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## Human Resources & Health and Safety

July 2012



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your legal and contractual  
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## HR Update July 2012

### Carrying out Investigations

#### Purpose

The need to carry out an investigation (to gather the facts) is a common theme which applies to many HR related areas, e.g. when managing a poor attendance case, an 'alleged' conduct issue or an employee's poor performance. The objective of any investigation is to determine the next steps, i.e. is there a formal case to be managed and is the case related to capability (can't do) or conduct case (won't do).

#### Objectivity

A thorough, objective investigation will ensure that any subsequent decisions are underpinned by the facts that were gathered, rather than by subjective emotional thinking or personal opinions and assumptions. Where appropriate, an independent Manager should lead the investigation, handing the matter over thereafter to another member of the management team if it is decided that there is a case to answer to. This is particularly important when managing an 'alleged' conduct issue as the lack of a thorough, objective investigation may provide ammunition for a claim to an employment tribunal. If an employee is dismissed and subsequently claims unfair dismissal, the tribunal will closely examine whether or not the employer followed a fair procedure. A reasonable investigation is a fundamental aspect of a fair procedure.

#### Burden of Proof

Carrying out a thorough investigation will provide evidence which will be critical if the employer is required to defend a subsequent decision in an employment tribunal. The burden of proof (duty to disprove a claim) is placed with the respondent (the employer), and evidence gathered during the investigation will support and justify the decisions that were made.

#### Best Practice Tips

In order to ensure that investigations are carried out in a 'fair and reasonable' manner, it is important to;

- Inform the employee that they will be the subject of an investigation
- Provide the employee with a copy of the relevant internal procedure (if applicable)
- Inform the employee of approximate timescales and anticipated next steps
- Carry out the investigation in a reasonable timeframe
- Manage the investigation confidentially

- Only consider suspension where it is deemed absolutely necessary and not as a 'knee jerk' reaction
- Interview witnesses where appropriate
- Make 'factual, objective' notes and distinguish between fact and opinion
- Review the evidence on the 'balance of probability' i.e. what is more likely than not to have occurred based upon the facts/evidence gathered

In some circumstances, it may not be appropriate to inform the employee beforehand as it may result in the employee being too forewarned and may disadvantage the investigation or provide an opportunity to destroy or change evidence.

Timeliness is also important to ensure that recollections are still fresh and accurate and that evidence is still available i.e. documentation or CCTV footage.

## Further Advice

We hope you have found this brief overview of 'Carrying out Investigations' useful. If you have any employee related problem which you would like to discuss in confidence then please don't hesitate to contact us; [ehedley@hasslefreehr.co.uk](mailto:ehedley@hasslefreehr.co.uk) for further advice and information.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing [ehedley@hasslefreehr.co.uk](mailto:ehedley@hasslefreehr.co.uk) or by calling 02476 664092.

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