



Sexual Harassment and Discrimination Investigation Unit (SHDIU)

Department of Administration



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Creation of the SHDIU



- The Sexual Harassment/Discrimination Unit (SHDIU) was established July 1, 2003, to establish an impartial, consistent and independent investigative process to evaluate allegations contained in a complaint of harassment or discrimination.
- The Governor issued the Governor's Policy Against Sexual Harassment & Discrimination (recently revised and renamed April 2018) with a mandate that all State employees sign the "Sexual Harassment & Discrimination Policy Acknowledgement" form.
- Both the Policy and Acknowledgement form can be accessed at http://hr.nv.gov/Resources/Forms/SexualHarassment/Sexual_Harassment_Discrimination/

MISSION

- The unit's mission is to conduct prompt, independent investigations of complaints of sexual harassment and discrimination, as defined by State and federal law, in order to protect the interests of the State, protect employees from unlawful discrimination and harassment, and reduce costs associated with settlements and court decisions against the State.

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Benefits of SHDIU

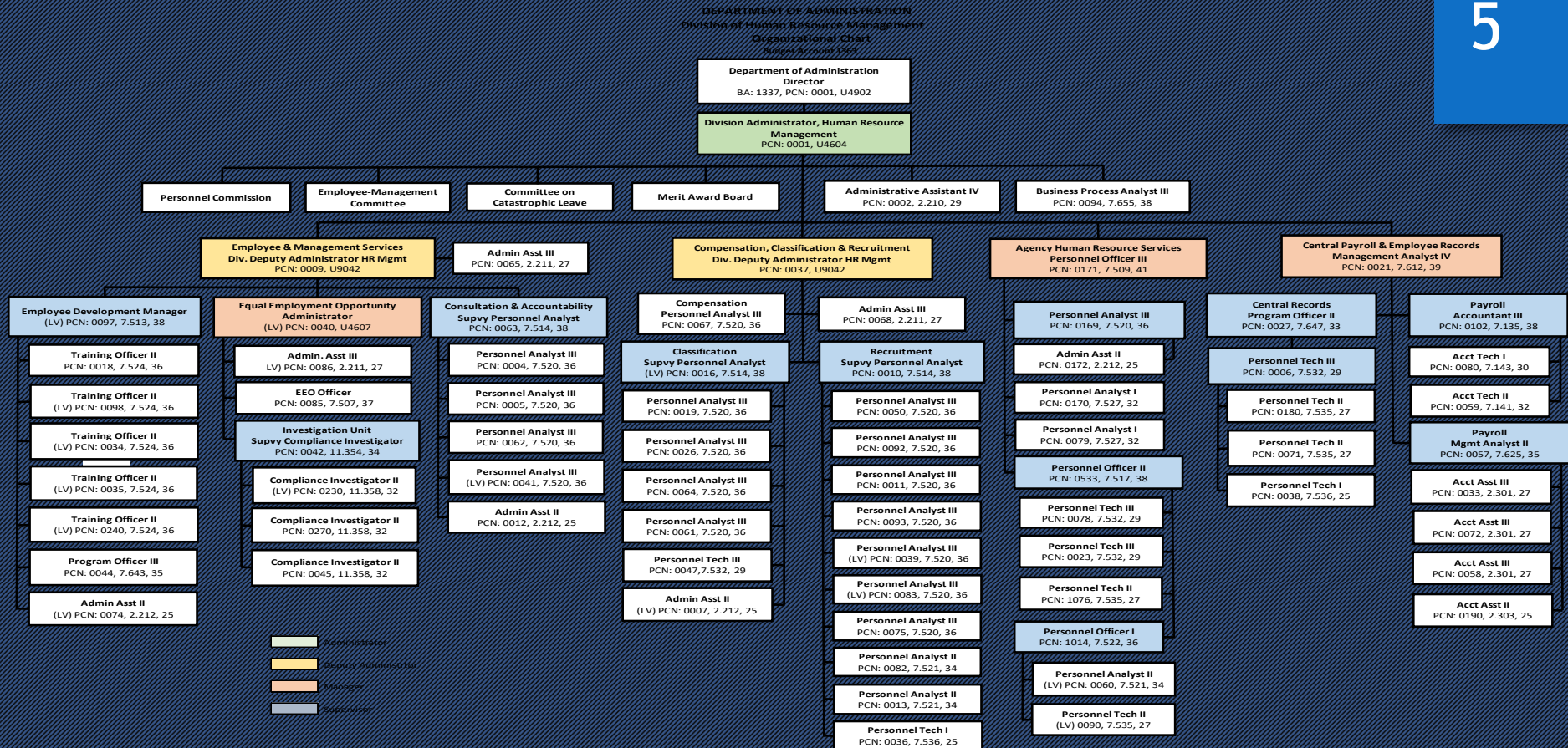
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- Each complaint is evaluated and investigated by trained personnel using consistent investigative procedures.
- Independent investigations reduce the perception there is bias on the part of the investigator. It may reduce concerns that departments could “sweep issues under the rug.”
- Independent investigators can complete investigations more timely and more in-depth as compared to agency staff that often have many other duties.
- Investigators provide management with additional important information which can be used to improve work culture.

Organizational Chart

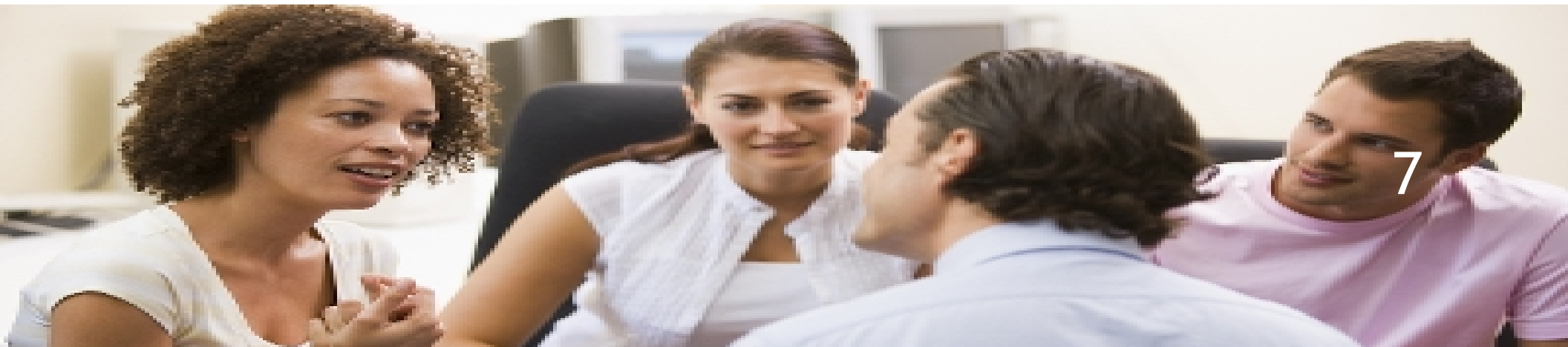
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Unit Description

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- The unit is managed by the Equal Employment Opportunity Office and is part of the Division of Human Resource Management.
- SHDIU has one Supervisory Compliance Investigator and three Compliance Investigator II's.
- Investigators are located in Carson City and Las Vegas.



- Investigators are trained both internally by other staff and externally by various providers.
- Training consists of investigative techniques, a federally certified EEOC Investigator Certification Program, and ongoing State courses.

Training sources



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- 32-hour online EEO Investigator Certification Course
<https://www.artofresolution.com/wp/?cat=21>
- Administrative Investigations offered through the State of Nevada Department of Public Safety
- Eliciting Effective Interviews and Interrogations
<https://isspolicetraining.com/>
- New hires participate in a 60-day training program where they are partnered with the supervisor. They work on cases together while applying concepts from the procedure manual. Investigators observe while the supervisor plans and develops the investigation. As they work through the training, the new investigator begins to work with the supervisor as a partner and then on their own.

Training-continued

- Investigators coming into the unit receive training manuals specific to EEO and Title VII investigations and must work with the Supervisory Investigator on all cases until they become proficient with our techniques and the application of Title VII.



Method and Law

- The Unit conducts its investigations in accordance to State and federal law.
- Title VII of the Civil Rights Act of 1964/Amended 1991
- Age Discrimination in Employment Act of 1967 (ADEA)
- Americans with Disabilities Act of 1990 (ADA)
- The Rehabilitation Act of 1973
- Equal Employment Opportunity Act of 1972
- Equal Pay Act of 1963 (EPA)
- The Pregnancy Discrimination Act of 1978
- Family and Medical Leave Act of 1993 (FMLA)

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Method and Law-continued

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- NAC 284.0995. “Sexual harassment” defined. “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature when:
 1. Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person’s employment;
 2. Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or
 3. Such speech or conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive working environment.
- NAC 284.696 and NRS 613.330 -Unlawful discrimination.

NAC 284.771. Sexual Harassment

1. Sexual harassment violates the policy of this State and is a form of unlawful discrimination based on sex under state and federal law. An employee shall not engage in sexual harassment against another employee, an applicant for employment, or any other person in the workplace.
2. Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on, or dismiss, persons who commit sexual harassment, including, without limitation, first-time offenders.

Parameters of Sexual Harassment and Discrimination

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- Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).
- The unit often finds conduct that may not rise to the level of a Title VII violation such as a one-time inappropriate comment. While those cases may not rise to the level of a violation, the conduct is still notated in the final report to be addressed by the agency.

Parameters of Sexual Harassment and Discrimination-continued

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- Typical outcomes of investigations include:
 1. The investigation revealed activity consistent with violations under Title VII;
 2. The investigation did not reveal activity consistent with Title VII; or
 3. The investigation revealed activity that, if continued, could rise to a Title VII violation.
 4. Our report also documents other misconduct if discovered.
- Additionally, any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations.
- An extension may be filed when the timeframes become a concern.

Parameters of Sexual Harassment and Discrimination-continued

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- Investigators are continually trained on what level of activity is required to meet Title VII violations.
- In recent training, the unit was provided caselaw including *San Mateo vs. Brooks* from the Ninth Circuit Court, which set a shockingly high standard to meet hostile work environment.

Prima Facie - Sexual Harassment

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- Was he/she subjected to unwelcome sexual harassment?
- Was the harassment sufficiently pervasive? Did it affect a term, condition, or privilege of employment?
- Did Management know, or should they have known, of the conduct, but failed to take immediate and appropriate corrective action?

COMPLAINT FILING OPTIONS

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The complainant has several methods to file a sexual harassment or discrimination complaint with the SHDIU:

1. Call the confidential Department of Administration's DHRM, Sexual Harassment and Discrimination Hotline: 1-800-767-7381. This goes directly to the supervisor of the SHDIU;
2. Complete a complaint in the NEATS system;
3. File a complaint using the SHDIU (NPD-30 Form); or
4. File a complaint directly with the Agency Coordinator (usually the agency Personnel Officer or EEO Officer).



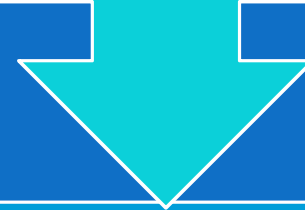
Notice Requirements- NRS 284

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- An employee who is the subject of an internal administrative investigation that could lead to disciplinary action must be provided notice in writing of the allegations against the employee within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations. The notice must be provided before the employee is questioned regarding the allegations.
- SHDIU typically uses a courtesy notice to document when the appointing authority became aware or should have become aware of the investigation.

Procedure for Discrimination Cases

After filing a complaint with the SHDIU, the investigator will reach out to the complainant to schedule an interview (recorded), collect a statement, a witness list, and any evidence regarding the allegation.



The Investigators establish a Prima Facie Case.

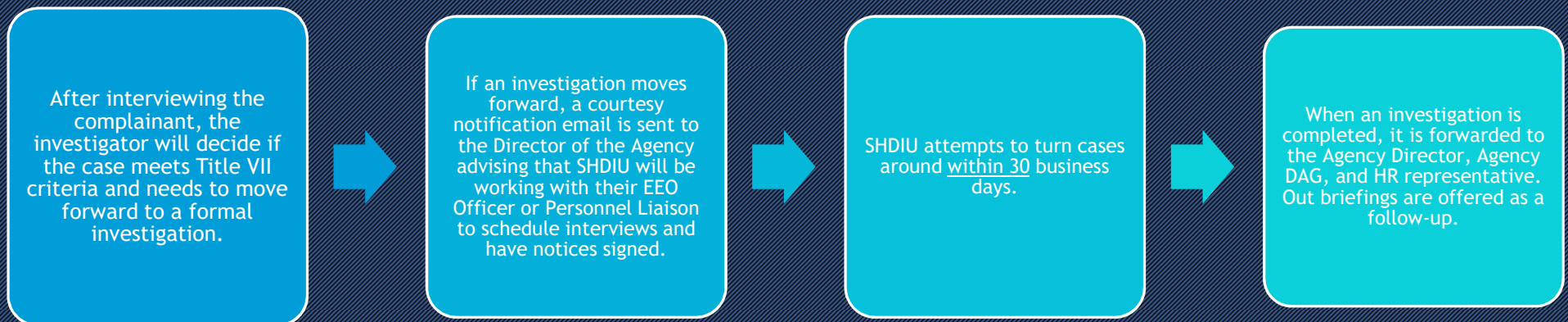
1. Complainant is a member of a protected class;

2. Complainant was subjected to an adverse employment action; and

3. A similarly situated employee was treated more favorably than the complainant under similar circumstances.

Investigative Process

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NAC 284.646 (Dismissals) and NAC 284.650 (Disciplinary action)

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284.646, 1(c)

Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State.

284.650, 21

Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.

284.650,22

Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.

Trends 2015-2018

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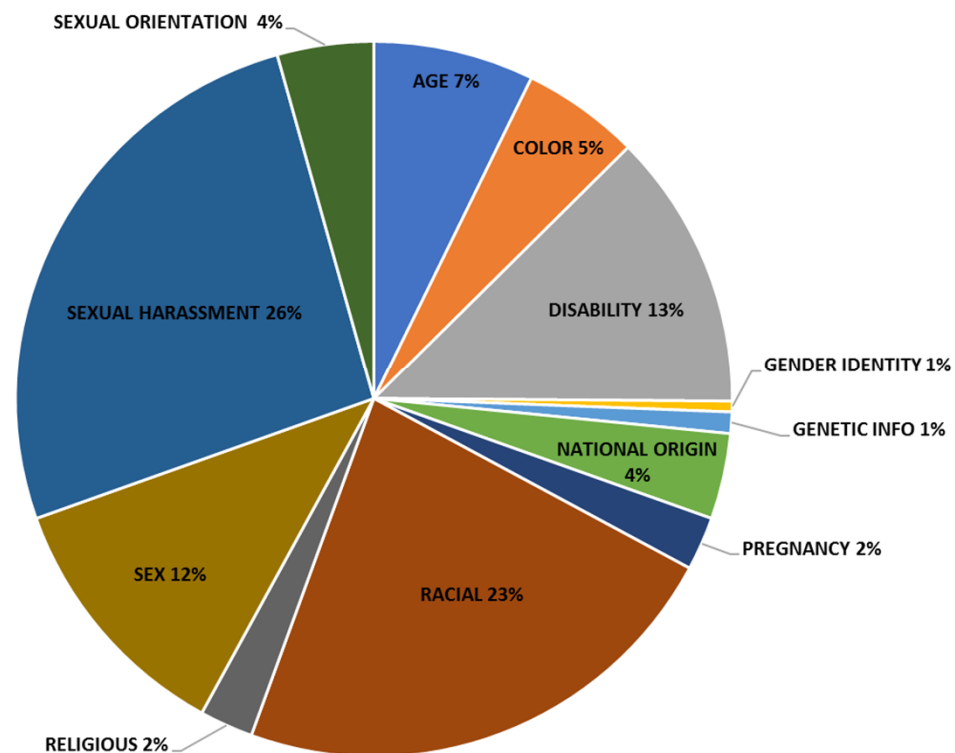


- 2015: 199 Complaints filed
- 2016: 179 Complaints filed
- 2017: 111 Complaints filed
- 2018: 116 Complaints filed

Complaints by Type

- In 2018 sexual harassment was the most common complaint by State of Nevada employees, followed by racial discrimination and then gender discrimination.
- Disability discrimination complaints were often associated with ADA compliance issues and FMLA leave.

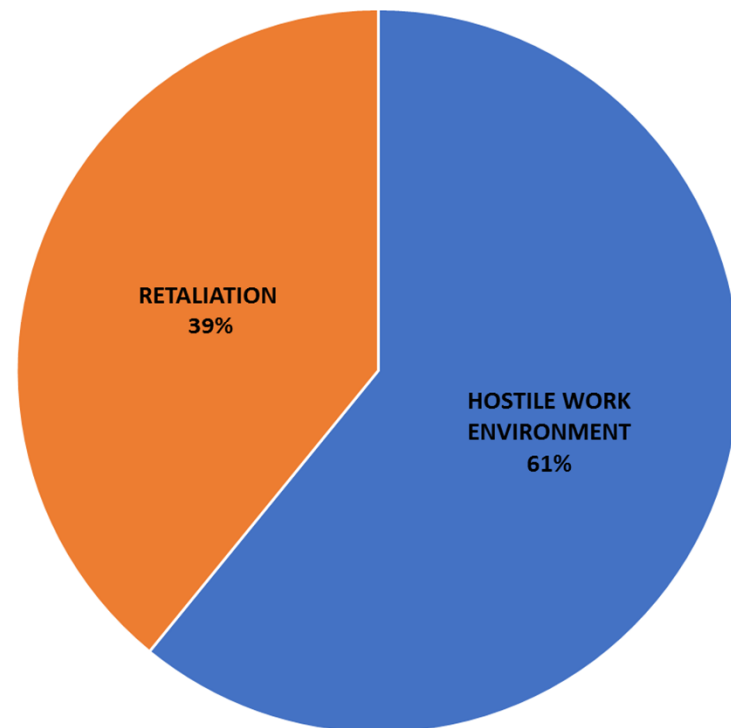
2018 EEO INVESTIGATION CASES BY COMPLAINT TYPE



Employees Reported Retaliation and Hostile Work Environment at a Significant Rate

- Of the complaints received 61% included allegations of hostile work environment and 39% reported retaliation after filing.
- Retaliation continues to be a significant concern for those interviewed, whether complainants or witnesses.

2018 EEO INVESTIGATION CASES
HOSTILE WORK ENVIRONMENT & RETALIATION



New Methods to Identify Trends

- SHDIU has begun gathering data that will help us allocate resources, identify problem areas within the State, forecast trends, or at least recognize trends to adjust staffing, and to identify areas for targeted education to reduce complaints.
- The unit plans to collect information on repeat offenders, previous complaints against the accused, relationship information, adverse employee actions, whether a case is Title VII or not, and if there is other misconduct not rising to the level of Title VII.



Challenges

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- Once a Final Report of Investigation is sent to a Director, investigators typically don't receive a response.
- There is no follow up to inquire if any action was taken regarding findings. This has led to Hearing Officer's decisions impacting the unit.
- Many follow-up calls by complainants, witnesses, and accused, include concerns that nothing was done and the activity is ongoing.
- Typically, SHDIU has to notice staff through their agency creating additional hurdles and scheduling issues.

Challenges-continued

- **Confidentiality:** There have been cases of employees disclosing interviews and the content of those interviews, which has affected the integrity of investigations.
- There have been reported breaches of the NEATS system and inappropriate access and distribution of reports.
- There is concern as to who has access to the online complaint database.
- State of Nevada Confidentiality Notices have been challenged by defense attorneys.

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Challenges-continued

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- **Retaliation** has had a significant impact on our investigations.
- Employees are fearful of bringing their issues forward due to a fear of retaliation.
- Witnesses are hesitant to participate honestly in interviews for fear of retaliation.

Challenges-continued

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- There is a lot of cross contamination. Accused supervisors have served witnesses with notices, witnesses try to be representatives, and representatives try to sit in on several interviews; all of which impacts our ability to investigate.
- Accused who have not been disciplined by agencies have retaliated against staff.
- Staff have acted in unison to retaliate and harass witnesses and complainants.
- We currently do not have a mechanism in place to quickly address any employee concerns regarding retaliation.