

YUROK TRIBE INVESTIGATION GUIDE

An investigation into a bullying or harassment matter will follow a consistent standard and shall be initiated as soon as possible. This investigation guide was created and enacted by the Yurok Tribe to ensure consistency and fairness throughout the process.

1. Pre-investigation Considerations

An investigator will be assigned according to the Yurok Tribe Personnel Policies. Throughout the investigation, investigator shall:

- A. Limit questions to requests for factual information only;
- B. Avoid recording speculation;
- C. Document the investigative process, such as:
 - 1. When the complaint came to the Tribe's attention;
 - 2. who was interviewed;
 - 3. what was disclosed;
 - 4. what corrective action was taken;
 - 5. and, if applicable, why corrective action was taken.
- D. The investigation notes should be taken with, or soon after, each witness interview to ensure accuracy.

Documentation is important because the Tribe may be required to demonstrate when and how it investigated the employee's complaint.

2. Conducting the Investigation

The timing of an investigation is critical because a delay in investigating an internal complaint can create an impression of indifference on the part of the Tribe. Once a complaint is received:

- A. Review the policy and determine whether the alleged behavior meets the definition of workplace bullying or harassment.
- B. Meet with each party individually to explain the investigation process.
- C. Select an investigator. An investigation must be fair and impartial. The investigator could be someone from within the organization. In more complex or sensitive cases, an external investigator might be more appropriate.
- D. The investigator shall promptly obtain a written statement of the facts underlying the complaint. The statement of the reporting employee shall include the following:
 - 1. The date and time of the incident
 - 2. The location of the incident
 - 3. The Yurok Tribe employees involved
 - 4. Any witnesses to the incident
 - 5. The precise nature of the complaint

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6. Any additional facts that are relevant to the complaint.

The reporting employee shall sign and date the statement to acknowledgement that the employee has read the statement and that the statement is complete and accurate.

3. Gathering Evidence

After obtaining the written statement pursuant to section 2 of this Investigation Guide, the investigator shall promptly interview the reporting employee, the alleged offender, and all potential witnesses identified throughout the process.

The investigation notes should be taken with, or soon after, each witness interview to ensure accuracy. When feasible, the investigator should record all interviews or have a witness present during all of the interviews related to the investigation to serve as a corroborating witness.

Interviewing the Reporting Employee

After obtaining the written statement pursuant to section 2 of this Investigation Guide, the investigator shall promptly interview the reporting employee and obtain a complete narrative of the allegations. During the interview, the investigator **shall**:

- Explore the factual details of the actual complaint of harassment;
- Be careful to distinguish between what the employee has personally witnessed or experienced and what the employee has heard from others (i.e., office gossip);
- Explore the employee's response to the harassment and ask how the harassment has affected the employee (i.e., job performance, mental health, etc.);
- Obtain the identity of any witnesses to the harassment and any individuals with relevant information;
- Ask the employee if they are aware of any other incidents of harassment by the alleged harasser
- Ask whether the employee knows of any other complaints against the alleged harasser (follow-up separately, in collaboration with the HR Director);
- Request that the employee provide any notes, physical evidence or other documentation regarding the alleged harassment;
- Ask the employee how they would like to see the situation resolved;
- Ask whether the employee is comfortable continuing their work during the investigation; and,
- Instruct the employee to report any subsequent instances of harassment.

In some circumstances, the reporting employee will not want any adverse action taken against the alleged harasser. The Tribe still must conduct a thorough investigation and issue discipline as appropriate, despite the reporting employee's request. If the reporting employee requests that the Tribe keep the complaint confidential, the Tribe must explain that the Tribe cannot forgo an investigation and cannot keep the complaint confidential as it pertains to the investigation.

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However, the employee should be told the names and titles of any individual(s) that will be informed of the complaint.

It is very important to determine whether the reporting employee is comfortable continuing to work in their position during the investigation. As a precaution, the Tribe shall ensure that the alleged harasser does not have further access to the reporting employee during the investigation. If the alleged harasser is a supervisor, the Tribe could place the alleged harasser on a leave of absence until the Yurok Tribe has time to conduct and finalize its investigation. Otherwise the Yurok Tribe could have the reporting employee report to another supervisor pending the outcome of the Yurok Tribe's investigation. Reporting employees shall not be penalized for making a complaint.

Interviewing the Alleged Harasser

Next, the investigator shall interview the alleged harasser, as follows:

- At the start of the interview, the investigator shall:
 - Explain the nature of the complaint against the alleged harasser;
 - instruct that retaliation against the reporting employee will result in disciplinary action regardless of the outcome of the harassment complaint
- obtain the alleged harasser's response to the complaint.
 - If the alleged harasser denies the allegations, the investigator shall ask if the reporting employee has any reason to lie (i.e., personality conflicts).
- The investigator shall ask the alleged harasser if any other individuals have information that would be relevant to the investigation
- The investigator shall request any relevant documents or evidence that they may have in their possession.

Interviewing Alleged Witnesses

Finally, it is critical for the Tribe to interview all witnesses to the alleged harassment in order to conduct a thorough investigation. Interviews with alleged witnesses shall be conducted as follows: The investigator shall:

- At the beginning of the interview, provide the witness with a brief introduction that includes the reason for the interview
- Tell the employ that they will not be retaliated against for providing truthful information,
- Remind the employ of their obligation to cooperate with the investigation in accordance with Personnel Policies
- Determine what, if anything, the employee personally witnessed regarding the alleged harassment
- Get a detailed description of the alleged harasser's behavior toward the reporting employee and others in the workplace
- Ask about any communications that the employee has had with the reporting employee or alleged harasser regarding the incident
- Ask about any other conduct that the employee witnessed in the past that may be relevant to the harassment complaint

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- Ask the employee for copies of any relevant documents and the identity of any other individual(s) with knowledge of the incident(s).

4. Post-Investigation: Determine the Response

Based on the available evidence, determine whether bullying, harassment, and/or other violation occurred. It is important that any action taken against the alleged offender occur only after a thorough investigation. The appropriate Yurok Tribe response depends on whether the allegations are corroborated, disproven, or if the Tribe is unable to reach a definitive conclusion as to the merit of the allegations.

Relaying Findings

The investigator, employer, manager, and/or supervisor shall meet separately with 1) the complainant and 2) alleged offender to relay and explain the investigations findings.

Take Corrective Action

- A. If the investigation establishes that the allegations have merit** and the reporting employee was subject to bullying, harassment, or some other violation of Personnel Policies; the Tribe must determine the most appropriate level of discipline for the offending employee. In making this determination, it is important to consider how similar misconduct was handled in the past to ensure consistency and avoid claims of discrimination based on a difference in discipline. Please use the Yurok Tribe disciplinary matrix for guidance.
- B. If the allegations are disproven by the investigation.** The Tribe will not penalize the employee for the complaint. Penalizing an employee for a complaint of harassment could subject the Tribe to a subsequent retaliation claim, and should be avoided. It is important to maintain the integrity of the Yurok Tribe as an employer and avoid any action that may be perceived as retaliation, action contrary to the Yurok Tribe's personnel policies, and/or discourages future reports of misconduct by other employees.
- C.** Finally, in some circumstances, the investigation may be inconclusive. For example, if there are no corroborating witnesses to the harassment and no other evidence to corroborate either employee's version of the events. **If the investigation is inconclusive**, the Tribe will inform the parties that a thorough investigation was conducted and was inconclusive. The Tribe shall inform the reporting employee to immediately report any further instances of harassment, discrimination or retaliation. Moreover, the Tribe shall consider the following actions: (1) ongoing monitoring; (2) a change in the reporting relationship if the alleged harasser was a supervisor; and (3) workplace training on the issue implicated by the investigation.

5. Record Keeping

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The investigator must provide the Yurok Tribe with a written record of the investigation. This shall include the following:

- a. Complaint details:
 - Names of all parties, including who made the complaint and who received the complaint
 - Date, time and location the report was made
 - Details of the specific behaviors (including dates and names) alleged in the complaint
- b. Transcripts and a summary of interviews with the affected parties
- c. A list and appendix of all documents reviewed during the investigation
- d. Outcomes and findings.
- e. Record of actions taken to respond to the complaint and to deal with any adverse impacts resulting from a bullying or harassment incident

Copies of this record and all relevant documents will be electronically filed with Human Resource in employees personnel record, the Department Director or Deputy Executive Director, and the Investigator.