Workplace Investigations Update



Workplace investigations are an important tool that employers can use to address issues of workplace harassment.

Statistics Canada released data in early 2024 which indicated a high incident of workplace harassment complaints (nearly 50% of women and approximately 30% of men reported experiencing workplace harassment.

Workplace investigations can assist employers in addressing this issue but a review of some recent case law suggests that flawed investigations can end in results that are not effective, and further, are time-consuming and expensive.

For example, often the employer has a policy in place that describes a formal investigation process and how it will be conducted. Further, the policy may specify the parties to be interviewed as part of a workplace investigation. Sometimes, circumstances may arise in which the investigation does not entirely follow the formal investigation process set out in the policy.

In British Columbia, this can be grounds for a court, on judicial review, to find that the investigation process was flawed and the steps taken by the employer following the investigation were seen to be unreasonable (see ***Pereira v. WCB***, 2022 BCSC 1654).

Conversely, an employer who makes reasonable efforts to investigate the merits of a workplace complaint and maintains records of the steps taken in the investigation has an increased likelihood of a court finding that the employer did act reasonably in conducting the investigation and relying on its findings in order to take steps regarding the complaint (see ***Ahluwalia v. BC (WCB)***, 2022 BCCA 165).

There are cases where the courts have found that an employer's initial investigation was flawed but that further investigation steps did eventually support the decision made by the employer regarding an employee's employment status (see ***Golob v. Fort St. John (City)***, 2021 BCSC 2192).

In summary, workplace investigations are an important tool for employers in dealing with workplace complaints. However, the investigation itself must be fair and reasonable in order to justify the steps taken by the employer following the completion of the investigation.

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This article is intended to be an overview and is for informational purposes only.

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