

## Responding to Workplace Complaints and Conducting Investigations

This resource, from a SRE Network session held in August 2022, is a summary of best practice advice from Rahel Bayar ([www.thebayargroup.com](http://www.thebayargroup.com)) for determining whether to conduct an internal or external investigation, as well as steps to follow when conducting an internal investigation. This information is shared with the permission of Rahel Bayar.

### Key Questions

- How do we know whether to conduct an internal or external investigation?
- How can we cause more good than harm?
- How do we ensure that what we are doing follows our organization's ethos, best practice, and is trauma informed?

### Top 13 Tips

1. Ensure that the person receiving complaints at your organization is trauma informed, and understands the complexities involved in making a complaint as well as their responsibilities when receiving that complaint.
2. When assessing whether an investigation should be conducted externally or internally, ask:
  - a. What are the legal and ethical implications of the complaint in each kind of investigation?
  - b. Are we structured in a way where neutrality is an option given who the complainant is and against whom they are complaining?
3. Know that neutrality is an obstacle in every internal investigation.
4. The person in your organization who receives complaints must have the appropriate education and expertise in understanding many different issues because complaints arise following many different kinds of behaviors (sexual harassment, discrimination, microaggressions, bullying, etc.).
5. The immediate response of your organization's representative who receives complaints matters.
6. Understand that your human resources personnel are tasked with many different things.
7. Take a **two-step approach** when assessing whether to investigate a sexual harassment complaint internally or whether to bring someone in for an external investigation
  - a. Step 1: How is the behavior viewed from the eyes of the person who experienced it?

- b. Step 2: Apply the 'reasonable person standard': Is it reasonable for someone else in that situation to feel the behavior was sexual harassment?
8. Know that different people may have different reactions to the same conduct.
9. Ask yourself: Can an internal investigation assess this considering the power dynamics and our organization's internal structure? Are we set up for success?  
If your initial answer is 'yes', consider these 4 points:
  - a. **Know when the 'door opens' to this investigation.**
  - b. **Understand your role in how the initial information is shared and received.**
  - c. **When the protocol is triggered, understand the various actors and the behavior involved as well as the legal implications.**
  - d. **Get your village in order to help guide you.** This includes appropriate legal counsel that can advise you beyond risk mitigation and organizational protection, experts in the areas you are dealing with, and considering whether the initial report/complaint raises issues that you should have seen before and requires an external investigator or fact finder.
10. If after all these considerations you still believe that an internal investigation is the way to go, ensure that you are extremely clear with yourself, your organization, and everyone involved about these areas of your investigation:
  - a. Clarity on process.
  - b. Clarity on confidentiality. Clarity of timeline.
  - c. Clarity on 'duty to cooperate' in a workplace. Clarity on retaliation policy.
  - d. Clarity on final determination.
11. Identify whether the expensive cost of an external investigation is the primary reason that you are leaning towards conducting an internal investigation, given the combination of trauma, power dynamics, and your organization's structure in the situation.
12. Know that there are other costs associated with internal investigations and conduct a cost benefit analysis to help you determine whether your investigation should be internal or external.
13. There are times when an internal investigation is appropriate and doable but many times where it is not.