

Conducting a Workplace Investigation

Issues sometimes arise in the workplace that warrant exploration by way of a formal investigation. The investigator will investigate the issues in accordance with a document authorised by your company, such as an investigation plan, policy / procedure or terms of reference.

During an investigation, employees may be interviewed to determine what they know of the issue under investigation. The investigator will interview people who may have something to contribute. People who are interviewed may also suggest other people that may know something pertinent to the allegations.

ANONYMITY

Generally, the person complained about (the respondent) can work out who the complainant is, even if the complaint is made confidentially. We generally cannot keep people's identity anonymous unless there has been an assessment made by the employer that there is a genuine risk of harm to the complainant. Talk to your employer to see whether it is allowable to make an anonymous complaint and how to go about it.

PARTICIPATION IN AN INVESTIGATION

Companies can direct employees to participate in an investigation and to answer questions put to them by an authorised investigator. A failure to cooperate in an investigation may result in a disciplinary process being initiated. However, if you choose not to participate then the investigation can continue without a statement or interview from you, and Findings can be made without your evidence.

EVIDENCE

The investigator will look for those people who can provide direct evidence of what actually occurred. If investigators are provided with hearsay evidence, they will seek to speak to the people who actually saw or heard the incident rather than rely on what someone else told them they saw or heard. It is the responsibility of all individuals to ensure that the information provided to investigators is only what they know to be true (not what someone told them).

All information must be provided honestly and in good faith.

The investigator will gather all the evidence regarding the issue and if allegations have been made about an individual, the investigator will usually interview that person last to ensure that they can respond to all the information gathered about the alleged conduct.

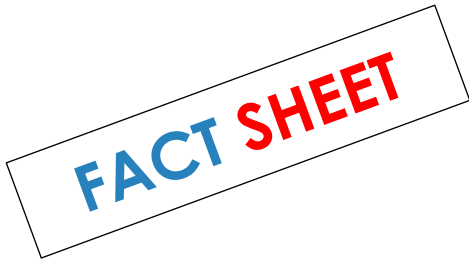
FINDINGS

Once the investigator has gathered all the information, they will analyse that information to determine, on the balance of probabilities, whether the alleged conduct did in fact occur. Balance of probabilities is a measure that says:

"It is more likely than not that the alleged conduct did occur."

PROCEDURAL FAIRNESS

Procedural fairness is also commonly referred to as natural justice. It will be provided to an individual by ensuring that no action that materially affects them, as a result of the Findings



of an investigation, will be implemented without giving the individual:

- the opportunity to hear the substance of the allegations;
- the opportunity to respond to the substance of the allegations; and
- an unbiased decision-maker to determine whether the allegations can be substantiated, not substantiated or dismissed.

Anyone adversely affected by the investigation process can access the company's employee assistance program.

WHEN SHOULD THE PERSON BEING INVESTIGATED BE TOLD ABOUT THE ALLEGATIONS?

The right to be informed about the substance of allegations, and the opportunity to respond, must be given before any Findings are made.

The point in time at which the person who is the subject of the complaint is informed of the allegations will depend on the circumstances of each case.

However, the following should be considered:

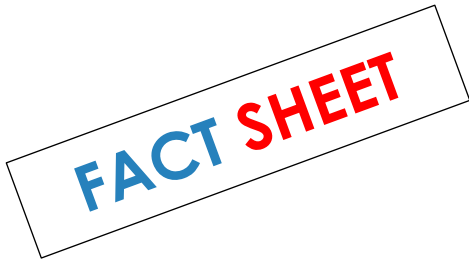
- There may be circumstances where initial inquiries or the early stages of an investigation will reveal that there is no case to answer. In such circumstances, it may not be necessary to inform the person complained about at all if they are unaware of the investigation. However, if anything is to be recorded on their file, they may need to be told.
- In circumstances where a complaint alleges wrongdoing, but the identity of the alleged wrongdoer is unknown, no-one should be notified of the allegations in that complaint unless there is a particular person named.
- Where the person who is the subject of the complaint is to be interviewed, it can be appropriate to delay informing them of the substance of the allegations until the interview, if it appears that evidence could be tampered with or witnesses approached. Specifically, where there is risk that:
 - Documents may be destroyed
 - Records may be modified
 - Collusion may take place, particularly where more than one person is involved
 - A vital witness is in a position to be pressured or influenced

There are no hard-and-fast rules about how and when to inform a person of the substance of any allegation/s. However, procedural fairness requires you to advise the respondent (person complained about) of the nature of the allegations and provide them with an opportunity to respond to the allegation/s.

CONFIDENTIALITY

Confidentiality is a duty of care not to disclose information that may be sensitive or damaging to the interests of another, whether or not the other person has specifically asked for the information to be kept in confidence.

It is the responsibility of anyone involved in an investigation, including witnesses, to ensure that



strict confidentiality is maintained. This is also to protect any information collected and to ensure that people's evidence has not been influenced or contaminated.

The maintenance of strict confidentiality means that an individual is unlikely to face civil action for defamation i.e. attacking the good reputation of someone or speaking ill of them, or disciplinary action being taken.

Information collected during an investigation may need to be released where there is a legal requirement to do so.

THE REPORT

The report is provided to the person who commissioned the investigation. Witnesses, complainants and respondents are not given copies of the report to maintain confidentiality.

Please note that information collected during an investigation may need to be released where the company is required to release the information under a legal requirement.