

Internal or External Workplace Investigations: Choosing the Right Approach

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Key takeaways:

- The choice between an internal and external investigator should be based on the nature and complexity of the complaint, the people involved, the level of risk, and the organization's available skills, time, and resources
- External investigators are often the better choice for complex, sensitive, or senior-level complaints where independence and objectivity may be questioned
- Internal investigators may be appropriate for lower-risk, less complex workplace disputes where there is sufficient independence, training, and capacity
- Investigations must be conducted by individuals who are impartial, independent, objective, and properly trained, with enough time and resources to complete the process
- Early involvement of legal counsel can support a fair process, reduce legal risk, and help preserve privilege over sensitive communications and investigation materials

How to Choose the Right Approach

When an employer determines that a workplace issue requires investigation, one of the first decisions is whether to appoint an internal investigator or retain an external one. Choosing the right investigator at the outset can reduce risk, support procedural fairness, and help ensure the investigation process withstands scrutiny.

In making this decision, employers should begin by reviewing their policies and procedures to determine whether they identify who must conduct the investigation. If the policies and procedures are silent or permit choice, several factors should guide the decision between appointing an internal or external investigator, including the following:

- **Nature and complexity of the complaint** – An internal investigator may be appropriate for relatively minor workplace disputes. However, for complex complaints or those involving highly sensitive matters, including sexual harassment and violence, an external investigator is often the better choice.
- **People involved in the complaint** - The investigator should be independent and should not have a reporting relationship with, or close connection to, anyone involved in the complaint. As such, if the complaint involves a senior leader, an external investigator is often the most appropriate option to avoid concerns about objectivity and conflicts of interest.

- **Level of legal, operational and reputational risk** – Where risk is relatively low, an internal investigator may be appropriate. Where the investigation is more likely to be scrutinized in legal proceedings, such as in more complex complaints or those involving members of senior management, for example, the independence and expertise of an external investigator can strengthen the defensibility of the process and the credibility of the findings.
- **Skills and training** – The investigator should be trained in conducting investigations, including the applicable common law or legislative framework, interviewing techniques, procedural fairness, and the employer's policies and procedures.
- **Time and resources** – The investigator must have sufficient time and resources to conduct a proper investigation. While some investigations may be short and relatively straightforward, others may take weeks or months. It may not be realistic for an internal investigator to manage a time-consuming, and often time-sensitive and urgent investigation, alongside their existing responsibilities.

Whether an investigation is conducted internally or externally, employers should ensure that the investigator is impartial, independent, objective and sufficiently trained.

The Role of Legal Counsel in Workplace Investigations

Employers facing workplace complaints often benefit from involving external legal counsel early in the process. Independent legal oversight can help ensure the investigation is conducted fairly, efficiently, and in a manner that minimizes legal risk.

At BD&P, we assist employers in a variety of ways in this context. Our experienced team of lawyers in our [Employment and Labour Group](#) conduct workplace investigations, retain and work with independent third-party investigators, and provide strategic oversight and support for internal investigations. We also advise clients on one of the most important—and often overlooked—aspects of workplace investigations: **preserving privilege**. Seeking legal advice at the outset of an investigation may help protect sensitive communications, investigation materials, and legal strategy where privilege may apply.

Workplace investigations can have significant legal, operational, and reputational consequences. Having the right guidance from the beginning can make a meaningful difference in outcome. If your organization requires assistance with a workplace investigation, including retaining an independent investigator, overseeing an internal investigation, or obtaining advice regarding privilege and legal risk, please contact our [Employment and Labour Group](#) to discuss how we can help.