



Workplace Investigations

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24. What next steps are available to the employer?



Hong Kong

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If the outcome of the investigation reveals that misconduct has been committed by the employee, the employer may consider whether it should allow the employee to defend him or herself against such findings. If the employment contract or relevant internal policies specify a right to be heard on the part of the employee through a disciplinary hearing before any actions can be taken against him or her, such procedures should be followed.

Assuming the employer maintains its findings that the employee has committed misconduct after the conclusion of the disciplinary hearing (if any), the employer may consider taking one of the following disciplinary actions against the employee depending on the nature and severity of the misconduct:

- Verbal or written warning – this is a common form of disciplinary action. The employer may consider including the nature of the misconduct and the potential consequences of repeating such misconduct (for example, termination of employment) in the warning to be given to the employee;
- Termination with notice – the EO allows employers and employees to terminate the employment with notice. It is not necessary to give reasons for the termination unless the employee concerned has been employed for at least 24 months, in which case the employer shall demonstrate a valid reason for the termination as defined under the EO;
- Suspension – the employer may suspend the employee without pay for up to 14 days in circumstances where the misconduct concerned justifies a summary dismissal, or where a decision on summary dismissal is pending. The employee may also be suspended where there is a criminal proceeding against him or her relevant to the investigation, until the conclusion of the criminal proceeding (as discussed in question 3);[\[1\]](#) and
- Summary dismissal – the employer may terminate an employment contract without notice if the employee is found to have:
 - wilfully disobeyed a lawful and reasonable order;
 - failed to duly and faithfully discharge his duties;
 - committed fraud or acted dishonestly; or
 - been habitually neglectful in his duties.[\[2\]](#)

[\[1\]](#) EO section 11(1).

[2] EO section 9. The employer is also entitled to summarily dismiss an employee on any other ground on which he would be entitled to terminate the contract without notice at common law.

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The investigator will usually set out recommendations within their report. It will then be up to the employer to act on those recommendations and to accept or reject the findings (if it were a fact-finding investigation). If, for example, a recommendation is made that the matter should proceed to a disciplinary hearing, the employer should then arrange such a hearing and nominate an impartial member of management to carry out the disciplinary hearing. In some instances, recommendations are made by investigators to provide training or update policies and such recommendations should be acted upon without delay. It may also be appropriate to notify a specific regulator of the outcome of the investigation.

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If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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