

Workplace Investigations

Contributing Editors

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01. What legislation, guidance and/or policies govern a workplace investigation?



India

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There is no codified law in India on conducting workplace investigations, so they largely depend on the internal policies of the employer. Certain requirements and best practice measures have evolved through judicial precedent, and these are codified through internal policies.

For claims involving sexual harassment, however, investigations can only be undertaken by the Internal Committee (IC), which an employer needs to constitute under the Prevention of Sexual Harassment of Women and Workplace (Prevention, Prohibition and Redressal) Act 2013 (SH Act).

The general principle laid down by the courts is that any action against an employee for misconduct should be taken after conducting a disciplinary inquiry as per the principles of natural justice (PNJ). Whether or not a disciplinary inquiry can be done away with in any circumstances is a very fact-specific assessment and depends on various factors, including but not limited to the seniority and location of employment of the employee, and the nature and circumstances of the alleged misconduct.

The PNJ broadly require:

- that the accused employee should be issued with a written charge sheet or notice setting out the allegations against him or her along with a reasonable opportunity to respond;
- appointment of an independent inquiry officer to assess whether the allegations are proven or not; and
- that action must be taken based on the outcome of the inquiry, any punishment ordered should be proportionate to the gravity of the misconduct, and also take into account the service history (eg, prior warnings) of the individual.

The charge sheet or notice issued to the employee has to set out the evidence used by the employer to support the allegations in sufficient detail. Therefore, gathering necessary information and evidence is usually a critical precursor for any disciplinary process that an employer may eventually initiate against an employee.

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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.

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