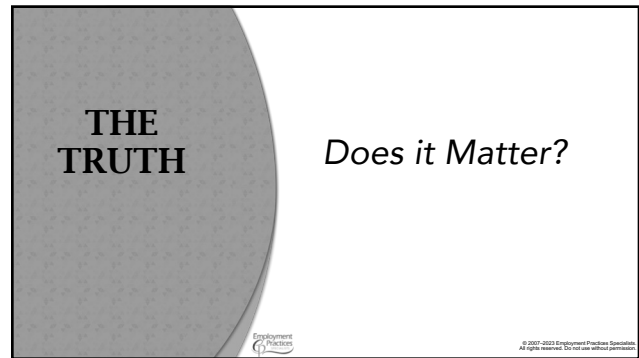
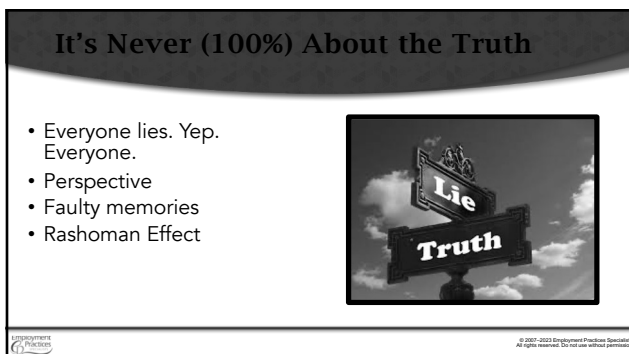




1



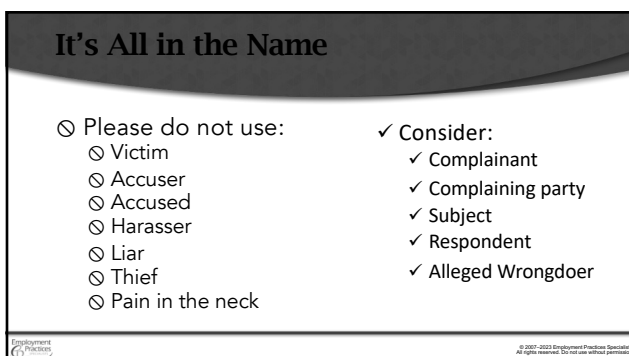
2



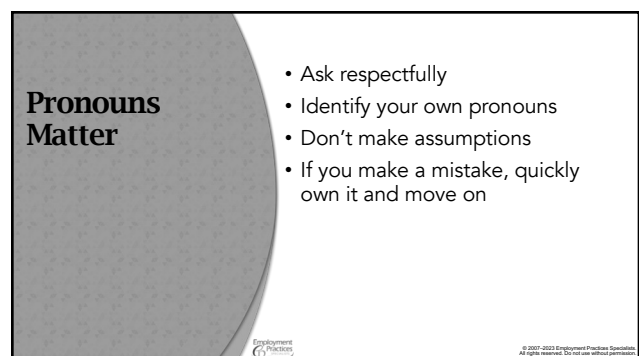
3



4



5



6

Be an Eagle Scout: Be Prepared

- Written statements
- Employee handbooks
- Personnel files
- Notes
- Email
- Diaries
- Complaints
- Journals
- Letters
- Timesheets
- Receipts
- Attendance records
- Surveillance videos
- Calendars

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

7

Be Prepared

- Create an outline
 - brief
 - key words
- Tag documents, interview notes or other evidence
- Remember to listen!

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

8

Be Prepared

- Chronology of events
- Cast of characters
- Investigation Log
- Keep track of all major events/contacts during investigation
- Record efforts to contact witnesses and/or obtain documents, reasons for delays, other issues that arise

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

9

In-Person: Host/Hostess with the Mostess

- ☞ Make the witness feel comfortable
- ☞ Interview location
 - ☞ private and non-threatening
 - ☞ HR office is not always the best location
 - ☞ be mindful of wage and hour issues!
 - ☞ ask the witness
- ☞ Seating parity
- ☞ Tissues and water!

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

10

Video is different.

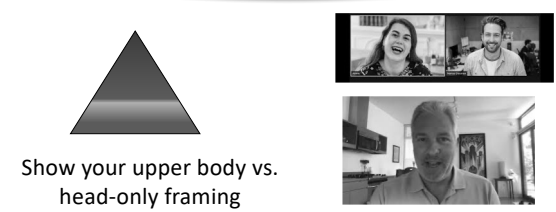
These times are different.

- You don't know what goes on in someone's home/life:
 - abuse/neglect/trauma, loss of loved ones, small/tight living situation, family staying, illness, lack of support, teens, seniors
- Fear
 - loss of work/income, getting COVID-19/other illness, caring for family, SIP orders, depression, balancing kids/work
- Not everyone wants you in their home

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

11

How we see each other...



Show your upper body vs. head-only framing

© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

12

Opening Act

- Set the tone for the interview
- Introduction and Standard Admonitions
 - State your name and role
 - No retaliation
 - Taking notes
 - Refreshing memory
- Thank the witness for showing up



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

13

Confidentiality

- Be consistent
- Talk to senior HR leaders and/or counsel
- Critical to help maintain the integrity of the investigation
- Investigator cannot promise confidentiality, share information to only those with a need to know



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

14

Sneak Preview

- How much do you tell the subject?
 - be honest and straightforward
 - cautiously provide witness names
 - **CAVEAT: BE AWARE OF SAFETY ISSUES**



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

15

Sneak Preview

- How much do you tell the witness?
 - Funnel approach
 - Start with broad questions then narrow down



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

16

Be a Reporter

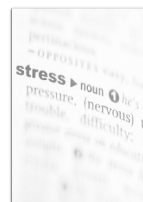
- ***Listen – don't be wedded to your outline***
- Who, what, when, where, how
 - Sparingly use "why"
 - Who else has information?
 - Are there any documents?
- Ask:
 - open-ended question to elicit information
 - closed-ended questions to confirm



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

17

Act Like Webster



- Get definitions
 - words have different meanings to different people
- Examples:
 - uncomfortable
 - stress



© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

18

Sexual Harassment Claims *are* Different



19

Sexual vs. Other Types of Harassment Investigations



- Complainant
 - Can be humiliating and embarrassing
 - Don't discount this if complainant is male
 - Same sex harassment issues
- Witnesses
 - May be uncomfortable



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

20

Sexual vs. Other Types of Harassment Investigations

- Investigator
 - Asking questions of a sexual nature maybe uncomfortable/ embarrassing
 - Requires a delicate approach
 - Conduct may involve touching or other physical contact



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

21

Delicate

- ❖ Consider
 - ❖ Letting the witness know the topic is delicate and may create some discomfort
 - ❖ Gathering details is part of the investigative process
 - ❖ Providing breaks for the witness
- ❖ If the witness cries, give him/her time
- ❖ **Don't stop asking probing questions because the topic is uncomfortable**



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

22

Mirror Mirror...

- Should you select an investigator based on the gender of the complainant?
- Short answer:
 - It depends
 - Nature of the allegations, alleged wrongdoer
- Don't rule this issue out!
- Keep your eye on the goal – not your ego



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

23

IMPORTANT! HIGH ALERT!


- ➔ Avoid using the word HARASSMENT, hostile work environment or quid pro quo
- ➔ Avoid legal conclusions
- ➔ Do not label the conduct
 - ➔ Do not say: How did you feel after Beth harassed you?
- ➔ You are just gathering the facts



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

24

Be A Director



- ☛ Prepare scripts:
 - ☛ “why me?”
 - ☛ “will I be terminated?”
 - ☛ “I don’t want to talk to you”
 - ☛ “what will happen to the alleged wrongdoer?”
 - ☛ anticipate questions

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

25

Different Heights

- ❖ Dealing with witnesses at different levels of hierarchy
- ❖ The goal remains the same
 - ❖ Don’t be intimidated
 - ❖ Respectfully question and focus on your goal
 - ❖ Gently push management the same way you would push a staff-level employee

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

26

Be A Judge

- ☛ Remember your role and credibility
 - ☛ fact finder
 - ☛ neutral
- ☛ **Fagedabout** HEARSAY!
- ☛ Do not reach a conclusion until the investigation is over

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

27

Be A Judge

- Confession – not your main goal
- Assess credibility throughout interview
 - Remember non-verbal
- Conflicting information
 - Give complainant and alleged wrongdoer opportunity to rebut or add information

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

28

Be A Judge

- ✓ Be patient
- ✓ Give witness time to respond
- ✓ Be respectful of individual styles
- ✓ Be aware of diversity / cultural issues

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

29

Be A Judge, *not* judgmental

- Use the word “alleged” throughout the investigation
 - Or say in the beginning “I always mean alleged.”
- Be aware of your neutrality
 - Keep top of mind
 - Impacts your credibility
- Wrong attitude: “they must have done it”

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.

30

Exhibit A

- Documents
 - Authentication
 - Go through entire document with the witness – don't make assumptions
- Have witness id people, places, things in photos
- Id all evidence to easily track it in your notes
 - E.g., For the first document you present to witness Barbara Walters – at the bottom right of the document write BW1 and continue in sequence for all documents

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

31

Drilling Down

- ✘ Get details
- ✘ Techniques:
 - ✘ Drawings
 - ✘ Measurements
 - ✘ Location
 - ✘ Distance
 - ✘ Demonstrating conduct

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

32

Be A Magician

- 📄 Use a variety of questioning techniques
 - 📄 Summarize
 - 📄 Ask questions out of order
 - 📄 Repeat a question later in the interview
 - 📄 Ask a question you already know the answer to
 - 📄 "I'm struggling"

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

33

Kiss Your Questions

- 💧 Keep your questions
 - 💧 Simple
 - 💧 Slow
 - 💧 Short
- 💧 Improves your note-taking

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

34

Kiss Your Questions

- 🕒 Avoid questions that are . . .
 - 🕒 Accusatory
 - 🕒 Loaded
 - 🕒 Leading
 - 🕒 Compound
 - 🕒 Long and winding
 - 🕒 Sound like Sgt. Joe Friday

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

35

Land The Plane

- ✈️ Ultimately ask a direct or leading question
- ✈️ Use when struggling to get an answer
- ✈️ Pay attention to non-verbal cues
- ✈️ Handling conflicting information

Employment Practices Specialists
© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

36

The Sybil Effect

- ☞ Reluctant or Nervous Witness
 - ☞ Gently probe concerns
 - ☞ Emphasize retaliation prohibition
 - ☞ Make sure the location is comfortable
 - ☞ Don't make promises just to get the witness to talk

Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

37

The Sybil Effect

- ☞ Overly helpful / talkative / inquisitive witness
 - ☞ Stay in the driver's seat
 - ☞ It's ok to interrupt
- ☞ Scripts:
 - ☞ "I am sure you can appreciate I need to stay focused with my line of questioning"
 - ☞ "I understand you are curious about the details, but right now I need to ask some questions"
- ☞ Don't make promises just to get the witness to talk

Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

38

The Sybil Effect

- ☞ **Hostile Witness**
 - ☞ Respond quietly and calmly - ask about the hostility
 - ☞ Address concerns, fears or other issues
 - ☞ Document all comments and behaviors
- ☞ **Don't**
 - ☞ threaten, coerce or intimidate
 - ☞ make promises of benefits based on cooperation
 - ☞ play games - if appropriate, give information

Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

39

Close the Circles

- **Remember to do a follow-up interview when necessary**
 - Are there any responses that are unclear?
 - Are there issues in conflict that require further fact-finding?
 - Do you need clarification?
 - Do you need to confirm or figure out credibility?
 - Was witness given every opportunity to answer all questions?

Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

40

Close the Circles

- Are you making assumptions about facts without getting confirmation, corroboration or clarification?
- Did you learn new facts after the witness's interview that might change some responses?
- Have you been fair and unbiased?
- Have you been put on notice about other potential wrongdoing?

Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

41

The Follow-up Interview

- Follow-up
- Follow-up, and then
- Follow-up some more
- The more you can get witnesses to talk, the better your chances of reaching a finding in a he said, she said, she said, he said, they said, they said investigation


Employment Practices

© 2007-2023 Employment Practices Specialists
All rights reserved. Do not use without permission.

42

Keep your skills sharp and up-to-date

- **Association of Workplace Investigators**
✓ www.awi.org
- **AWI Guiding Principles**
✓ Email me to get a copy!



© 2007-2023 Employment Practices Specialists. All rights reserved. Do not use without permission.



43

Thank you!

Connect with me!

LinkedIn: [linkedin.com/in/allisonwest](https://www.linkedin.com/in/allisonwest)
Twitter: [@AllisonWestEsq](https://twitter.com/AllisonWestEsq)

446 Old County Road, #100-328 • Pacifica, California 94044
650-922-4611 • awest@employmentpractices.net • www.employmentpractices.net



44