

# Labour & Employment

## Global Snapshot on Workplace Investigations




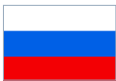








**Whether it's an employee "blowing the whistle", allegations of bullying, harassment or discrimination, potential fraudulent conduct by a supplier or claims of regulatory or health and safety breaches, we have seen a significant increase in the number of companies seeking advice on how to handle workplace investigations.**

Workplace investigations can be complicated, time-consuming and a significant distraction for any business. Furthermore, as seen from recent press coverage, the manner in which a business handles an investigation can attract as much scrutiny from internal and external stakeholders (if not more) as the alleged wrongdoing that led to the investigation in the first place. It is, therefore, critical that companies are aware of when a workplace investigation should be triggered, what a "good" investigation looks like and their duties and obligations in relation to such investigations.

In our latest global guide, we set out the key questions that employers are likely to have in relation to workplace investigations and lawyers from our global Labour & Employment team provide outline answers to these questions for their particular jurisdiction.

Please note that this guide is a high-level overview only and should not be regarded as a substitute for legal advice. It sets out the position as at 20 June 2022. We recommend that you always check the latest position with your local labour and employment lawyers.

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### In what circumstances might it be necessary to conduct a workplace investigation?

**A workplace investigation might be necessary in any situation where the employer needs to establish the facts.**

Typical examples include:

- Where an employee lodges a grievance containing allegations of bullying, harassment, discrimination, etc.
- Where the employer needs to determine whether disciplinary action is warranted, e.g. if there are performance or disciplinary issues.
- Where an employee raises a whistleblowing complaint, e.g. allegations of a legal, regulatory or health and safety breach.

### What is the role of an investigator?

**The role of an investigator is usually to establish what has happened**, to collate evidence and to report the findings so that a decision can be made about next steps.

Typically, an investigation deals only with establishing the facts and not with determining what should be done about them or what they mean as a matter of law. However, some investigators are also asked to provide non-binding recommendations to the employer. It is rare that they are also instructed to make any final and binding decisions.

### Five Key Issues to Consider When Conducting a Workplace Investigation

1. **Scope and objectives** – It is important the employer obtains a clear understanding of the specific factual issues it needs to determine and appoints the right investigator. A misstep, even at this early stage, could derail or undermine the whole process. In some circumstances, it may be appropriate to appoint an external investigator to maintain the integrity of the investigation. Clear terms of reference are essential.
2. **Evidence** – What evidence needs to be collected? Which individuals need to be interviewed? When identifying witnesses, it is important an investigator does not just speak to those individuals who will support or deny a particular version of events. It is important to look at both sides.
3. **Reporting the investigator's findings** – Are the allegations proven, not proven or are the findings inconclusive? The investigator's report should set out the findings based on the facts. Consider what action should be taken in response to the findings. As can be seen from recent press coverage, the action (or perceived lack of action) taken in response to the findings from an investigation is important and will face scrutiny from the company's stakeholders, from employees and customers to regulators and shareholders.
4. **Confidentiality** – The details of an investigation should be kept confidential wherever possible. Companies should, however, be aware that any evidence collated as part of the investigation may need to be disclosed at a later stage, whether as part of court proceedings, in response to a data subject access request, to a regulator, etc. Consideration should be given to data privacy issues, as well as whether the investigation can be conducted under legal professional privilege.
5. **Consequences** – The stakes have never been higher when it comes to workplace investigations – not only doing the right thing, but being seen to do the right thing. A failure to carry out a reasonable investigation can make any subsequent decisions or actions unfair, leaving the company vulnerable to legal action and/or negative publicity.



