

## Employment Investigations

Investigating serious allegations in the workplace such as misconduct, bullying, or harassment is never an easy or straightforward process. It is hugely important that employers understand their good faith duty to their employees to run a fair and reasonable investigation, before jumping to conclusions.

There is no “one size fits all” to an investigation. Some employers, particularly where there are allegations of serious misconduct, appoint an external investigator on behalf of the employer. An external investigator provides a neutral and independent approach to make findings. This ensures that the process is unbiased and will help mitigate the any personal grievances that can arise from an unfair investigation.

Conducting investigations internally can be seen as less intrusive and less expensive, but these issues can often get complex with further claims arising from an improper internal investigation. This can quickly change the landscape for employers when considering their options.

### Tips for in-house investigations

Here are tips that you may consider before conducting an internal investigation:

- **Carefully consider the context before you proceed.** It is crucial that the investigator understands the risk of a litigious claim. Understanding the full context enables organisations to assess risk and ensures that the investigation is conducted appropriately.
- **Keep this context in mind when deciding who should conduct the investigation.** There is a range of people that could conduct an investigation so employers should take into account things such as independence, capacity, expertise and cost when deciding who should conduct an investigation.
- **Prepare a terms of reference that clearly defines the scope of the investigation.** Key purposes may include: Setting out the aims of the investigation, defining the scope of the investigation, identifying issues to be covered and potential limitations in terms of access to people or documents, recording who is conducting the investigation and who this person reports to in the workplace and how they are to report, and setting time frames.
- **Take proportionate steps to preserve evidence and record those steps.** It’s important to document accordingly to reduce speculation for the parties involved. If an investigator discovers something relevant to the investigation, they must follow adequate processes to ensure this evidence is not destroyed.
- **Keep internal disclosures of the fact the investigation is taking place to a need-to-know basis.** Employers who are going to be interviewed or provide evidence for the investigation need to be notified, however it is important to keep an air of confidentiality to protect the complainant (if there is one) and potentially the workplace’s reputation.
- **Keep in mind your obligations of good faith** (including an express duty to be responsive and communicative) when conducting interviews. Remaining communicative and responsive will help avoid personal grievances or breach of good faith claims from employees who do not feel they have been treated fairly.
- **Be concise in your correspondence.** It is important from the outset that everyone is clear about the process. The aim of an investigation should not be dismissal, rather it is an

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opportunity to delve deeper into an issue and put it to rest. While dismissal may be the outcome, it should not be the main purpose and fair and reasonable processes must be followed to arrive at this result.

Our employment law team can assist you in conducting investigations, responding to complaints or allegations made against your employees and guiding you throughout the investigation and any disciplinary process.