Guide to Workplace Investigations

What is a workplace investigation?

A workplace investigation is where an employer is enquiring into the facts surrounding an issue of concern such as a complaint of bullying in the workplace, a concern about missing stock, or the causes of a workplace accident.

What will the investigation achieve?

The scope of outcomes of an investigation may vary. Some investigations are fact finding and will result in a summary of the evidence and a recommendation about what happened, with higher management to make the final decision about what happened and what (if any) further action will be taken.

Other investigations may have a wider scope with the investigator to reach a final decision about what happened and what further action will be taken. This is often the case in small businesses.

Who is involved?

In larger organisations the parameters of an investigation are set by higher management. Thereafter, the participants in the investigation are the investigator, the person who made the complaint (if any), the person about whom the complaint was made (if any), and witnesses whose direct knowledge may inform the issues under investigation.

What rights do the participants have in the investigation?

In most cases employers have considerable latitude in deciding how the investigation will be undertaken.

Some positions such as local government and public service jobs may be subject to overarching legislation that imposes obligations upon the investigation process.

Support person

It is good practice to allow a participant in an investigation to have a support person if they ask for one.

Do I have a right to refuse to participate?

Usually employers have a right to expect reasonable cooperation from their employees. This is a complex issue and you should take advice before refusing to participate in an investigation.

If I am under investigation, do I have a right to silence?

Usually employers have a right to expect employees to answer reasonable questions. This is a complex issue and you should take advice before refusing to answer a question.

If I am under investigation, can I demand a copy of the investigation report?

Although the investigation report prepared by the employer's report is usually the employer's confidential document, there can situations where the employer should cooperate with a request to release information from its report, and a failure to do so may impair any further disciplinary or other action by the employer that is based on the report. This is a complex issue and you should take advice to know where you stand.

Further information

You should consider contacting WorkLegal without delay for advice about an adverse action or discrimination situation.