



# Conducting International Employment-Related Investigations

Insights

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If you are a Human Resources or other manager at a multi-national company, it is likely that at times you receive complaints from employees and others requiring investigations to ensure your workplace environment is free from illegal harassment, discrimination, theft, defamation, violence and other violations of the law and/or company policies.

However, those responsible for investigations for global organizations must be aware of statutes, policies, and guidelines in countries and regions outside of the United States that could impact the way investigations must be conducted, the actions that may be taken as a result of investigations, and the decisions regarding whether an incident violated applicable law or workplace policy.

In the United States, following the implementation of Title VII of the Civil Rights Act of 1964 and other statutes prohibiting discrimination, such as the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990, many United States employers created internal company departments responsible for conducting investigations of allegations of impropriety. In 1998, when the United States Supreme Court, in *Faragher v. the City of Boca Raton*, articulated an affirmative defense for employers who expeditiously and professionally conduct internal investigations and remedy harassment, it became standard for employers in the United States to establish complaint and investigation procedures. However, many regions and countries outside of the United States either prior to *Faragher*, or shortly thereafter, enacted their own laws and guidelines, many of which are stricter than those required by United States law and practice. A number of these laws or guidelines set forth specific procedures by which workplace investigations must be, or should be, conducted. Additionally, certain behavior that would not be prohibited by statutes in the United States since it is unrelated to a person's gender, race, national origin, or other demographic factor, may be illegal in other countries.

Some of the many international statutes, regulations and guidelines are as follows:

- **Philippines.** Under the Philippines' Anti-Sexual Harassment Act of 1995 (R.A. 7877), all sexual harassment allegations must be investigated and resolved according to specific procedures. Some of the requirements of this law are as follows: 1) each worksite must create and maintain a committee on decorum and investigation with membership consisting of employees and supervisors with disparate job backgrounds; and 2) the committee members will be responsible for conducting sexual harassment investigations. In the Philippines, the employer or the head of the office may be liable for damages arising from the acts of sexual harassment committed in the

the office may be liable for damages arising from the acts of sexual harassment committed in the workplace if he or she is informed of such acts by the offended party and no immediate action is taken.

- **United Kingdom and other European Union countries.** In the United Kingdom and many European Union countries, employees who are the subject of workplace investigations which could result in discipline depending on the outcome of the investigation must be provided certain safeguards according to local laws, common employment practices, Works Councils and union requirements, and practices suggested by the European Social Dialogue's Framework Agreement on Harassment and Violence at work. Depending upon the country, region or worksite where the incident occurs, these procedures may include: 1) expeditious investigations conducted with impartiality and fair treatment of all parties; 2) the notification to employees who are the subject of the investigation at least several days prior to any investigation interview; 3) the right of employees to be accompanied by a representative or support person during the interview; and 4) the entitlement of employees and representatives to records and documents prepared during and after the investigation.
- **Moral Harassment.** Some countries, such as France and Sweden, prohibit "moral harassment" in addition to forbidding gender and other demographically-related harassment. Moral harassment occurs when an employee experiences repeated acts which result in the degradation of the employee's dignity or employment conditions. Company representatives investigating harassment allegations in countries outside of the United States should be aware that moral harassment may be a legal cause of action that can be caused by general behavior unrelated to factors such as an employee's gender, race, and national origin.

Employers, especially those with managers who supervise employees in countries outside of those where the managers reside, should become knowledgeable about the laws and practices regarding conducting investigations prior to embarking on such processes.