

Workplace Investigations

Contributing Editors

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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?



Australia

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Non-disclosure agreements, also known as confidentiality agreements, can be used to maintain the confidentiality of the investigation. In this agreement, the employee will be directed to maintain confidentiality concerning the investigation and matters that are the subject of the investigation, and not speak to anyone outside the investigation team about the investigation without authorisation.

Confidentiality agreements are legal documents. Employees should be informed that a breach of the confidentiality agreement could result in disciplinary action being taken against them, up to and including termination of their employment.

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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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