

Workplace Investigations

Contributing Editors

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04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?

Hong Kong

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There are no statutory or regulatory requirements regarding the choice of investigator in workplace investigations. However, it is good practice to have the investigation conducted by persons who have been trained to do so as investigations may involve intricate issues. It is also important that the investigators are perceived to be impartial and fair. For that reason, the investigators should be individuals who are not involved in the matter under investigation.

Complex cases or cases that involve a senior employee may require someone more senior within the company to lead and oversee the conduct of the investigation. This also applies where it is foreseeable that the investigation may lead to disciplinary action, summary dismissal of the employee or a report to an authority.

Engagement of external parties or professional advisors may be necessary if the conduct under investigation is serious or widespread and may lead to regulatory consequences, or if the employer does not have the requisite expertise to handle the investigation. Lawyers (whether in-house counsel or external lawyers) may be the best fit to conduct a workplace investigation to ensure that legal professional privilege attaches to documents and communications created during the investigation (please see question 14).

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The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level^[1], if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

[1] David Rosenthal et al., Praxishandbuch für interne Untersuchungen und eDiscovery, Release 1.01, Zürich/Bern 2021, p. 18.

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