

Post-Investigation Report to Client – Sample A

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FINAL REPORT OF INVESTIGATION

I. BACKGROUND

On June 2, 20XX, Jane Doe was retained by ____, President of ____, to conduct an investigation of allegations of discrimination. The allegations were made by ____ against Chief Executive Officer _____. Jane Doe [investigator] interviewed witnesses and conducted the investigation between the dates of June 8, 20XX and July 8, 20XX. The investigation included interviewing twenty witnesses and reviewing relevant documents. Follow up telephone conferences were held with some witnesses. When the investigator was retained she was mailed documents from ____' counsel. Those documents are attached to this report as Exhibit A.

II. SCOPE AND METHODS USED

A. Focus

The investigation focused on the following allegations:

1. ____ was discriminating against Ms. ____ due to her gender in that Ms. ____ was treating males more favorably than females; and
2. ____ was discriminating against Ms. ____ due to her age in that Ms. ____ was treating older employees more favorably than Ms. _____. Ms. ____ is 36 years old.

The investigator's assignment was to make findings of facts and conclusions in regards to the above issues. However the investigator is not making a legal determination as to whether there was discrimination under the FEHA, Title VII, the ADA or any other statute nor is the investigator making a legal determination as to whether there was unlawful retaliation. Rather, the investigator is determining whether or not any of the actions or decisions made by ____ generally and ____ specifically were due to her gender or age. The investigators determinations should not be interpreted as giving a legal opinion on liability.

B. Identification of Witnesses and Content of Interviews

Once the scope of the investigation was determined and agreed upon, the investigator operated with independence as to witness identification, interview content, and preparation of findings. The investigator was assisted during the course of the investigation by ____ and, when Ms. ____ was on vacation, by ____, in the scheduling of interviews and a meeting room.

At the beginning of each interview, all those interviewed were advised of the following:

1. The investigator was a neutral fact finder investigating an employee complaint emanating from the legal department. When appropriate, witnesses were told some of the allegations related to age, gender and retaliation;
2. Their statements would be attached to a final report, which would go to _____. There was no confidential relationship between the witnesses and the investigator however the matters disclosed would be kept as private a possible and only those with a need to know would be told what was said;

3. Witnesses should not discuss the matter, including what the investigator asked them and what they said, with anyone who was associated with (the employer)
4. Witnesses were protected from retaliation for participating in the investigation and had a duty not to retaliate against anyone else for that person's participation in the investigation; and
5. The investigator would take notes during the interview and, based on those notes, would write a statement for the witness to review, make any changes they wanted to, and sign. If witnesses provided documents, the documents were attached to their statement. If a witness rewrote the statement, both the statement written by the investigator and the rewritten statement is included. If the witness refused to sign the statement, the unsigned statement written by the investigator is included. If the witness was interviewed more than once, a supplemental statement is included along with the original statement. Copies of these statements are attached as follows:

_____ Exhibit B
 _____ Exhibit C
 _____ Exhibit D
 _____ Exhibit E

A few people expressed discomfort at being interviewed, especially because they didn't know why they were being interviewed and the investigator was not able to tell them much. One person refused to sign a statement – although she acknowledged the contents were true. Another employee wrote a number of notes on the statement and returned it without signing it. She wrote a cover letter explaining her feelings about the matter. A third individual was reluctant to speak to the investigator initially but ultimately felt comfortable, provided full answers to questions, and signed a statement. It was the investigator's impression that the individuals who expressed discomfort and/or mistrust were responding in that manner due to their own relationship with (THE EMPLOYER) rather than their feelings or knowledge about the situation with (COMPLAINANT). This is based, in large part, on the fact that the two employees who didn't sign statements appeared to have no idea what the complaint was about and made reference to other historical issues. Thus while the refusals to sign statements may be indicative of some tensions and problems in the workplace, they do not appear to have a direct impact on the issue at hand.

III. STATEMENT OF FACTS

A. Background

[Narrative to appear here]

B. Complainant's Allegations

Ms. ___ contends she is being discriminated against based on her gender (female) and age (36). The basis for this is as follows:

1. ___ (male, in his 50's) was given all the staffing she had been requesting the year prior to his hire. He is also not quizzed by Ms. ___ as much as Ms. ___ is. He was given the title "___" whereas Ms. ___ had requested, but not been given, the title "___". He is paid almost \$20,000 more than Ms. ___. By way of background information Ms. ___ stated that ___ graduated from law school in the 1960's (she is a 1990 graduate), has more than twenty years experience in ___ and took a pay cut to take the position at ___.

2. Ms. ___ contends that Ms. ___ appears to prefer working with male volunteers rather than females (for example prefers ___ to ___). She has heard speculation that Ms. ___ is threatened by women with higher degrees (such as herself and ___, M.D.)
3. Ms. ___ contends that ___ received preferential treatment from Ms. ___ and was given credit for the ___ numbers even after Ms. ___ took over the department. She states that ___ has commented on Ms. ___' preference for both ___ and ___.
4. ___ contends that all the Corporate Officers are treated with more respect and deference than she is. They are all older than her. She often brings ideas up through an officer rather than directly with ___ because she finds it is then received better. There are six Corporate Officers:

- _____, President
- _____, Vice President of Operations
- _____, Vice President of Human Resources
- _____, Vice President of Sales and Marketing
- _____, Chief Technology Officer
- _____, Chief Financial Officer

C. Employer's Response

[Narrative to appear here]

D. Witnesses provided the following pertinent information:

[Summary of witness info to appear here]

IV. FINDINGS OF FACT AND CONCLUSIONS

A. Gender Discrimination

It is determined that there is insufficient evidence that any actions made regarding Ms. ___ were related to her gender. Ms. ___ compares herself to three males. In regards to Mr. ___ & ___, Ms. ___ only complaint is that they appeared to have more access to Ms. ___ and that their ideas were taken more seriously. Of course this is very subjective. No one else expressed any awareness of this. Even if Ms. ___ had made the comments attributed to her by Ms. ___ (which she denies), her comments were that ___ treated Ms. ___ differently from ___ because Ms. ___ threatened Ms. ___ not because of her gender.

It is also noteworthy that both of these men had worked for the organization for many more years than Ms. ___ – thus if indeed their access was greater and their ideas taken more seriously, an explanation unrelated to gender is a far more plausible explanation for the behavior. This is especially true given the demographics of the office. Of the five highest-ranking employees only one is male. Ms. ___, who has worked with Ms. ___ for many years and who Ms. ___ states complained of differential treatment, in fact stated she had not experienced any differential treatment. It is also noteworthy that one of Ms. ___ closest working relationships is with a female, ___. While Ms. ___ alleged Mr. ___ receives preferential treatment, he stated Ms. ___ backed Ms. ___ when he raised a concern about her. Lastly, Ms. ___ hired Ms. ___. If she had wanted a male for the job, she could have sought one out.

In regards to Mr. ____, while he does earn significantly more than Ms. ____ and has the title of “_” rather than “_”, there are a number of reasons for this unrelated to gender. Most significantly, according to Ms. ____, Mr. ____ has at least twenty years more experience than her as an attorney. She was the one who negotiated his pay and title with him and, according to Ms. ____, he took a pay cut to work for ____ and would not work for less. In regards to Ms. ____ assertion that Mr. ____ is taken more seriously by Ms. ____ than she is, again, the fact that he has significantly more experience than her is a more reasonable explanation (if indeed this is the case) than his gender.

Ms. ____ also claims that Mr. ____ has been given staff for the legal department that she was told would not be provided had she asked for it. Ms. ____ asserts this is due to gender. Her secretary, ____, echoes this concern. First, it is impossible to say definitively whether Ms. ____ would not have been given this additional staff had she made a budget request. The evidence disclosed that Ms. ____ was given all the staff she requested in the budget. However her assertion that she was met with resistance is credible. There were a number of witnesses who stated they did not think further staff was needed in the legal department and clearly the first response from ____ was to try to use volunteers rather than hire additional staff.

While it does appear that Mr. ____ was given more staff more easily, again, the explanation does not relate to their respective genders but rather points to other reasons. Most significantly are the circumstances Ms. ____ herself put into motion. The fact is that Ms. ____ became aware of a significant need for additional help in the legal department. Her suggestions may well have been met with resistance – most organizations do not take on significant expenses lightly. It appears that ultimately the organization came around to the conclusion Ms. ____ had been asserting: more paid staff was necessary. ____ expertise as a specialist in ____ may also have had an influence on the number of staff that has been approved. What there is no evidence of is that the decision in any way was due to Ms. ____'s gender.

Thus, in summary, while Mr. ____ & ____ may indeed have more “access” to ____ and be taken more seriously by Ms. ____ than Ms. ____ (the investigator does not have enough information to conclude whether this is true or not), there is no indication the reason for this has anything to do with Ms. ____'s gender. Further, while Mr. ____ may be paid more, have a more desirable title, been granted more staff and be taken more seriously by Ms. ____, this too is not related to gender but rather to experience.

B. Age Discrimination

There is also no evidence that any of the decisions or actions of ____ or ____ related to Ms. ____'s age. She does appear to be the youngest staff at her level. However that, in and of itself, does not mean that she is being treated differently because of her age. As stated above, the individuals she compares herself to generally have more experience in their field and/or have worked with Ms. ____ for an extended period of time. To the extent that she is accurate and that other people's ideas are taken more seriously, the difference in experience and track record in working with Ms. ____ are more reasonable explanations. Furthermore, and as will be expanded below, Ms. ____ does have legitimate concerns about Ms. ____ behavior that have led to a lack of trust. This is another reasonable explanation for any difference in treatment Ms. ____ may experience. There is simply no evidence of any age related decisions or actions.

Dated: _____ XX, XXXX

Signed: _____
[Type Investigator Name], Investigator