**Investigation Outcome Report – Employer Considerations**

\*\*This document should be used in conjunction with the Investigation Outcome Report.\*\*

**Potential Evidence Sources**

**Physical Evidence**

* Photographs of injuries or the debris of broken item
* Documentary Support Evidence – Incident Report, Timesheet, Rosters
* Medical Reports (alternative unbiased Expert Reports)

**Technical Data**

Reports

Emails/Texts/What’ App Messages

**CCTV Footage:**

Please provide a minute by minute breakdown of the events leading up to and after the incident in the following format:

Date

13.03.23pm Customer enters shop

13.05.04pm Customer approaches the POS with an item

13.05.30pm Customer hands XX the item

**Witness Statements**

Include statements from anyone else who was involved or was around at the time (even if they are only saying they didn’t see anything).

**Training Records**

* What relative training has he/she completed? Please list:
* Induction DATE completed

**Previous Disciplinary Action**

* Does he/she have any live warnings on file?
* If yes, please provide date, type of warning, reason, and expiry date.

**Key Points to Consider during Workplace Investigations**

* The more serious the allegation, the more probative the evidence should be to satisfy a conclusion on the balance of probabilities;
* Consider all relevant evidence, and test any contradictory evidence;
* When considering prior conduct, consider the prejudicial effect(degree to which a piece of evidence can prove the allegation it stands for) vs the probative value(extend that the evidence detracts from a court’s ability to determine what happened);
* Where there is corroborating evidence, consider the possibility of collusion; always test the evidence;
* When assessing credibility, identify your own biases, assess reliability and consistency and remember, everyone performs differently at interviews.

**FAQs:**

**Who should compile the Investigation Report?**

The Investigation Outcome Report should be compiled by the nominated Investigating Officer. Once completed the report should then be issued to the Disciplinary Officer (if applicable) and the complainant (if applicable).

**What is the correct terminology for the investigator to use in their investigation findings report if recommending a disciplinary hearing?**

In Disciplinary Investigations where Investigators will be making recommendations, the following is appropriate;

“*These findings will now be issued to the nominated Disciplinary Office who will conduct the Disciplinary Meeting, review all evidence and the Disciplinary Officer will then make their own independent decision regarding an outcome”.*

Outcome maybe no further action, verbal warning, First Written Warning etc. inline with Company Policy.

**Taking witness evidence**

It may be difficult to obtain witness evidence as part of an investigation. If the investigation involves a sensitive issue, co-workers may be unwilling to participate in the investigative stage of the disciplinary process.

There is no way to force an employee to give evidence in a workplace investigation. If the issue being investigated is particularly sensitive, the investigator may wish to submit the queries in writing to the witnesses to see if that method elicits a written response.

**Redacting notes – should minutes of meetings be redacted and if so when?**

Notes of formal proceedings would not normally be redacted, unless the context of the meeting relates wholly to someone else and is not in any way related to the complainant, or the subject of the complaint.

**Legal representation at investigation stage**

If an employee seeks to be represented by a lawyer in a workplace investigation, you should carefully consider the circumstances.

A Supreme Court decision has confirmed that legal representation should only be permitted in a workplace investigation in certain exceptional circumstances that would result in the employee not receiving a fair hearing.

If the facts of the case are complex, difficult legal questions arise or the employee’s case is prejudiced by having to make their own defence, then you may need to permit the employee to bring a legal representative.

**What if a separate investigation is underway?**

In serious cases of misconduct, there may a separate Garda or regulatory body investigation underway.

If an employee is being investigated by external bodies, this may be sufficient cause to initiate a workplace investigation and any appropriate disciplinary action.

If a regulatory body is involved, it will be important to comply with any reporting or other relevant statutory obligations in relation to the complaint.

**What are the HR considerations for using recording facilities on Zoom or Microsoft Teams meetings?**

Article 4 of the GDPR defines personal data as any information related to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly. Therefore, in the context of recorded videos, if an employee is identifiable from the images, then the images within the recording can be regarded as personal data and the Data Protection Act will apply.

If an employer decides to use the recording option on any virtual platform, they should do so with caution. An employee must be made aware that the employer will be recording the session, why it is being recorded, where it will be stored, who has access to the recording and how long it will be stored for.

*If perhaps anything is unclear regarding this topic, please don’t hesitate to contact the ISME HR Team for support.*