

FRAMEWORK

Internal Investigation Framework

How to Investigate Workplace Misconduct Lawfully and Defensibly

How you investigate decides whether the case holds. A rushed or poorly documented response can turn a genuine loss into an unfair-dismissal finding, and a compliance breach can create a second legal problem on top of the first. This framework sets out a lawful, proportional and defensible approach for South African workplaces.

Four principles

- **Lawful.** Stay within POPIA and RICA; monitoring must be proportional and serve a genuine business need.
- **Proportional.** Match the intrusiveness of the method to the seriousness of the suspicion.
- **Documented.** Record decisions, steps and evidence with a clear chain of custody.
- **Confidential.** Protect the case and the people; tipping off the subject destroys evidence and invites claims.

The steps

1. Plan and scope

Define the allegation, the questions to answer, who leads, and the boundaries. Keep the circle tight.

2. Preserve evidence

Secure records, system logs and physical evidence early, with a documented chain of custody. Evidence that withstands legal scrutiny is corroborated, properly documented, and gathered through a sound procedure, not a single test or a hunch.

3. Investigate lawfully

Any monitoring or covert method must be proportional, serve a genuine business need, and avoid areas with a reasonable expectation of privacy such as changing rooms. Unlawful interception of communications under RICA is a criminal offence carrying a fine of up to R2 million or ten years' imprisonment.

4. Interviews

Plan questions, keep accurate records, and afford the employee a fair opportunity to respond in line with the Labour Relations Act and the organisation's disciplinary code.

5. Assess the evidence

Weigh corroboration, not just suspicion. A polygraph result has corroborative value only and can never be the sole basis for a dismissal; weak or hearsay evidence is a leading reason employer cases are overturned on review.

6. Report and recommend

Produce a clear, factual report that a chairperson, the CCMA or a court could follow.

Report structure. Mandate and scope · method · evidence and chain of custody · findings of fact · assessment against the allegation · recommendation · annexures.

Labour-law considerations

Discipline must be substantively and procedurally fair. Build the case on corroborated evidence gathered lawfully, and let any polygraph support that evidence rather than stand in its place. A defensible investigation is what separates a sound outcome from an expensive reversal.

Talk to Trio Data

Trio Data Special Services provides corporate intelligence, undercover audits, and forensic and fraud investigations across South Africa. For a confidential, no-obligation discussion, contact +27 21 949 4440 or office@triodatacape.co.za.

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