He said/she said: Gauging credibility in harassment cases

Most employers understand the importance of doing a fair and thorough investigation when they receive complaints of on-the-job harassment. In-house investigators (usually from HR) often do a good job of interviewing the right people and documenting the interviews but then fall short when analyzing the evidence.

For example, many investigators falsely believe they can’t conclude that harassment occurred unless they have independent witnesses to the allegations. This mistake leads to action not being taken when it should.

So what should you do when confronted with conflicting stories? Here are some guidelines.

**Use a lower burden of proof**

Investigators of workplace harassment often believe that the employee claiming harassment must show the harassment occurred “beyond a reasonable doubt.” Not so.

Instead, use the lesser standard of “preponderance of the evidence.” In other words, is it more likely than not that the harassment occurred?

**Look at ‘baseline’ behavior**

No witnesses to the alleged harassment? Then you’ll have to decide who is more credible: the alleged victim or the alleged harasser.

One way to do so is to look for changes in an interview subject’s demeanor. First, observe the witness’s “baseline” behavior. How does that person act when being questioned about something neutral? While gathering simple background information, observe the person’s behavior. Then compare the baseline behavior with the manner in which the person answers questions about the allegations.

Is there a change in eye contact or body language? Are there significant pauses before the employee answers the question? These are clues to credibility.

**Listen for evasive responses**

Most harassers actually find it hard to lie outright. Instead, they’ll give indirect answers to questions that could incriminate them.

If a witness will not answer directly, that’s a strong indication that he or she is not being truthful. Here is an example of such a dialogue:

*Investigator:* Did you ask Megan out?

*Witness:* I’m insulted that you would ask that.
Investigator: I’m sorry, but it’s necessary for me to ask you these questions. So did you ask her out?

Witness: That’s not the sort of thing I would do.

Investigator: I understand, but did you ask her out?

Witness: Look, I’m a married man.

**Listen for important contradictions**

Significant contradictions are often the best indicators that someone is not telling the truth. You’re looking for material discrepancies that don’t result from simple memory problems. Misstating the date when something happened may not mean anything. A very different recollection of what someone did or said is probably significant.

**Don’t discount contemporaneous witnesses**

There may be no direct witness to the harassment itself, but give credence to people who may have seen that the complainant was upset shortly after the alleged harassment.

**Make a determination and support it**

After all the facts are gathered, decide whether each allegation happened or not. Don’t say you can’t tell what occurred because of conflicting evidence.

Instead, weigh the evidence, weigh witness credibility and come to a determination based on a preponderance of the evidence. Support your determination in writing.