

The Dentons logo consists of the word "DENTONS" in a bold, white, sans-serif font, enclosed within a white arrow-shaped graphic pointing to the right. The background of the slide is a purple gradient with a wavy, textured pattern, and a top banner shows a beach and ocean scene.

**DENTONS**

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# **Navigating workplace investigations: Your top FAQs answered**

Grow | Protect | Operate | Finance

# Moderator



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An aerial photograph of a beach with waves crashing on the shore. The sand is a golden-yellow color, and the water is a deep blue-green. A large, semi-transparent purple graphic with a wavy, organic shape is overlaid on the left side of the image, containing the text.

# **Navigating workplace investigations**

Preliminary considerations

# When to investigate

- Allegations that can trigger the need to conduct an investigation may come from an employee, a customer, or another third party
- Typical allegations that trigger investigations:
  - Incidents of discrimination/harassment
  - Allegations of abuse/violence
  - Incidents of theft/fraud
  - Allegations of conflicts of interest
  - Breaches of workplace policies
  - Other dishonesty

# Why conduct an investigation?

- Legal obligations (e.g. occupational health and safety, human rights, constructive dismissal)
- Courts, arbitrators and tribunals recognize that allegations of serious misconduct may have a significant impact on an employee and must be properly investigated by the employer before a decision is made
- Adjudicators have imposed an obligation on the employer to conduct a fair and effective workplace investigation
- There is potential liability if an employer:
  - fails to conduct a workplace investigation;
  - fails to conduct the workplace investigation properly; or
  - fails to discharge its statutory obligations to investigate, if applicable
- Fairness and reputation

An aerial photograph of a coastline featuring golden sand dunes on the left and blue ocean waves on the right. A large, semi-transparent purple shape with a wavy, organic border is overlaid on the image, containing white text.

# **Navigating workplace investigations**

Questions for the panel

# Navigating a workplace investigation

**Q:** When does a complaint need to be investigated? Who should conduct the investigation?

# Navigating a workplace investigation

**Q:** What are some best practices to ensure you are engaging an effective investigator?



# Navigating a workplace investigation

**Q:** If the external investigator is not a lawyer but a trained workplace investigator, how does this impact privilege?

# Navigating a workplace investigation

**Q:** Can the complainant or the respondent bring a support person to the investigation interview? For example, a friend, co-worker or lawyer?

# Navigating a workplace investigation

**Q:** How do you navigate a complaint where the complainant declines to participate?

# Navigating a workplace investigation

**Q:** How do you navigate a complaint where the complainant wishes to remain anonymous? How do you address maintaining confidentiality during the investigation process?

# Navigating a workplace investigation

**Q:** How do you conclude an investigation where the parties have conflicting stories and there are no other witnesses?

# Navigating a workplace investigation

**Q:** How do you manage investigations on multiple-employer sites?

# Navigating a workplace investigation

**Q:** Can you start an investigation if the respondent is on leave of absence?

# Navigating a workplace investigation

**Q:** If you find that a complaint was fabricated, how do you address this matter with the complainant?



# Navigating a workplace investigation

**Q:** Who should get a copy of the investigation report once the investigation is concluded?

# Navigating a workplace investigation

**Q:** What is your opinion regarding the recording of investigation interviews?

# Navigating a workplace investigation

**Q:** Can you avoid an investigation by terminating without cause, in cases where it is believed there is misconduct, but the employer would prefer to avoid the costs of investigating to make out just cause?

# Navigating a workplace investigation

**Q:** How do you address that the timeline for an investigation can be uncertain, particularly where a respondent is placed on a leave of absence pending the outcome of the investigation?

# Navigating a workplace investigation

**Q:** If an employee is within their probationary period and there are complaints against them, would the investigation process change?

# Navigating a workplace investigation

**Q:** Can you clarify the boundary between the investigation, and then the actions to be taken based on the outcome of the investigation. Are those separate activities undertaken by different people?

# Thank you

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