



6 tips for employers conducting workplace investigations

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Allegations of [misconduct in the workplace](#) arise frequently. They may involve suggestions of professional rule violations, workplace misbehaviour such as sexual harassment or misuse of resources, or even criminal conduct such as fraud or stealing. An employer learning of such allegations will have to consider the response to be made, and whether formal investigation is required.

The following are some basic guidelines on the approach to be taken by employers in such a situation.

1. Safety first

The first consideration should always be to ensure that any immediate danger is addressed – stop the bleeding. This includes having regard to the emotional safety, as much as the physical safety, of employees.

The appropriate response will depend on the circumstances. It might involve standing an employee down until preliminary investigations can be conducted, changing access permissions on computer systems or physical premises, or re-deploying a staff member to separate them from other parties.

2. Get advice

In serious cases, you should get advice from a lawyer experienced in workplace investigations. That lawyer can assist you with considerations such as whether you need to report the matter to the police or your insurer, whether an investigation is necessary, and if so, how to go about conducting an appropriate investigation.

3. Secure the evidence

It is important to promptly locate any relevant evidence so that it can be preserved for later consideration. This may mean securing hard copy files, copying electronic files, etc. Assistance from an IT expert may be required.

The access of certain employees may need to be restricted or removed. You may need to take expert advice on this issue, as the collection and preservation of evidence can be crucial in the course of later proceedings.

4. In-house or independent?

An important decision in any workplace investigation is whether it can be properly conducted in-house, or whether external investigators should be appointed. Your lawyer will be able to advise you.

Any internal person appointed should be someone who is entirely removed from the alleged misconduct; someone in a position to conduct a fair investigation. That will usually be someone other than the ultimate decision-maker, who may have to later consider the results of the investigation.

An internal process is usually cost-effective, but not always suitable, particularly for serious allegations. There are often advantages in retaining an independent investigator.

Independent investigators offer experience and expertise in conducting investigations. They can allow it to be conducted with the protection of legal privilege if, for example, you use a lawyer. They ensure the process is conducted according to law, so as to minimise any prospect of a successful challenge to the ultimate findings and decisions made.

5. Be fair

Workplace investigations shouldn't be used as an opportunity to "*finally get rid of*" a difficult employee. Approaching an investigation with that mindset will often lead to unfair processes, which may later be overturned, with rulings of unfair dismissal or other breaches of employment law.

Investigations must be conducted in a procedurally fair way, and any subsequent disciplinary proceedings decided by an unbiased decision-maker, who gives the employee under suspicion a proper opportunity for their version to be heard and considered.

6. Be prompt

It is important that any workplace investigation not drag on unnecessarily. It should be prioritised and properly resourced so that matters can be dealt with in a timely way. If investigations drag on too long, they can be the subject of criticism by the courts for unnecessary delay.

At Gilshenan &Luton, we've assisted clients in many workplace investigations. Our lawyers are highly skilled and experienced in providing the necessary advice, guidance and assistance with all aspects of such an investigation. We act on behalf of government agencies, employers, and employees the subject of workplace allegations.

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