

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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01. What legislation, guidance and/or policies govern a workplace investigation?

China

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Currently there are no unified laws, administrative regulations or policies in the field of labor laws in People's Republic of China (referred to as "PRC") regarding investigations on workplaces of ordinary employers. The laws and regulations of employers in certain specific industries (such as banking, securities, insurance, medical institutions, etc.) and the laws and regulations governing certain personnel (such as officers of state-owned enterprises and members of the Communist Party of China) contain provisions relating to investigations on employees' conduct, but such provisions are only applicable to the aforementioned specific industries or personnel.

Employers generally will specify their investigation rights and rules and procedures of internal investigations in their internal rules and regulations (such as the employee handbook) or the employment contracts entered into with their employees. However, it should be noted that workplace investigations are still subject to laws and regulations in relation to personal information, privacy and data protection.

Last updated on 29/11/2023

Singapore

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A workplace investigation is usually governed by the employer's internal grievance policy or contractual guidelines found in the employment contract or employee handbook. In the absence of the same, the default governing regime is as set out by the Ministry of Manpower (MOM) and the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) in its guidelines and advisories, which include:

- the Tripartite Advisory on Managing Workplace Harassment;
- the TAFEP Grievance Handling Handbook; and
- the Tripartite Guidelines on Fair Employment Practices.

In addition, section 14(1) of the Employment Act 1968 provides that an employer is required to conduct

“due inquiry” before dismissing an employee covered under the Employment Act 1968 without notice for misconduct. The Singapore Courts take the view that “due inquiry” suggests some sort of process in which the employee concerned is informed about the allegations and the evidence against him or her so that he or she has an opportunity to defend him or herself with or without evidence during the investigation process.

Further, there are numerous cases where the Singapore High Court has alluded to or implicitly accepted the application of the implied term of mutual trust and confidence in employment contracts that would oblige the employer to act reasonably and fairly during the investigation, even though it is worth noting that the Singapore Court of Appeal has stated that the status of the implied term of mutual trust and confidence has not been settled in Singapore and that the Appellate Division of the Singapore High Court has stated that “[i]t remains an open question for the Court of Appeal to resolve in a more appropriate case, ideally with facts capable of bearing out a claim based directly on the existence of the implied term” (see [81]-[82] of *Dong Wei v Shell Eastern Trading (Pte) Ltd* and another [2022] SGHC(A) 8).

Hence, any references to the application of the implied term of mutual trust and confidence in Singapore in this article must be read in light of the above.

The current position is expected to change in the second half of 2024, with the passing of Singapore’s first workplace fairness law, the Workplace Fairness Legislation. On 4 August 2023, the Singapore government announced that it has accepted the final set of recommendations by the Tripartite Committee on Workplace Fairness in respect of the upcoming Workplace Fairness Legislation. The Tripartite Committee on Workplace Fairness recommended, among other things, that employers are required to put grievance-handling processes in place. It is therefore expected that the Workplace Fairness Legislation may contain requirements on how and when a workplace investigation should be conducted.

This article sets out the current position, before the Workplace Fairness Legislation was enacted, and will be updated when appropriate.

Last updated on 15/09/2022

Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

Last updated on 15/09/2022

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