

Dear HR Knowledge: I need to conduct an investigation at one of our locations in the United States, but our corporate Human Resources is in another country, what should I do?

Being a global employer has many complexities. Having to conduct an investigation about an incident in the workplace is a tricky thing to address for any employer. When we introduce the fact that this is an international internal investigation, we add an additional layer of complexity to the mix. However, it is important for the leadership and management team at an organization operating in multiple countries to know the proper steps to conduct an international internal investigation. It is important to address an incident right away, especially if it could be criminal, depending on the type of offense. Conducting an overseas investigation can come with new legal challenges, so employers must ensure the investigation is conducted appropriately. There are a number of reasons for workplace investigations, including concerns that conduct by an employee or several employees could be violating local law, company policy or code of conduct. The following recommendations outline the best practices for conducting an effective investigation.

1. When we refer to “local labor laws”, we are referring to the state in which the employer/employee is working as each US state requirements will vary and must be reviewed and understood before you even begin the investigation. We can’t stress enough the importance of having a strategic process in place before you start, as laws in most states limit the time you have to “take action” once you begin the investigation. Don’t go it alone; consider hiring an attorney or HR consultant familiar with US laws.
2. Be aware that in the US, the investigation is on a “need to know” basis; sharing data and information with the employer and management is done without any issue and the company/investigator determines who sees what.
3. To aid with an investigation or to gather information in advance, we recommend implementing a Whistleblower Hotline. These hotlines have become more popular as they are a means of ensuring that

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a complaint or concern reaches the appropriate parties. It's common for a concern or complaint to be dismissed or swept under the carpet by a manager or supervisor. A Whistleblower Hotline ensures that a complaint or concern reaches a party that is able and prepared to respond and take action. Remember that local labor laws may impose restrictions on a hotline, so again, do your homework before you put one in place.

4. Before taking any action, do your due diligence to ensure the action or allegation in fact rises to the level of an investigation. Sometimes the issue can be solved by a simple Performance Improvement Plan (PIP), written warning, or counseling session. You need to keep in mind what local and labor laws dictate, and what you have included in your code of conduct or business ethics. Remember, even if something is illegal overseas, it may not rise to the level of requiring disciplinary action or a dismissal for cause. In many of these instances, you may find your code of conduct is the best way to ensure your corporate policies are followed, especially if "state law" does not provide for such action.
5. Avoid "shooting first and asking questions later." Approach every investigation with an unbiased, objective perspective; everyone should be considered innocent until the evidence collected proves otherwise.
6. With any investigation, be sure not to guarantee confidentiality. You can safeguard information, but beyond that you run the risk of betraying a promise.
7. A significant factor that may complicate your investigation is the difference in laws and cultures between the US and the international affiliate country. For example, are you complying with document retention law in the state you are in, such as what documents may be retained and for how long? In many countries, information may only be collected for "the specified, explicit, and legitimate purposes" for which the organization had "originally" intended.
8. Identify appropriate witnesses, individuals, and corroborating evidence for your investigation. Remind those involved that you will safeguard information, but there is no guarantee of confidentiality.
9. A key point to not overlook is the fact that local labor law may provide additional (outside the norm) rights to individuals participating in an investigation. In many countries, access to email and voice mail may be considered protected and thus not accessible during the investigation, whereas in the US, that data is owned by the employer, not the employee.
10. Reporting your findings back to headquarters is standard procedure, but again, be sure the data you've collected and the means by which you are going to export that information comply with local labor laws related to protecting personal information.
11. When the investigation has been completed and the investigator has shared their findings with management, the next step is to determine the course of action or discipline, if appropriate. With international internal investigations, one key to a successful outcome is ensuring the local affiliate is included in the determination and delivery of the course of action. The local affiliate will be more familiar with laws relating to disciplinary action and termination depending upon which course of action you wish to take.
12. Based upon the outcome of your investigation and what you've learned, we urge you to use this time to update/review your code of conduct and business ethics, if necessary, to prevent future issues or to aid in future investigations. It may be necessary to educate those involved that retaliation is prohibited, and local law may extend greater or less protection than we are accustomed to in the US. The information you have collected during the investigation may not be preserved indefinitely, as is the case in the US. Certain countries require that investigatory data be expunged as soon as relevant status or limitations pass, or the target of the investigation requests the purge as a "right to be forgotten."

Our best advice is, don't go it alone. Use the services of a trained HR consultant, such as HR Knowledge or attorney familiar with employment law and conducting investigations.

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