

GUIDELINE: SUGGESTED STEPS TO FOLLOW WHEN CONDUCTING AN INVESTIGATION INTO MISCONDUCT

1. Decide whether to investigate

First determine whether an investigation is required. In situations where all the employees agree on what happened or the problem appears to be minor, it may be unnecessary to conduct a full-blown investigation. Usually, however, it may be better to conduct an investigation to ensure the problem is properly understood. An investigation is recommended in the case of serious misconduct.

2. Choose an investigator

In most small businesses, investigations are undertaken by the owner of the business or a manager within the business. The main requirement is that the investigator adopts an impartial investigation and does so in a manner that respects the rights and dignity of all concerned.

3. Plan the investigation

An investigation needs to be thorough.

Identify what rule or standard the employee is alleged to have breached. Ensure that the rule is reasonable and lawful, and that the employee knew the rule he / she is accused of breaking or should reasonably have known the rule.

Check for consistency of application and sanction for similar offences.

All available information should be gathered. Determine whether there are any witnesses to the events.

4. Conduct interviews

By asking people questions, an investigator is able to obtain valuable information about the matter. The employee who is alleged to have committed misconduct should be interviewed, as should the employee who complained of the wrongdoing. Other witnesses should also be interviewed where applicable and statements taken from them.

5. Gather documents and other evidence

A number of investigations may rely on documents, for example, e-mail messages, company policies, correspondence, and so on. Other investigations may require other types of evidence such as, social media posts, CCTV video footage, a recording, a weapon, photographs, or stolen items. These should be collected and retained.

6. Evaluate the evidence

The most challenging part of many investigations, especially if witnesses disagree or contradict each other, is to determine what actually happened. Do not make assumptions – gather facts. Base the investigation on observation, statements, records, data and interaction with supervisors.

Investigators need to determine how probable it is that the allegations are true. Based on this information the employer will have to determine whether or not there is sufficient evidence to charge the employee and convene a hearing. Where there are conflicting stories, assess the probabilities by considering whose story makes the most sense, whose version was more convincing, and whether those interviewed may have a motive to lie. Bear in mind that guilt needs to be proved by the employer based on a balance of probabilities (NOT beyond a reasonable doubt).

7. Document the investigation

Once the investigation is complete, the investigator should make notes to record what was done and why. Among other things, the notes should explain how and when the allegations came to the employer's attention, what interviews were conducted and what evidence was obtained. It is advisable for the investigator to write an investigation report, detailing amongst other things, the findings from the interviews and the analysis of the documentary evidence inclusive of witness statements. These notes and the investigation report will also provide guidance at a disciplinary hearing which may follow an investigation.