

## **INVESTIGATION PROTOCOL FOR BARU ENTERPRISES, LLC**

This McDonald's-brand restaurant is independently owned and operated by BaRu Enterprises, LLC , which is the sole employer of its employees, not McDonald's Corporation or McDonald's USA.

Here at BaRu Enterprises, LLC, we are committed to providing our employees with a respectful, safe, and inclusive work environment. As part of that commitment, we take concerns and complaints raised by our employees seriously, we provide employees with information regarding the investigation process and resources available to them, we take appropriate steps to ensure the employee's safety in the workplace, and we conduct a prompt investigation. All complaints will be taken seriously and investigated thoroughly and fairly. Our policies – and the law – prohibit any type of retaliation against someone who, in good faith, makes a complaint or participates in an investigation of a complaint.

It is critical to understand our organization's investigation protocols. These protocols, which are detailed below, apply when an employee of our organization makes an informal or formal complaint or raises a concern about a possible violation of our policies.

While each step in the investigation is dependent on the specific circumstances involved, all complaints will be taken seriously and investigated thoroughly and fairly. All employees who raise complaints or concerns regarding a possible policy violation are protected against retaliation.

### **Conducting a Prompt, Thorough Investigation**

Under BaRu Enterprises, LLC Policy Against Discrimination, Harassment and Retaliation– as well as under many laws – we must investigate complaints (alleging violation of our policy against harassment, discrimination, retaliation, as well as other policies) in a timely manner. Investigations provide us with the information to understand and resolve internal problems quickly and, if necessary, take appropriate corrective actions to stop inappropriate behaviors or potentially illegal actions and prevent them from happening in the future. Investigations are critical to ensure policies are followed, and the work environment is free from discrimination, harassment, and retaliation.

Responding to complaints and promptly investigating not only gives us the best information to address workplace issues, but enhances our credibility as an organization and ensure that all employees, supervisors and managers are working together to maintain a respectful workplace, free from discrimination, harassment, and retaliation. Additionally, the investigation serves as a record of the information known to the organization at the time, which may be relevant in connection with any later matters, including complaints or litigation.

Each investigation will have unique facts and considerations, but all investigations must be conducted promptly, thoroughly, and without bias. Below, we have set forth below steps that our organization should consider when an employee makes an informal or formal complaint or raises a concern about a possible violation of our policies, or we otherwise receive information that a policy violation may have occurred.

The below guidance is designed to assist in conducting an investigation. Remember, an investigation is required whether or not the person who raises a complaint does so in writing or verbally, is an employee or third party, expresses their opinion that they do not want an investigation to occur, and whether or not they are making a “formal” or “informal” complaint. If our organization has information from which a reasonable person would conclude that a policy violation may have occurred, we should conduct an investigation.

### **First, Ensure Confidentiality, to the Extent Possible, and Inform Employees**

Our organization should protect the confidentiality of employee complaints and concerns to the best of our ability, but at the same time, we must conduct a prompt and thorough investigation. It may not be possible to keep all information gathered from the complainant confidential as it may be needed to fully investigate the allegations raised.

We should explain to the person raising the concern and all individuals involved in the investigation that the information gathered will remain confidential to the extent possible. There are circumstances that may require the Company to provide information about complaints to others, including third parties, and the information may need to be disclosed during the investigation and during consideration of corrective or other related actions.

For example, it is appropriate to explain to the person who raises a complaint that, in order to conduct an effective investigation, some information will be revealed to the person accused of wrongdoing and potential witnesses, but that information will be shared only on a "need to know" basis. We should not promise absolute confidentiality to any person involved in the investigation.

### **Consider Whether Interim Steps Are Needed**

One of the first considerations is whether we need to take immediate measures to protect the person raising the complaint or others. During the investigation, we should take appropriate steps to ensure our employees’ safety in the workplace. Those steps are dependent on the circumstances, and may include removing the person alleged to have engaged in inappropriate conduct from the workplace (such as through a temporary reassignment or leave for the person who allegedly violated the policy), immediate directions to stop certain behaviors or from interactions with certain employees, employee training, providing supportive resources to an individual adversely affected by another employee’s behaviors, and/or employee counseling.

Separating the person accused of violating the organization’s policies from the person raising the complaint may be necessary to guard against continued policy violations. While actions such as a leave of absence, a suspension, a temporary reassignment or transfer, or a schedule change may be appropriate, it is important that our organization be thoughtful that the person raising the concern should not be involuntarily transferred or burdened. These types of actions could appear to be retaliatory and result in a retaliation claim. Our organization and the person raising the concern must work together to arrive at a mutually agreeable solution.

*Our organization may seek legal advice when a complaint comes in to help determine what best next steps are and prior to making any decisions. In addition, in certain circumstances, the subsequent investigation that takes place may be covered by the attorney-client and attorney work product privileges. EPLI or our organization's labor attorney can help us with this.*

### **Selecting the investigator**

A neutral person with the time and ability to investigate the issues promptly, thoroughly, effectively, and in a neutral manner should conduct the investigation. That investigator may be affiliated with our organization or a third party, depending on the circumstances. The investigator will interview the employee raising the complaint or concern, possible witnesses and the person who allegedly engaged in the conduct that may violate the Policy. The investigator will also review relevant information and documents.

In choosing an appropriate investigator, our organization should consider the following:

- An ability to investigate objectively without bias.
- Whether the person has a stake in the outcome. The investigator should not have a personal relationship with the involved parties. The outcome should not directly affect the investigator's position within the organization.
- Whether the person has the skills to obtain appropriate information in a manner that is consistent with sound investigation techniques, including an understanding of relevant areas of inquiry and good interviewing, listening and documentation abilities.
- Strong interpersonal skills to build a rapport with the parties involved and to be perceived as neutral and fair.
- Attention to detail.
- The right temperament to conduct interviews.

In addition, the investigator should be able to maintain confidentiality to the extent possible, be respected within the organization (because their conclusions will be used to make a determination), and have the ability to act as a credible witness if needed.

### **Get Ready for the Investigation -- Create and Review the Plan**

To conduct an effective and thorough investigation, it is important to prepare an investigation plan. An investigation plan would typically include a statement of the alleged policy violations, a list of relevant fact issues, a list of documents to be collected and reviewed, a list of witnesses to be interviewed, potential interview questions targeted to draw out the key information and details, and a process for retention of documentation (e.g., interview notes and e-mails that could be treated as evidence). The number of days and amount of time it takes to complete a thorough investigation will vary depending on the circumstances.

The Equal Employment Opportunity Commission (EEOC) [provides guidelines](#) and definitions to on specific topics such as sexual harassment and discrimination which you may wish to consider in

developing your plan. This is also another area where we may want to seek legal advice from EPLI or our organization's labor attorney.

### **Developing Interview Questions and Deciding Whom to Interview**

Typically, the investigator should interview the complainant, the alleged wrongdoer, and third parties who could reasonably be expected to have relevant information (e.g., people who may have witnessed any alleged inappropriate conduct or policy violations). The investigator should refrain from offering their opinion during the interviews and focus on gathering information from the individual.

Questions should be developed ahead of time in the planning stage. Additional questions may be added throughout the investigation as more evidence and information are shared. Good questions are relevant to the alleged conduct or potential policy violation and designed to draw out facts without leading the interviewee to a particular answer; they should be open-ended so that the interviewee is in a position to provide as much information as possible. The EEOC has [sample investigation interview questions](#)<sup>1</sup> (in Section V of the EEOC's Guidance) which are included below for your consideration.

#### *Questions to Ask the Complainant and Witnesses*

The following are examples of questions that may be appropriate to ask the parties and potential witnesses. These sample questions are reprinted from the EEOC's website for your consideration. In an actual investigation, the questions should be tailored to the particular concern raised.

#### Questions to Ask the Complainant:

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment/discrimination/other affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment/discrimination/other occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment/discrimination/other?
- Did the person who harassed/discriminated/other against you harass anyone else? Do you know whether anyone complained about harassment/discrimination/other by that person?
- Are there any texts, IMs/chats, notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?

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<sup>1</sup> [Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

- Is there anyone else that you think it would be helpful for me to talk to?
- Do you know of any other relevant information?

Questions to Ask the Alleged Harasser/Person Accused of Wrongdoing:

- What is your response to the allegations?
- If the harasser/person accused of wrongdoing claims that the allegations are false, ask why they think the complainant might lie.
- Are there any persons who have relevant information?
- Are there any texts, IMs/chats, notes, physical evidence, or other documentation regarding the incident(s)?
- Is there anyone else that you think it would be helpful for me to talk to?
- Do you know of any other relevant information?

Questions to Ask Third Parties:

- What did you see or hear? When did this occur? Describe [the alleged harasser's/wrongdoer's] behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

The above information was reprinted from the EEOC's website for your consideration.

It may be also appropriate to review information or documents before developing questions or beginning to interview any potential witnesses. Consider whether that information will assist you in preparing for the interview process.

### **Conducting Interviews**

In each interview, provide the interviewee with relevant background information about the process, the importance of the organization's policies, the level of confidentiality applicable, available resources, and the organization's requirement that no one be retaliated against for participating in the investigation.

The investigator should focus on being impartial and objective to gather and consider relevant facts. It is important NOT to push the investigation in any particular direction or pre-judge the allegations before or during the fact gathering stage. The investigator should never offer any opinion or say anything to interviewees that will discredit his or her impartiality. Objectivity must be maintained with every interview.

Taking notes, looking for inconsistencies, and seeking opportunities for more evidence and names of other potential witnesses should be a consideration as well.

Investigators should review relevant information in an attempt to determine employees' credibility where material fact disputes exist. Interviews might provide differing accounts and even conflicting versions of the events. Be aware that the issue is very personal to employees involved. Because of the personal and emotional nature of the issue, their individual perceptions of what happened may be impacted by personal interests, or if their jobs are on the line, they may have a motive to not provide complete and/or accurate information. Investigators must consider the credibility of the individuals being questioned during an investigation and use techniques (e.g., inherent plausibility, ability, demeanor, motive, motive to falsify, corroboration, past behavior and past accusations) in assessing credibility.

### **Factual Findings**

Through the investigation, the investigator must be careful not to jump to any conclusions before all the facts are available. Once the interviews are conducted, other necessary procedures, such as evidence collection, should be completed. Once any credibility issues have been resolved, the investigator will evaluate all the information for a formal recommendation.

Following the completion of the investigation and the determination of any factual findings regarding the issues alleged, the information will be reviewed by the designated decision maker to determine what prompt remedial action should be taken, if any, and to conclude the investigation.

If the investigation confirms that our organization's Policy Against Discrimination, Harassment and Retaliation has been violated or that inappropriate conduct has occurred, we should take appropriate timely actions to ensure the conduct does not continue and to remedy any past inappropriate behaviors. The type of action taken will depend on the nature and severity of the violation that has occurred and other relevant factors. It may include a spectrum of corrective actions with respect to the employee who violated the Policy, including termination, reassignment to another job or location, changes in reporting relationships, written warning, training, coaching, counseling, and/or other measures that we find appropriate for the circumstances. We must consider all the parties involved, as well as organizational processes, not just whether the allegations are substantiated, in the final determination. The decision maker may seek the advice of others, including EPLI consultants and resources as well as other labor attorneys to finalize the remedial actions that are warranted based on the investigation's findings.

### **Investigation Closure**

Once a decision is made, we should notify both the employee who raised the concern and the person accused of wrongdoing of the outcome of the investigation. It is important to let the employee who raised the concern know that the organization took the complaint seriously and took appropriate action, as determined by the investigation's findings and other relevant information. We should do our best to ensure the employee raising the concern agrees that they have been properly heard and understood, even if they may not be in agreement with the results. The investigator should set a time frame to follow

up with the employee raising the concern to ensure there are no other issues and that they are settling back into the work environment without fear of retaliation. We should encourage communication and follow-up until the complainant is comfortable again. Finally, the investigator should remind all parties to preserve confidentiality as appropriate.

Additionally, after the investigation of the employee's complaint is completed, if they have any continuing concerns or wish to provide additional information about their complaint or any other situation that makes them feel uncomfortable, we should encourage the employee to reach out to HR or another resource for our organization.

Also, if the employee feels like they are being retaliated against, punished, or treated poorly after they made a complaint, they should reach out to one of our organization's available resources immediately so that the employee's concerns can be reviewed and appropriate action taken.

### **Written Summary of Investigation Results**

The information obtained during the investigation should be retained in a manner in which it can be available in connection with later potential employment issues as well as any later reviews by an administrative agency or a court, as well as in compliance with local laws regarding record retention. In addition, our organization should consider, given the nature of the allegations and investigation, whether it is also appropriate to preserve information regarding the scope of the allegations, the investigation, and factual conclusions in a written report. EPLI or our organization's labor attorney can help us with this.

A best practice is to keep an accurate and complete record of everything reviewed, such as statements, documentation of previous employee behavior, and incidents and your notes as an investigator. The investigator should have a record of everything done and any findings as well as other steps taken during the investigation. We should also document interviews with the person raising the concern, the person accused of wrongdoing, and any third parties or witnesses interviewed.

Investigators should ensure their notes from interviews are as factual as possible, contain as much relevant information as possible, are dated and indicate the duration and time of the interviews.

The following information is typically included in the investigation record:

- The incident being investigated, with dates and location.
- The individuals involved.
- Key factual findings and credibility determinations.
- Applicable policies or guidelines.
- Summaries of witness information or statements or witness interview notes or statements attached.
- Specific factual findings.
- The name of the interviewer and decisionmaker.
- Issues that couldn't be resolved, to the extent that these exist, and the reason for the lack of resolution.
- Actions taken (e.g. termination of employment, suspension, verbal warning, re-training, etc.)

We want to ensure that the investigation file contains all information a third party would need at a later date to understand the work the investigator did and the reasons for the findings and conclusions/ actions taken. Sometimes a matter is reviewed by a third party such as a court, jury, or government agency. It is important that the investigation file is complete and accurate and contains all of the information necessary for the reviewer to understand our organization's prompt actions to investigate, make factual findings, and take action with respect to the issues raised.

**Our organization's paramount concern is that our employees know that we care about them and the experience they have working here. As we conduct investigations, it's important that we remember that we are all in this together, and we are stronger and better when we work together to keep our workplace a respectful, safe, and inclusive work environment.**



## WORKPLACE INVESTIGATIONS: CHECKLIST

Who should do the investigation?

- HR
- Owner Operator
- EPLI/Labor Attorney
- Manager
- Other: \_\_\_\_\_

What policy/policies does the organization have that the person doing the investigation should review?  
This should be tailored to the concern being raised.

- Policy Against Discrimination, Harassment and Retaliation or Safe, Respectful and Inclusive Workplace Policy
- Workplace Violence Policy
- Drugs/Alcohol
- Dating/Nepotism/Fraternization/Dress Code
- Fraud
- Other: \_\_\_\_\_

How should the investigator confirm that the parties received/knew about the organization's policy?

- Policy with Signed Acknowledgment
- Training Tracking for Training that Included the Policy
- Poster with Policy Included
- Prior Discipline With Individuals Regarding Policy
- Other: \_\_\_\_\_

What other information or documents should the investigator consider reviewing before interviewing the parties? (This should be tailored to the concern being raised.)

- Applicable policies
- Prior discipline/performance documentation
- Timesheets
- Security Footage
- Texts/Voicemails/Emails
- Other: \_\_\_\_\_

Who should the investigator interview?

- Person raising the complaint/concern
- Witnesses/anyone identified by the person raising the complaint/concern as having relevant knowledge
- Person accused of the policy violation
- Witnesses/anyone identified by the person accused of the misconduct as having relevant knowledge
- Anyone who may have experienced similar conduct by the accused
- Any other person who has relevant information
- Anyone who may have observed the incident (e.g. coworkers)

- Other: \_\_\_\_\_

The investigator may need to go back and re-interview individuals as additional information is learned.

Where should the investigator conduct the interviews?

- Manager's office
- Private area of the restaurant
- Remotely or off-premises (e.g. Organization's office, hotel conference room, another restaurant)
- Other: \_\_\_\_\_

How should the investigator contact the individuals for the interviews?

- Tell them in person
- Call them
- Email them
- Leave a voicemail
- Other: \_\_\_\_\_

How should the investigator prepare for the interviews?

- Prepare an interview introduction
- Prepare an outline of questions – open ended questions are more likely to draw information out of individuals
- Practice introduction and questions
- Review policies that are potentially applicable to make sure you are familiar with them
- Decide how investigator is going to document information learned during the investigation
- Other: \_\_\_\_\_

How should the investigator start, conduct, and end the interviews?

- Thank the individual for participating in the investigation
- Discuss the purpose of the investigation
- Discuss confidentiality to the extent possible by the organization, and whether confidentiality is requested in the specific situation of the interviewees
- Discuss the organization's anti-retaliation policy and resources and contact persons for any questions the interviewees have about the process or the investigation
- Ask questions relevant to the allegations
- Listen to how each person interviewed responds
- Ask any necessary follow up questions
- Ask each person if there is any additional information they would like to share on the topics that you have been discussing that you have not already covered
- Thank the individual for participating in the investigation and let them know you will follow up once the investigation has been concluded
- Other: \_\_\_\_\_

What about the interviews should be documented and how?

- Person being interviewed

- Location/date/time
- Information learned during the interview
- Any post-interview notes
- Other: \_\_\_\_\_

What additional work is necessary to make a final determination?

- Have all relevant individuals been identified and interviewed?
- Have you summarized the investigation and your findings?
- Do you need to collect any additional information?
- Have you consulted with EPLI or your labor attorney? (It is best to do this at the START of an investigation and at other times as appropriate.)
- Other: \_\_\_\_\_

How does the investigator make factual findings relating to alleged policy violations?

- Review your investigation and findings
- Re-read interview notes
- Assess individual's credibility
  - Consider plausibility – is the individual's version of the facts believable? Does it make sense?
  - Demeanor – Does the witness seem to be telling the truth?
  - Motive – Does the person have a reason to lie?
  - Corroboration – Are there documents or other witnesses that support the individual's version of events?
  - Past conduct – does the alleged wrongdoer engaged in inappropriate conduct?
- Assess relevant information/documentation collected (e.g. what does security footage show or what do text messages show?)
- Review disciplinary documents or performance records
- Review any past complaints involving the person accused of the policy violation/person raising the concern or complaint
- Other: \_\_\_\_\_

How does the investigator document their factual findings?

- Cite relevant policy provisions
- Maintain notes and documents/information reviewed in an appropriate file
- Describe the original concern/complaint
- Describe the nature of the violation/conduct
- Describe analysis
- Other: \_\_\_\_\_

How does the investigator or the decision-maker determine what is the appropriate action to take?

- Consider impact to employees
- Review actions taken in past instances of similar conduct
- Review any discipline policies (e.g. progressive discipline policy)

○ Other: \_\_\_\_\_

Consider whether given the nature of the allegations it is an investigation that should be documented

FOLLOW UP with the parties (person raising the concern, person accused of misconduct, witnesses) involved in the investigation and MONITOR for any potential future misconduct or retaliation.