence?

Pattern of conduct?

Inconsistent/consistent statements?

Writings developed after incident?

Biases and motives?

Willingness to interview?

‘Detailed’ complaint?

Others who report harassment by same individual?

Timing – Delay in coming forward to complain

Plausible?

Change in victim's behavior after the incident(s)

Clarify “I don't recall” vs. “I don't remember if it occurred”

Misperceptions and misrecollections exist – not necessarily because someone is lying but they believe their perception

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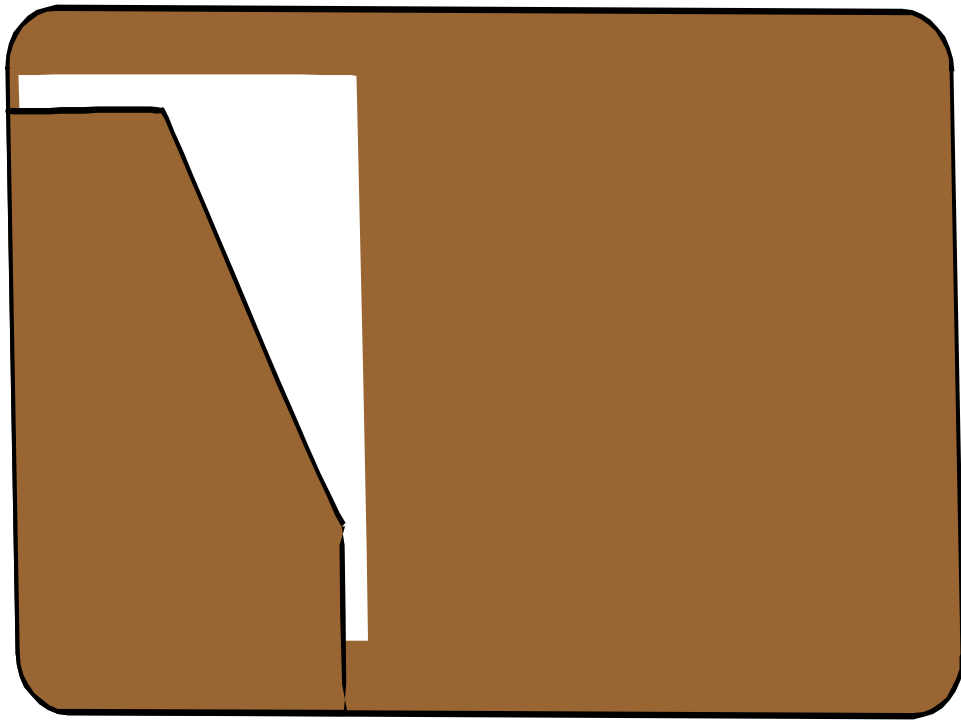
Plausible?

Change in victim's behavior after the incident(s)

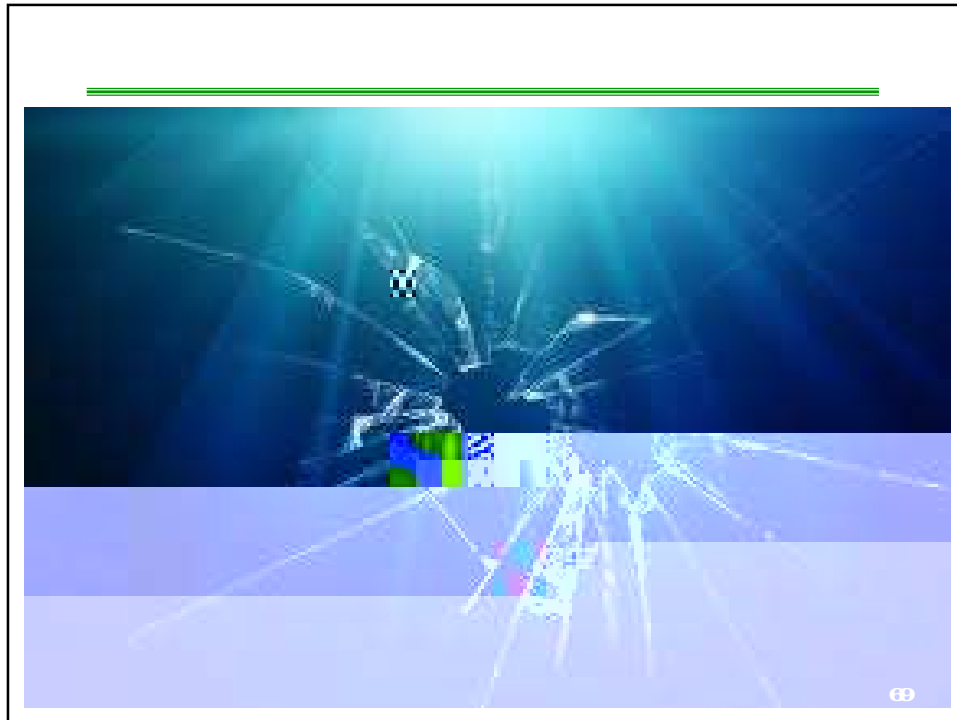
Clarify “I don't recall” vs. “I don't remember if it occurred”

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Did behavior



search for corroborative evidence
determine whether conduct was "welcome"
consider the absence of corroborating evidence
make a determination based solely on credibility; if necessary
consider badger d



Don't be afraid to make a judgment because you could be wrong



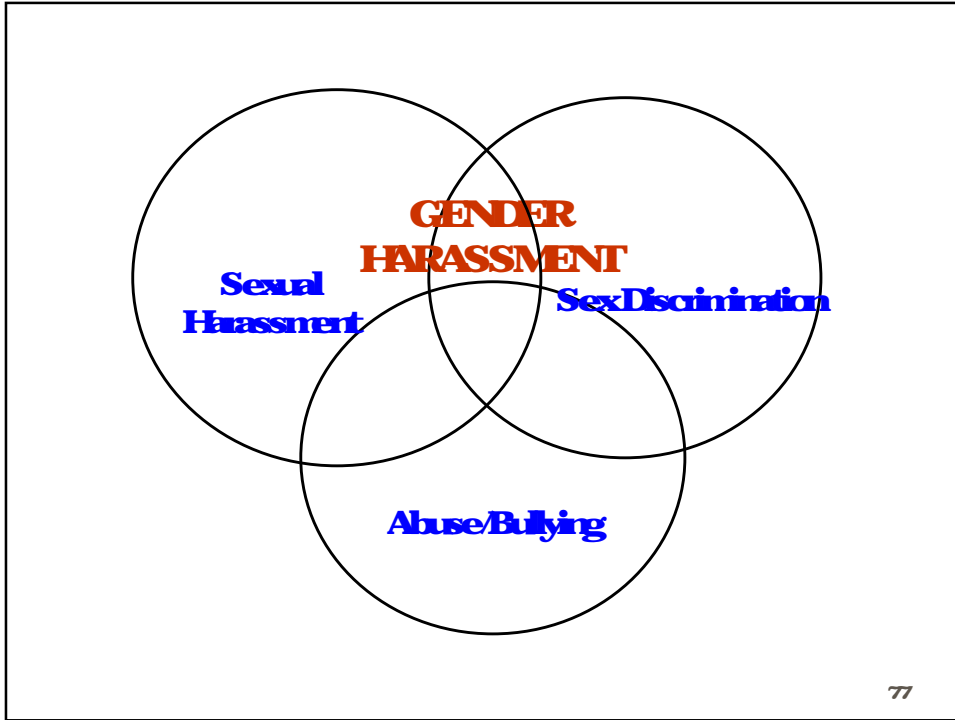
Usually there are indications regarding the truth with a 'he said/she said' scenario

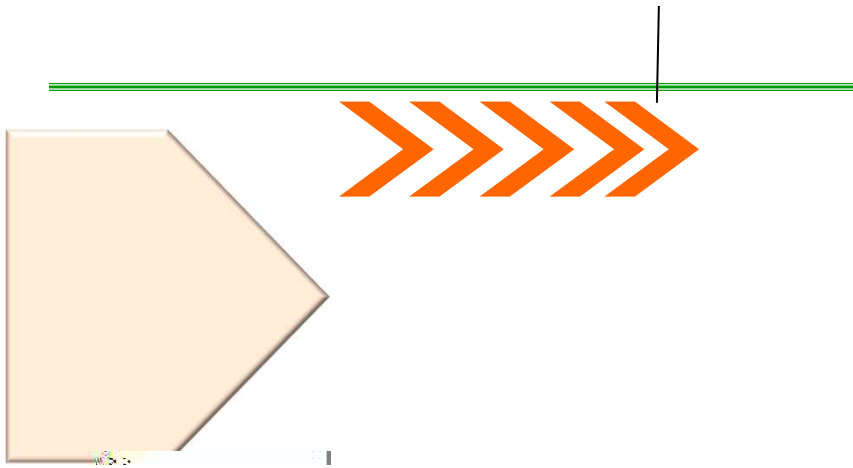
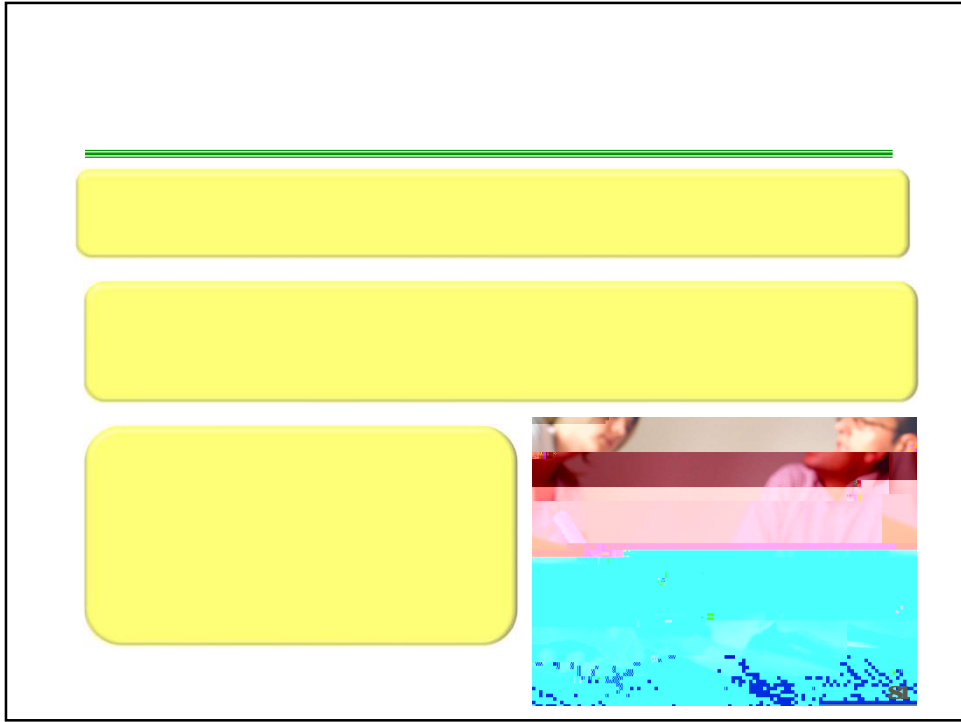


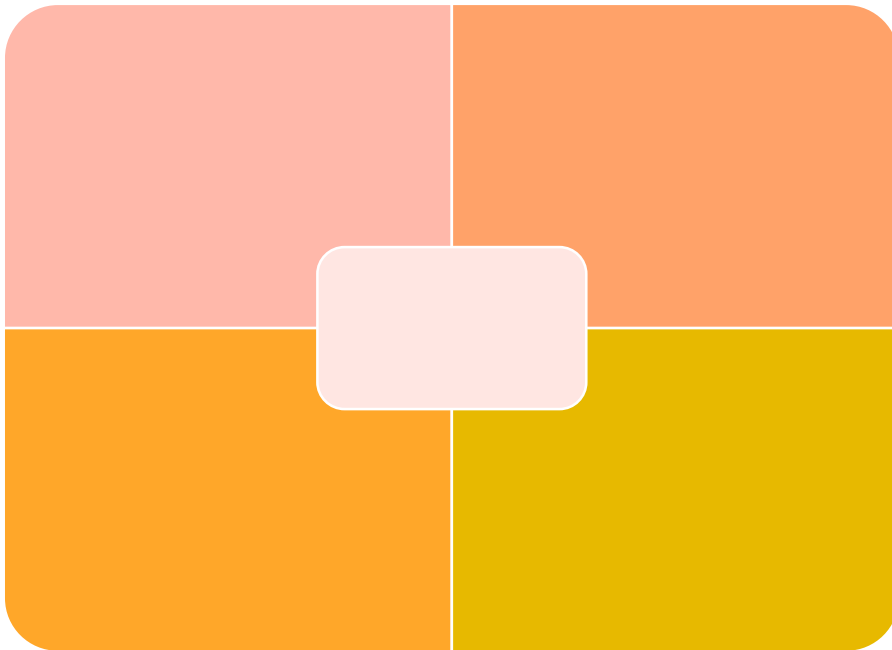
Generally 5% - 10% of investigations are inconclusive

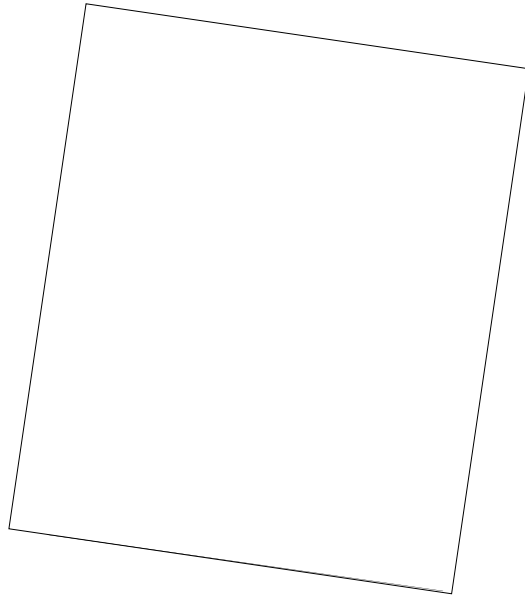


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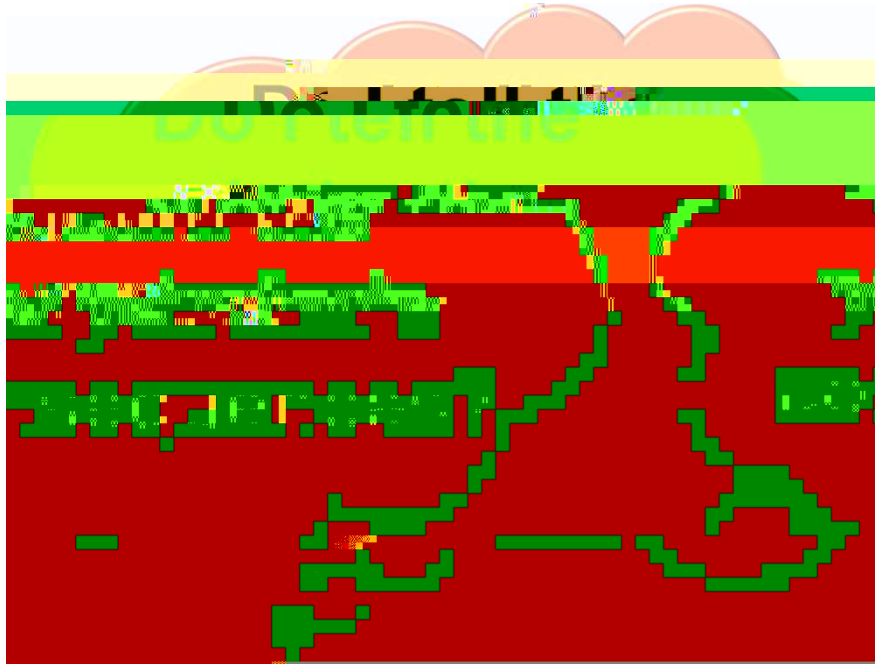
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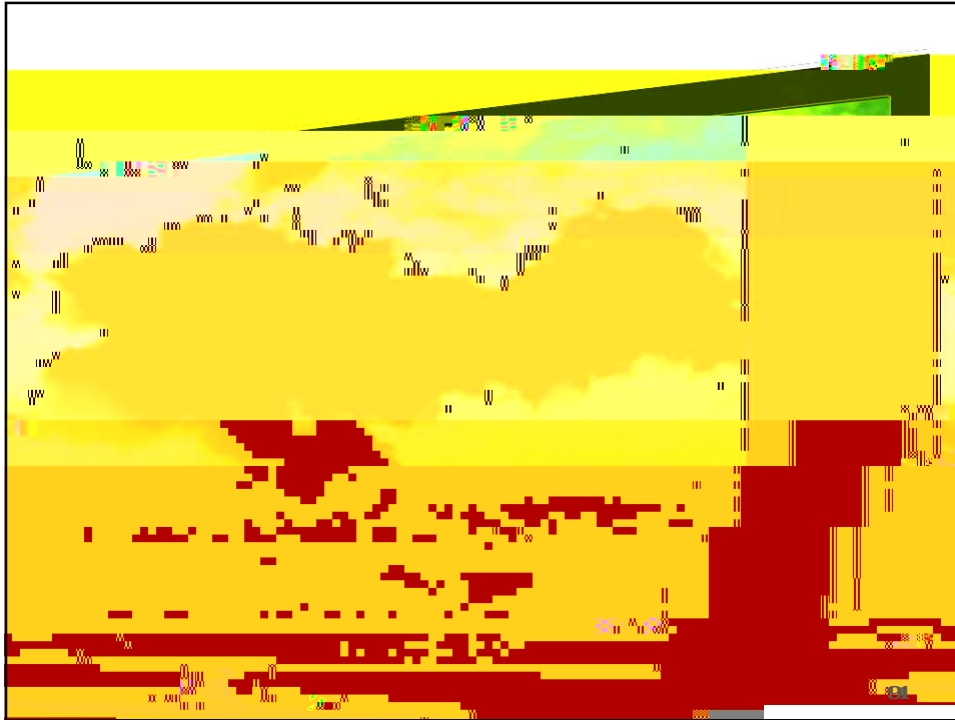
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- **Were company policies, guidelines or practices violated?**
 - **Did harasser commit a serious offense?**
 - **How has organization treated other offenders?**
 - **Do any federal, state or local laws require certain action?**
 - **How long has offender been with organization, what is offender's performance history?**
 - **Any mitigating circumstances?**
 - **What does collective bargaining agreement say?**

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- **Written agreement not to engage in behavior**
- **Altered work schedules or responsibilities**
- **Apology**
- **Verbal warning**
- **Transfer**
- **Written warning**
- **Suspension**
- **Probation**
- **Termination**
- **Demotion**
- **Fines**
- **Education**
- **Counseling**
- **↑ Supervisory oversight**
- **Discipline for management**





1. Separately notify the victim and the accused of the outcome of the investigation

2. Document their reactions and place with your investigation file

3. Management should make whatever amends necessary to make the victim 'whole' such as backpay, benefits, vacation and pay damages, if any;

4. Discipline the harasser:

5. Any remedial action taken needs followup to ensure compliance e.g., meeting with the victim to ensure the harassing behavior has stopped, meeting with harasser to ensure he is counseling, etc.

6. If the complaint was not substantiated, tell harasser - "The company policy is . . . and any further complaints will result in . . . The company considers allegations serious and although the facts are s s s s s s s s - Kit

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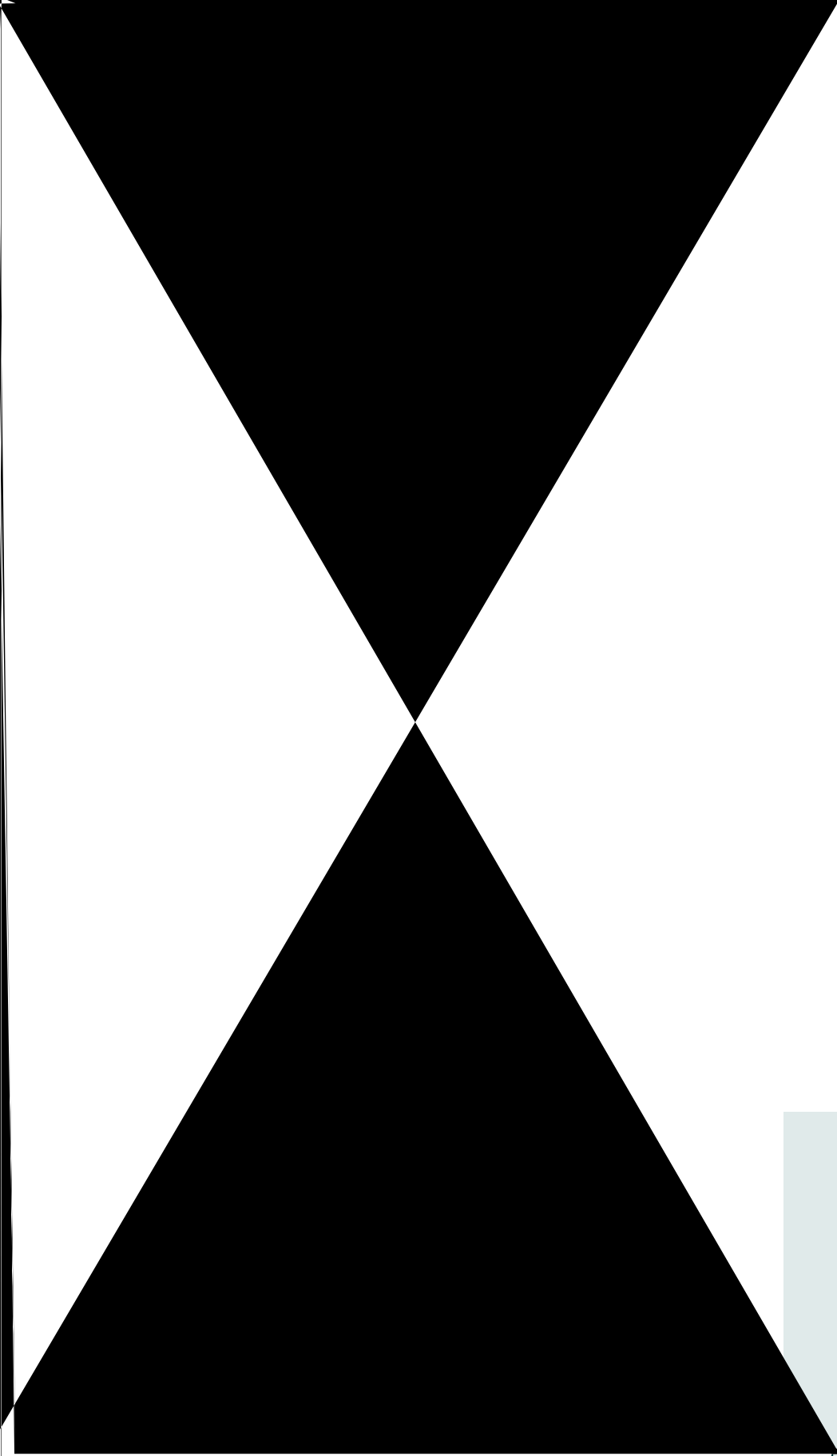
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Purpose: Focuses on a specific concern regarding how the investigation was handled (e.g., critical witness/information/documentation missed).

An appeal is not designed to appease workers who are upset regarding the outcome of the investigation.

Explain: If the victim o



Documentation For Personnel Files

- On ___ (date) Suzie informed HR that Billy had xxxxxxx

- An investigation occurred on ___ (dates).

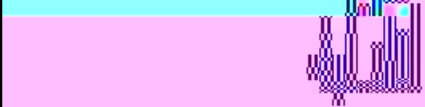
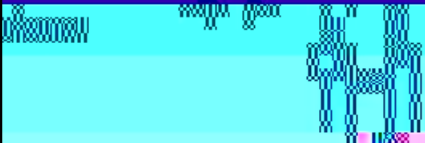
- It was determined that Billy's misconduct had occurred and was a violation of XXXX policy.

- Billy was given a written warning

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- be respectful
 - be neutral
 - be empathetic
 - be responsive
 - expect emotional response
 - use appropriate vocabulary
based on interviewee's
education and intelligence
 - be warm and inviting
 - paraphrase
 - ask follow up questions
 - use active listening
 - be flexible

- 13 Perform the investigation promptly. It is recommended that the investigation begin within 24 to 48 hours of the time the complaint is made. Case law overwhelmingly supports the conclusion that an employer can do much to minimize its liability by acting promptly. A prompt investigation helps to obtain truthful and complete witness statements before either party has a chance to solicit support from friends in the workplace.
- 14 Maintain adequate documentation of the investigation. Remember it may be an exhibit in a trial someday. Focus on the facts, avoiding conclusion, speculation and the like.
- 15 Create a separate confidential file accessible only to the investigators. This should include all notes taken during interviews, copies of corroborating documents, and the final written report. If interview notes are to be typed, minimize access to them with video

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