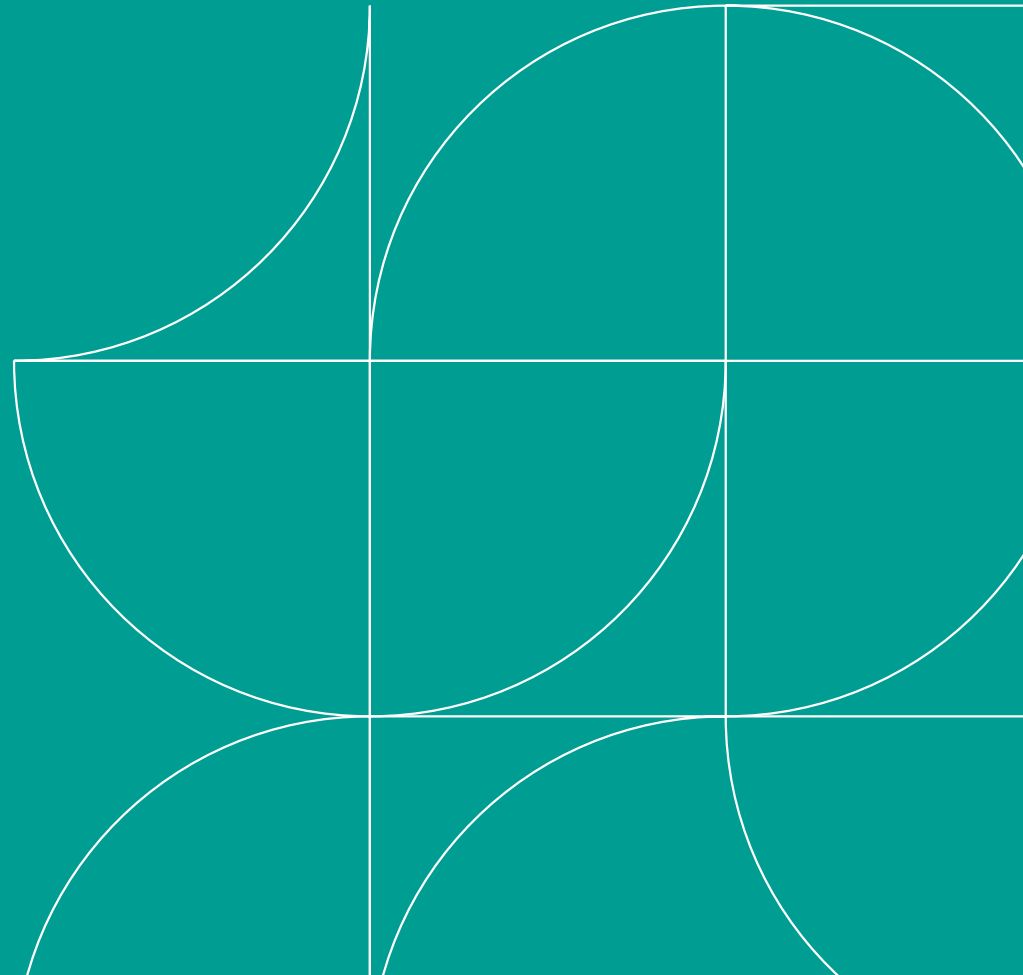




# Managing Cross Border Sexual Harassment Investigations

March 4, 2025

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# Speakers

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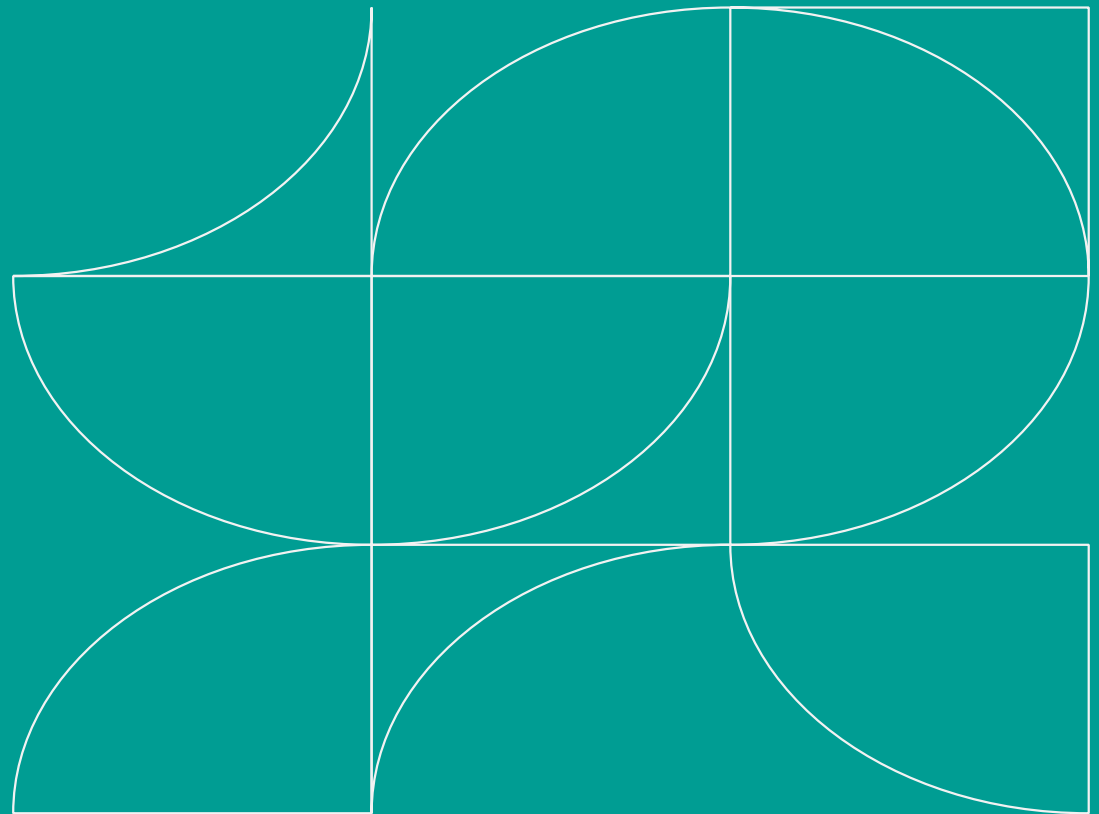
**Laurence Harvey  
Wood**  
Partner  
London



**Pete Talibart**  
Partner  
London

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# Comparative Review of Sexual Harassment Laws



# Sexual Harassment Laws – EU & UK

	France	Spain	Italy	UK
<b>Legislation</b>	Article L.1153-1, French labor code.	<ul style="list-style-type: none"> <li>- Criminal Code</li> <li>- Organic Law 3/2007, of 22 March, for Effective Equality between Women and Men;</li> <li>- The Organic Law 10/2022 on the Comprehensive Guarantee of Sexual Freedom.</li> </ul>	Italian "Code of Equal Opportunities" (Legislative Decree No. 198 of 11 April 2006).	s.26 Equality Act 2010  Worker Protection (Amendment of Equality Act 2010) Act 2023.
<b>Key Aspects</b>	<p><b>Prohibits:</b></p> <ul style="list-style-type: none"> <li>- acts of sexual harassment, consisting of <b><u>repeated</u></b> comments or behavior with sexual or sexist connotations that either violate their dignity because of their degrading or humiliating nature, or create an intimidating, hostile or offensive situation against them;</li> <li>- acts assimilated to sexual harassment, consisting of any form of <b><u>serious pressure</u></b>, even if not repeated, exerted with the real or apparent aim of obtaining an act of a sexual nature, whether for the benefit of the perpetrator or a third party.</li> </ul>	<ul style="list-style-type: none"> <li>- Equality law defines sexual harassment as any form of verbal or physical conduct of a sexual nature that violates a person's dignity, creating an intimidating, degrading, or offensive environment. It also includes harassment on the grounds of sex.</li> <li>- Criminal code defines sexual harassment as a criminal offense.</li> <li>- Sexual freedom law establishes that <b><u>all companies must promote working conditions that prevent the commission of crimes, and other conduct, against sexual freedom and moral integrity at work</u></b>, with special emphasis on sexual harassment and harassment for reasons for sex.</li> </ul>	Law defines sexual harassment as any unwanted conduct of a sexual nature that violates the dignity of a person or creates an intimidating, hostile, degrading, humiliating, or offensive environment.	<p><b>Prohibits</b></p> <ul style="list-style-type: none"> <li>- <b>sex-related harassment</b> unwanted conduct related to their sex which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person</li> <li>- <b>sexual harassment</b> unwanted conduct of a sexual nature which has the proscribed purpose or effect; and</li> <li>- <b>less favourable treatment</b> because of a person's rejection of, or submission to, sex-related harassment or sexual harassment.</li> </ul> <p><b>Employer Duty</b></p> <ul style="list-style-type: none"> <li>- Must take <b><u>reasonable steps</u></b> to prevent sexual harassment in the workplace.</li> <li>- Employer at risk of 25% uplift if the complainant succeeds and employer in breach of duty.</li> </ul>

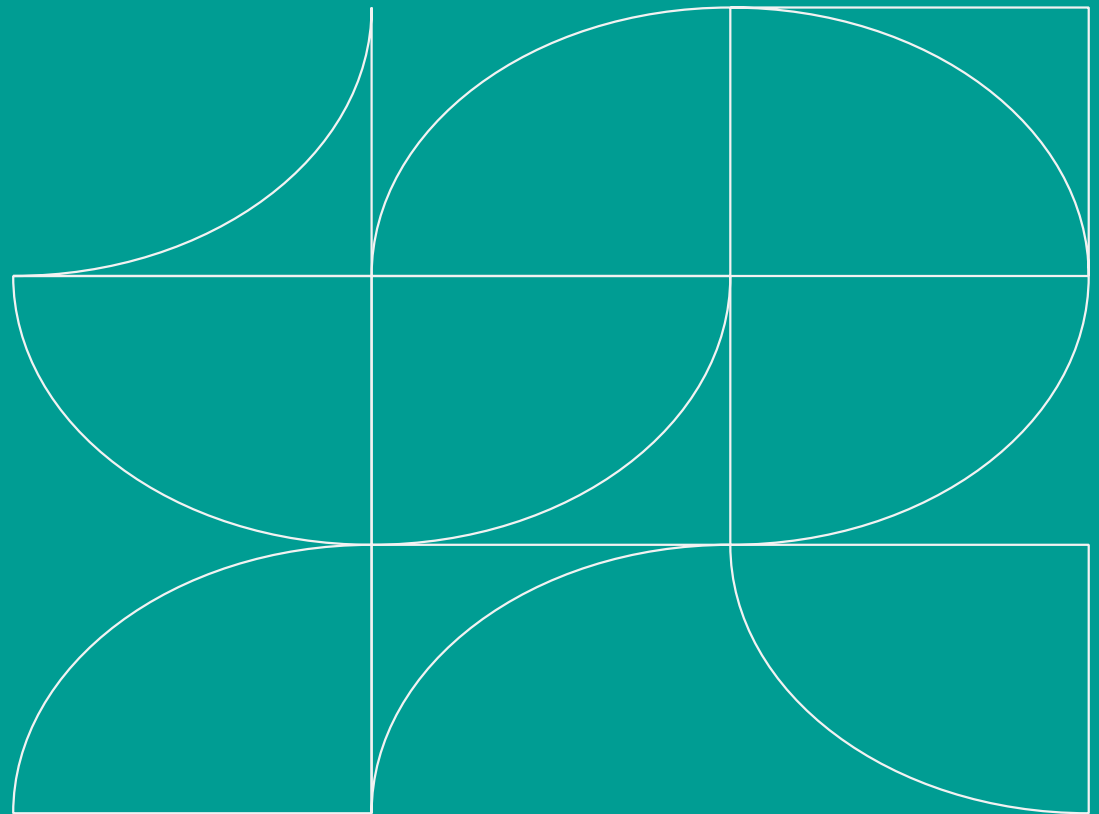
# Sexual Harassment Laws - Americas

	United States	Mexico	Brazil
<b>Legislation</b>	<ul style="list-style-type: none"> <li>- Federal: Title VII Civil Rights Act.</li> <li>- States: each state has some form of human rights act that would apply.</li> </ul>	<ul style="list-style-type: none"> <li>- Federal Labor Law (Articles 3 and 133)</li> <li>- Convention on Violence and Harassment</li> <li>- NOM-035-STPS-2018.</li> </ul>	<ul style="list-style-type: none"> <li>- Article 216-A of the Brazilian Criminal Code (Law No. 2,848/1940)</li> <li>- Norm Regulation 05.</li> </ul>
<b>Key Aspects</b>	<ul style="list-style-type: none"> <li>- Sexual harassment defined by Supreme Court as “sex discrimination” under Title VII. Quid pro quo or hostile work environment theories.</li> <li>- Supreme Court also recognizes sexual orientation and gender identity as “sex discrimination” under Title VII. Hostile work environment harassment based on sex, race, or other categories.</li> </ul>	<ul style="list-style-type: none"> <li>- Federal Labor Law defines sexual harassment and prohibits employers and its representatives from engaging in acts of sexual harassment in the workplace.</li> <li>- NOM-035-STPS-2028 regulates the identification, analysis and prevention of psychosocial risk factors, including workplace harassment.</li> </ul>	<ul style="list-style-type: none"> <li>- Brazilian Criminal Code defines sexual harassment and establishes the applicable penalties.</li> <li>- Norm Regulation 05, provides for the creation of an internal commission for the prevention of harassment in the workplace.</li> </ul>

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## Workplace Comparative Law – Investigations

### Practical Steps



# Comparative Table of Investigation Considerations

Aspect	United States	United Kingdom	Spain	Italy	France
<b>Privilege</b>	Broad application of attorney-client privilege.	Limited to attorney-client advice.	Applies to investigation materials prepared for legal advice.	No legal privilege, but doctrine of secrecy applies in limited circumstances for external counsel.	No legal privilege, but doctrine of secrecy applies in limited circumstances for external counsel.
<b>Governing Law</b>	Complex. Each US state has own law, plus Federal law. Location of incident, location of claimant and of respondent can all be relevant. Individuals have statutory and contractual rights linked to relevant jurisdiction.	Complex. Location of incident, location of claimant and of respondent can all be relevant. Individuals have statutory and contractual rights linked to relevant jurisdiction.	Comply with laws applicable to the employment contract or relationship of the employee under investigation.	Comply with laws applicable to the employment contract or relationship of the employee under investigation.	Comply with laws applicable to the employment contract or relationship of the employee under investigation.
<b>Obligation to investigate</b>	Not expressly stated but implied as part of employer responsibility to prevent harassment.	Not expressly stated but problematic if not carried out for numerous reasons.	Not expressly stated as such but implied as part of employer obligation to prevent harassment and included as an obligation in the applicable protocols.	Not expressly stated but implied as part of employer responsibility to prevent harassment.	Implied due to obligation to prevent harassment (and express requirement to investigate sexual harassment reported to works council).



# Comparative Table of Investigation Considerations

Aspect	United States	United Kingdom	Spain	Italy	France
<b>Timing</b>	Non-prescribed but complete promptly and diligently.	Same as US..	Proceed promptly  <b>Limitation periods</b> apply for disciplinary actions.	Start investigation ASAP.  Initiate disciplinary procedure promptly after investigation.	Start formal disciplinary proceedings within <b>two</b> months, notify disciplinary measures within <b>one</b> month.
<b>Interview Representation</b>	Only union-represented employees have right to representation.  Non-union currently has no such right (but can change depending on Administration).	No right to rep.	No right to be accompanied by a support person or lawyer during investigation, but can be accompanied by an employee rep or union rep for disciplinary hearing.	No right to be accompanied by a support person or lawyer during investigation but are permitted union rep for any disciplinary hearing.	No right to be accompanied by a support person or lawyer during investigation, but can be accompanied by colleague or employee rep for disciplinary hearing.
<b>Can an employee refuse to be interviewed</b>	A refusal on the part of an employee to participate in a reasonable investigation can potentially give rise to disciplinary action.	A refusal on the part of an employee to participate in a reasonable investigation can potentially give rise to disciplinary action.	A refusal on the part of an employee to participate in a reasonable investigation can potentially give rise to disciplinary action.	A refusal on the part of an employee to participate in a reasonable investigation can potentially give rise to disciplinary action.	A refusal on the part of an employee to participate in a reasonable investigation can potentially give rise to disciplinary action.

# Comparative Table of Investigation Considerations

Aspect	United States	United Kingdom	Spain	Italy	France
<b>Record of interview</b>	<p>Written record adequate. Can be recorded by employer in some states, or all states with consent of both parties. Not common to record.</p> <p>Complex whether employee has right to record.</p>	<p>Written record adequate but can be recorded with consent. Good practice to agree notes if possible.</p>	<p>Written record adequate, good practice is to agree on the notes/minutes of the meeting. Can be recorded with consent and if in compliance with GDPR.</p>	<p>Written record adequate, good practice is to agree on the notes/minutes of the meeting. Can be recorded with consent and if in compliance with GDPR.</p>	<p>Written record adequate but can be recorded with consent.</p>
<b>Reviewing Emails and phone communications</b>	<p>Can search any employer equipment, email, company phones, or work applications on personal phones.</p> <p>Searching personal phones or email is unlikely absent court order.</p>	<p>Personal phones for work purposes can cause difficulties.</p> <p>May review Employee emails on work server but should be proportionate and in accordance with policies and GDPR.</p>	<p>Personal phones for work purposes can cause difficulties.</p> <p>May review Employee professional emails on work server under certain circumstances (e.g. existence of policy informing on the monitoring and its purposes).</p>	<p>From a GDPR perspective, accessing work emails and company phone communications is challenging. Such access is only permissible when a specific policy is in place. This policy must be detailed enough to justify the access and comply with laws that protect employees from remote control and require minimizing data processing.</p>	<p>Review of emails sent from work email account permitted unless marked personal.</p> <p>Review of private emails is a criminal offence.</p>

# Comparative Table of Investigation Considerations

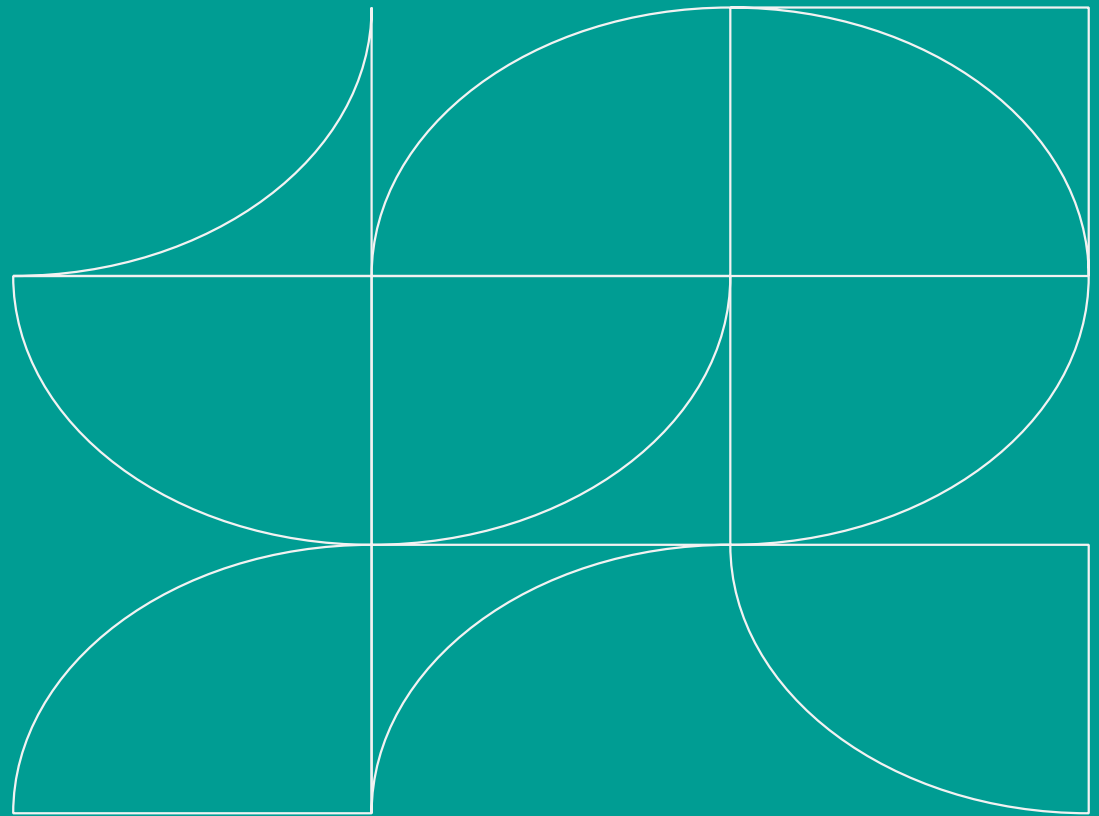
Aspect	United States	United Kingdom	Spain	Italy	France
<b>Data Privacy</b>	No expectation of privacy on employer systems, personal rights on personal devices.	Must comply with GDPR and associated data transfer rules.	Same as UK.	Same as UK.	Same as UK.
<b>Whistleblowing Protection</b>	No retaliation. Right to report to government.	Protection under UK law.	Adverse treatment of a whistle-blower, sexual harassment complainant or those collaborating in the investigation is prohibited. They are protected against retaliation.	Protect the identities of the whistleblower and any witnesses to prevent retaliation and ensure their safety.	Adverse treatment of a whistle-blower or sexual harassment complainant is prohibited.
<b>Employer Duties to Prevent Sexual Harassment</b>	Must proactively prevent sexual harassment, and must take steps to end ongoing harassment (between/among coworkers).	Must <u>proactively</u> prevent sexual harassment.	Must <u>proactively</u> take specific measures to prevent sexual harassment (equality plan, harassment protocols, training, reporting channels, etc).	Must take <u>all necessary measures</u> to protect the physical integrity and psychological well-being of the employee.	Employer has a specific statutory duty to take <u>all necessary steps</u> to prevent and stop situations of sexual harassment, and apply to sanctions.

# Comparative Table of Investigation Considerations

Aspect	United States	United Kingdom	Spain	Italy	France
<b>Works Council Involvement</b>	Unions representing employees must have opportunity to represent and participate in investigation, receive notice of discipline, etc.	Unusual but union or employee representatives are possible.	Works Council, and in some instances union representative, should be informed and involved in the process in the terms provided under the law and CBA.	Unusual but union or employee representatives are possible.	Required for cases of sexual harassment reported to the works council by an employee.
<b>Interim work arrangement Measures</b>	Not specified but suspension pending investigation often deployed. May be paid or unpaid; often paid. Separation of parties must not be viewed as retaliatory or disadvantage complainant.	Not specified but suspension pending investigation often deployed. Generally full pay. Separation of parties advised.	Suspension with pay must be justified and limited.	No measure is permitted during the investigation.  Employee can be suspended pending the outcome of the disciplinary procedure, but only if suspected of gross misconduct warranting dismissal without notice.	Employee can be suspended (without pay) pending the outcome of the disciplinary procedure, but only if suspected of gross misconduct warranting dismissal without notice.

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## Case Study



## Case Study

A **US** corporate hosts a Christmas party for senior management at its **London** Office. Key individuals fly in from various jurisdictions, including **USA, Spain, Italy, UK** and **France**. Some of whom later attend an offsite after party.

Two days after the party an HR executive in the **USA** receives a call from Jamie, a senior manager based in **Spain**, claiming sexual harassment by Alex at the party. Specifically, Jamie said that Alex having kissed and hugged other staff had tried to give Jamie a kiss on the cheek and pretended not to hear Jamie's protests. Alex also tried to kiss and hug Jamie at the after-party drinks, at a local bar, when other staff from the **France** and **US** office were also present. Alex is **Italian** but based in **France** and sits on the Company's executive board for the **EU**.

The morning after the party, Jamie received a work email from Alex which said "*Thanks for a great night, hope to see you soon. xx*". Alex also sent Jamie a message to her personal phone "*I am heading back to France next week. Would you like to meet again this week? ;)*"

Jamie wants to raise a formal grievance but is concerned of retribution due to Alex's position in the Company and has asked you not to share this with anyone else. **What should you do?**

## Case Study- Part 2

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In January 2025, the Company commenced a restructuring project which resulted in redundancies across the globe. Jamie was one of the impacted employees and was notified of the redundancy yesterday.

You receive an angry call from Jamie saying she had met her 2024 performance targets, and that the only reason she was selected for the redundancy was because she had rejected Alex's advances. Jamie said she would file a complaint with the local authorities.



What are the **risks** involved?



How does this impact the **ongoing investigation**?



How should you **respond**?



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