EVIDENCE STANDARD

CCMA-Ready Evidence Checklist

Getting workplace investigation evidence to withstand legal scrutiny

Most cases start with a signal, not proof. Tips remain the most common way fraud surfaces, at **43% of cases** — ahead of any control (ACFE, 2024). The work is turning that signal into evidence that holds. How you investigate decides whether the case survives: a rushed or poorly documented response can turn a genuine loss into an unfair-dismissal finding, and an unlawful method creates a second legal problem on top of the first.

Use this checklist before you act on a suspicion — and again before you sit down at a hearing.

The five building blocks of a defensible case

A defensible case usually needs the same five things. Miss one and the rest carries less weight than you think.

- **A lawful method.** POPIA-compliant, proportional and purpose-limited. Match the intrusiveness of the method to the seriousness of the suspicion.
- **Direct or strong circumstantial evidence** of the act itself — not merely of the loss.
- **Corroboration from more than one source.** One source is an allegation; two that agree is a case.
- **A properly qualified polygraphist**, if a test is used at all.
- **Findings documented with a clear chain of custody**, to an evidentiary standard — not merely enough to convince you internally.

Before you act on the suspicion

- [ ] **Is the allegation defined in writing, with the questions the investigation must answer?**
  Scope drift is what turns an investigation into a fishing expedition, and a fishing expedition into a POPIA problem.
- [ ] **Is the circle of people who know as tight as it can be?**
  Tipping off the subject destroys evidence and invites claims.
- [ ] **Is the method proportional to the seriousness of the suspicion?**
  Proportionality is the test a chairperson will apply to covert methods, not your good intentions.
- [ ] **Have you avoided areas carrying a reasonable expectation of privacy?**
  Changing rooms and bathrooms are not investigable spaces, whatever the suspicion.
- [ ] **If communications are involved, is the method RICA-lawful?**
  Unlawful interception under RICA is a criminal offence carrying a fine of up to R2 million or ten years' imprisonment.

Evidence quality

- [ ] **Were records, system logs and physical evidence secured early?**
  Evidence degrades and gets overwritten. The first hours decide what still exists at the hearing.
- [ ] **Does every exhibit have a documented chain of custody?**
  An exhibit nobody can account for is an exhibit the other side gets excluded.
- [ ] **Is each material fact corroborated by a second, independent source?**
  Weak or hearsay evidence is a leading reason employer cases are overturned on review.

- ☐ **If a polygraph was used, is it supporting a case that already stands without it?**
  A polygraph result has corroborative value only and can never be the sole basis for a dismissal.
- ☐ **Would the file make sense to someone who was not there?**
  The audience is a chairperson, the CCMA or a court — not the person who ran the investigation.

Process fairness

- ☐ **Was the employee given a fair opportunity to respond?**
  Required by the Labour Relations Act and your own disciplinary code. Substance can be lost on procedure alone.
- ☐ **Were interviews planned, and were accurate records kept?**
  Recollection is not a record, and a hearing may be months later.
- ☐ **Does the report separate fact from inference?**
  Conclusions that read as assumptions get treated as assumptions.

Where most organisations actually are

Only **59%** of companies worldwide ran an enterprise-wide fraud risk assessment in the past year, with a further 12% planning to — leaving 29% that did neither (PwC Global Economic Crime Survey, 2024). Most of the risk is unmeasured, which is why so many cases begin with a hunch rather than a system, and why the method you use after the first signal matters so much.

When to bring in a professional

Bring in an independent investigator when the suspicion involves someone senior, when the method needs to be covert, when the evidence will have to survive a hearing, or when an internal team would be investigating its own colleagues. Trio Data Special Services conducts undercover audits, forensic and fraud investigations for South African employers — lawfully, proportionally and to an evidentiary standard. Every enquiry is treated in confidence.

Sources: ACFE Report to the Nations (2024); PwC Global Economic Crime Survey (2024); Protection of Personal Information Act 4 of 2013; Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002; Labour Relations Act 66 of 1995.

This checklist is general guidance for South African workplaces and is not legal advice. Every matter turns on its own facts — take advice on yours.