

TEN STEPS TO A FAIR DOMESTIC INQUIRY: A LEGAL AND PROCEDURAL PERSPECTIVE UNDER MALAYSIAN EMPLOYMENT LAW

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Abstract: *This paper presents a structured and legally grounded ten-step framework for conducting a fair and transparent domestic inquiry within the Malaysian employment landscape. Anchored in the principles of natural justice and the statutory provisions of the Employment Act 1955, the domestic inquiry process functions as a vital disciplinary mechanism for addressing allegations of employee misconduct while simultaneously upholding the rights of the accused. Each procedural step from the initiation of the inquiry and formation of an impartial panel to the appeal process plays a critical role in ensuring procedural fairness, organizational accountability, and legal compliance. The discussion is framed around key legislative references, notably Sections 14(2A), 14(2B), 14(3A), and 14(4) of the Employment Act, and further highlights the procedural rights of employees, including the right to be heard, to representation, and to cross-examination. In addition, the paper critically examines the practical challenges encountered in implementing domestic inquiries, such as bias avoidance, evidence handling, and communication clarity. By delineating a comprehensive and legally sound inquiry process, this study contributes to the enhancement of industrial harmony and ethical human resource management practices in Malaysia.*

Keywords: *Domestic Inquiry, Employee Misconduct, Procedural Fairness, Employment Act 1955, Human Resource Management*

Introduction

The process of conducting a domestic inquiry within the Human Resources realm is a critical component of addressing allegations of employee misconduct in organizations. Ensuring a fair, transparent, and systematic approach to handling such matters is essential for upholding organizational values, policies, and legal requirements. The domestic inquiry process involves a series of well-defined steps, each playing a crucial role in maintaining fairness, due process, and accountability. This article delves into the key stages of a domestic inquiry, examining how each step contributes to the overall integrity of the process. From the initiation of the inquiry, through the formation of an impartial inquiry panel, to the final step of the appeal process, the domestic inquiry framework is intricately designed to balance the rights of both the accusing organization and the accused employee. Throughout this exploration, we will highlight the legal context, procedural intricacies, and challenges associated with each stage, shedding light on the complexities that organizations navigate in their commitment to addressing misconduct while ensuring justice and transparency.

Step 1: Initiation of Inquiry

The first step in the domestic inquiry process is the initiation of an inquiry which is a pivotal moment in the domestic inquiry process within the realm of Human Resources. This is the initial step and marks the beginning of addressing allegations of employee misconduct (Daily FT, 2021). This step is tied to the fact that a policy has been broken by an employee and such ensures that organizational values, policies, and legal requirements are upheld. The initiation step serves several essential purposes and one of such is that it sets the wheels in motion for addressing employee misconduct in a systematic and transparent manner. It also formally notifies the employee and the organization to uphold principles of fairness and due process and as such ensures that the accused is aware of the allegations against them and is given an opportunity to defend themselves (Bakar, 2022).

This step also includes the Identification of Allegation from the employee misconduct and violation of company policies (Adams, 2023). This involves a range of issues starting from insubordination, harassment, discrimination and any bad behavior that contravenes company policies and the codes of conduct. The identification process involves receiving reports and complaints from various sources such as fellow employees, supervisors and even third parties. After this, a notice is given to the employee facing allegations. This acts as a formal written notice detailing the charges against them and informing them about the upcoming inquiry process (Donovan & Ho, 2015). This notice to the employee informs the accused employee about the charges levelled against them and provides details about the upcoming inquiry process. This step is very essential that the notice includes clear and specific information regarding the nature of the alleged misconduct, time, date, and venue of the inquiry, and the employee's rights during the process (Employsure, 2023). The domestic inquiry process at this stage is well related to an alleged violation of company policies, rules, or codes of conduct by an employee and as such involves notifying the employee in question about the allegations and informing them about the upcoming inquiry process. The organizations strive to uphold their values and standards, making it imperative to address breaches promptly. The formal written notice that is served to the accused employee details the charges levelled against them and as such this notice serves as a foundation for the inquiry and ensures transparency by informing the employee about the forthcoming process. As per Malaysia's laws more so the Employment Act 1955, there is recognition of the rights of employers to take disciplinary action. This step also encompasses issuance of a formal written notice to the accused employee as stated under the Section 14(2A) of the Employment Act that states that the employee must be given a written

statement detailing the alleged misconduct and the scheduled inquiry date. As per the law this stage is very crucial as it is linked to the court processes later in the appeal as there is need for the notice to ensure transparency and allows employees to prepare their defense.

In this stage, there are a few challenges and considerations that arise from the misconduct and this is more complex and multi-faceted. There is also a challenge in striking the right balance between providing sufficient information and avoiding unnecessary speculation is crucial. Additionally, there is need for the companies to be mindful of potential biases and their inaccuracies in the initial identification of allegations. Also, there is also misunderstandings and misinterpretations that comes from this stage as the notice could lead to unwarranted accusations. This shows the importance of thorough investigations before proceeding to the initiation step. In this stage from the initiation of an inquiry, the tone for the entire domestic inquiry process is set and thus it is core for the allegations to be formalized and the concerned employees informed so that the right path is followed toward resolving the misconduct begins.

Step 2: Formation of Inquiry Panel

This is the second stage in the domestic inquiry process is the formation of the inquiry panel to oversee the entire process (Hashimoto & Zulkipli, 2023). The inquiry panel consists of neutral and unbiased individuals that are senior managers and HR representatives not directly involved in the incident under investigation. The inquiry panel members are a group of people who set up the hearing speed and in all cases are people who possess a fair understanding of the organization's policies and procedures (Bakar, 2022). This inquiry panel members ideally possess in-depth knowledge of the organization's policies and procedures and in most cases are designated to oversee the process, maintain decorum and facilitate a rigorous yet equitable inquiry.

This step starts at the selection of Panel Members where the heart of this step lies in and this is done accurately to ensure that the panel members chosen are the individuals who are not directly involved in the incident under investigation and who possess a deep understanding of the company's policies, procedures, and culture. Additionally, the panel members include HR representatives, senior managers and even external experts who can contribute their expertise. The most important person that is selected at this stage is the panel chairperson who has a more pivotal role to oversee the entire inquiry process and ensure that proceedings are conducted fairly. This is also core to enable for the maintenance of the decorum of the process. The chairperson's impartiality and professionalism are analyzed along with the leadership qualities so as to enhance the success of the inquiry (Alagaratnam & Thye, 2021).

This step has the core purpose and significance of ensuring that the inquiry is conducted independently and impartially and as such the selection of the individuals who are not connected to the incident or parties involved. The purpose of this stage enables the organization minimizes the risk of bias or conflicts of interest. Also, the formation of the inquiry panel is a foundational step in the domestic inquiry process and this step lays a groundwork for a fair and credible inquiry. The panel members are very core in the domestic inquiry process and plays a pivotal role in upholding the values of the organization through the promotion of transparency and ensuring that the inquiry is conducted in accordance with HR best practices and legal requirements.

Step 3: Notice of Inquiry

The third step in the domestic inquiry process is the notice of inquiry which is a formal written notice issued to the employee that outlines the specific charges against them. This formal notice also provides details about the time, date, and venue of the inquiry and allows the employee sufficient time to prepare their defense (Hashimoto & Zulkipli, 2023). Additionally, the domestic inquiry process is enabled beyond the logistics so as to give the right to representation, cross-examination and defense to the employee (Bakar, 2022). The formal notice issued to the employee is stated to explicitly mention the date, time, and venue of the inquiry just as stated in the Section 14(2A) of the Employment Act. Additionally, this formal written notice ensures the employee's right to adequate notice and prevents any perception of unfairness. The Section 14(2A) of the Employment Act depicts that an organization involved in a domestic inquiry process with an employee need to maintain clear Communication and specify the nature of the alleged misconduct with reference to the relevant company policies and the codes of conduct violated. Additionally, the clarity of the domestic inquiry process is essential to avoid misunderstandings and ensure that the employee comprehends the charges being brought against them.

The Section 14(2A) of the Employment Act states that the domestic inquiry process must follow the employee's rights during the inquiry process. The Section 14(2A) of the Employment Act follows the right to representation and as such the opportunity to cross-examine witnesses and the right to present evidence and arguments in their defense. The purpose and significance of this step in the domestic inquiry process is core as the issuance of the notice of inquiry serves several crucial purposes. It enables the employee to be fully informed about the allegations against them and the upcoming inquiry and shows the level of transparency upon which the company handle the case. Additionally, this stage in the domestic inquiry process empowers the accused employee to prepare their defense comprehensively and be mentally prepared for the process (Rahman, 2021). The formal notice given to the employee for a poor behavior or an activity that does not follow the policies of the company demonstrates the organization's commitment to upholding fairness and due process. This is because generally under the common law in Malaysia, the precision of the accused person with information about their rights shows that an organization has a reinforced dedication to conduct the inquiry in a transparent and equitable manner.

In this stage, there are lots of challenges and considerations that HR managers and the inquiry team struggle with and these range from the difficulty in striking the right balance between providing sufficient information and avoiding unnecessary speculation. The formal notice in this case is stated to be as specific enough as it can be so as to inform the employee without revealing confidential or sensitive details that may prejudice the inquiry process. This step is very core in enabling the transparency of the domestic inquiry process as per Section 14(2A) of the Employment Act as well as per the organizational policies and culture of the company.

Step 4: Pre-Inquiry Meeting

The fourth step in the domestic inquiry process as per the Section 14(2A) of the Employment requires that the team does a pre inquiry meeting with the employee and even with their representative if applicable so that the employee is informed about their rights during the inquiry process and the evidence is laid to showcase their mistakes (Chemmanur, et al., 2019). At this stage, the employee is given an opportunity to present any preliminary submissions or request witnesses if needed. This stage of the domestic inquiry process elucidates the inquiry process so as to ensure that the employee's understanding of their rights which also provides

them with an opportunity to prepare their defense. This step also enables employees in the domestic inquiry process to gather evidence and identify potential witnesses and as such these organizations promote a comprehensive and fair inquiry (Geyzel, 2018). In this pre-inquiry meeting in the domestic inquiry process, the employee's right is granted so that they prepare their defense and this is enshrined in Malaysia's labor laws. Also, the pre-inquiry meeting enables the accused employee to also gather evidence against the organization so as to identify potential witnesses and create a comprehensive presentation during the inquiry (Anbalagan, 2023).

Step 5: Inquiry Proceedings

The fifth step in the domestic inquiry process as per the Malaysian law is inquiry proceedings that start at the panel chairperson outlining the purpose, rules and procedures of the inquiry (Geyzel, 2018). After this, the accused employee is presented with the evidence against them more so the documents, witness statements and the relevant information linked to their actions. Additionally, in this stage the employee is given the chance to respond to the questions and allegations stated and also to question witnesses (Daily FT, 2021). After this, the accused is also presented with their own evidence and witnesses in their defense. The heart of the domestic inquiry is the proceedings where the chairperson opens with an introductory statement and elucidates the purpose, rules, and procedures of the inquiry. This fosters clarity and transparency, reassuring both parties of a fair process. The management of the company can also present its evidence and bolster the allegations of employee misconduct (Gilal, et al., 2019). In this stage, there is presentation of the evidence in a structured approach just as stated in the Section 14(2B) of the Employment Act. This puts lots of emphasis on the accused employee so that the employee is given a fair opportunity to defend themselves and respond to the evidence against them.

Step 6: Cross-Examination

In the domestic inquiry process, the sixth step is the cross examination that involves the Human resource managers and representatives of the management which also creates an opportunity to cross-examine witnesses (Daniel, 2018). This step has a thorough examination of the evidence and statements presented and as such all the employee's representative and the management's representative usually engage in cross-examination and subject the evidence and witnesses to critical scrutiny (Hamadamin, & Atan, 2019). This step is also core in enhancing the inquiry's thoroughness but also underscores its commitment to fairness. Moreover, the primary purpose of this stage in domestic inquiry process boosts the credibility, consistency, and accuracy of the witness's statements which gives lots of accuracy to the organization. Additionally, in the case of management of issues with employee misbehavior, the organization's representatives present counterarguments so as to clarify discrepancies and uncover potential biases and inaccuracies. In this stage, the people involved in this case have their roles outlined. The questioning party who are more so the cross-examiner assesses the accused employee's representative (Alagaratnam & Thye, 2021). Also, the witnesses in this case also offer evidence and testimony related to the allegations. Moreover, the questioned party and the witness's original examiner are also allowed to present their case.

There are lots of processes and techniques that are followed in this stage. The cross-examination stage follows a more a strategic approach to elicit useful information and challenge the credibility of the witness. The techniques that are used in this stage include leading questions that suggest a particular answer so as to challenge and verify specific points. There are also techniques of contradiction that showcases the inconsistencies between the witness's previous

statements and their current testimony. There is also usage of impeachment where the witness is assessed based on their credibility to contradict their current testimony. There is also usage of clarification on the facts of the case and this involves seeking additional information to provide context on the evidence presented.

Step 7: Rights of the Accused

In this stage, the rights of the accused are outlined. According to the Section 14(2B) of the Employment Act, the employee accused of some misbehavior have the rights to ask questions and as such the cross-examine witnesses are challenged on their statements and gather additional information (Hamilton, & Sodeman, 2020). The accused also have the right to challenge evidence and present counterarguments and explanations for the evidence presented. The stage of cross examination plays a very powerful role in domestic inquiry process as it uncovers the truth which allows for a comprehensive examination of evidence and ensures that all angles of the case are explored and tested. Additionally, the cross-examination stage in the domestic inquiry process enables for the protection of the rights of the accused and such creates credibility assessment. Additionally, the fair process is also done in the cross-examination that contributes to a fair, balanced and transparent inquiry process and this ensures that professionalism is essential (Flores, et al., 2020). In this stage the witnesses become defensive, confused and are even hostile during cross-examination which gives the chairpersons a difficult job to remain respectful and productive. The cross-examination is a cornerstone of the domestic inquiry process in the Human resources and this stage provides a platform for questioning and challenging evidence. This step also enables for the classification of the difficult terms which contributes to the pursuit of truth. Also, the cross-examination supports the development of a comprehensive understanding of the allegations and facilitates a and makes it a more flawless HR inquiry process.

Step 8: Deliberation and Conclusion

In the domestic inquiry process, the eighth step is the deliberation and conclusion where the evidence collected are analyzed based on the evidence so as to arrive at a fair conclusion. The panel then determines whether the employee is guilty of the alleged misconduct and if they approve the evidence, then an appropriate disciplinary action is taken (Malaysia Employment Act 1955). This stage involves an analysis of the evidence, statements and arguments presented by both sides so as to arrive to an impartial and well-founded conclusion based on the accused employee's culpability in the alleged misconduct.

Step 9: Findings and Recommendations

The ninth step in this domestic inquiry process is the analysis and preparation of the findings along with the recommendations presented during the inquiry. This report is then submitted to the organization's management for further action. Additionally, the report given at this stage serves as a critical reference for the organization's management in determining the appropriate course of action. The Section 14(3A) of the Employment Act put lots of emphasis on the inquiry panel's findings and recommendations and thus ensures transparency and accountability in the process (HR Council, 2020). The action by management as found from the cross examinations range from the management and this takes center stage in its reviews that underscores the importance of aligning the organization's response with its values and commitment to maintaining a positive work environment.

Step 10: Right to Appeal

In the last step in the domestic inquiry process is the appeal process that the employee accused of misbehavior is granted by the Section 14(4) of the Employment Act to pursue. This is the final phase of the domestic inquiry process that applies the principle of fairness by granting the accused employee the right to appeal and in most cases, employees have the right to appeal the management's decision if they hold the right belief that the inquiry process was unfair (Smith, 2019). The appeals process follows a similar procedure as in the court of order and as such has a higher-level authority within the organization. In the case where the employee believes that the inquiry process was unjust, then there can be a reassessment of the same that also shows the organization's commitment to transparency and equitable treatment. The application of the Section 14(4) of the Employment Act in this process of domestic inquiry process recognizes an employee's right to appeal and as such aggrieved by the inquiry's outcome. The domestic inquiry process is safeguarded by the Section 14(4) of the Employment Act and as such it gives the employee's right to redress and aligns with the broader principles of justice. In Malaysia, the step-by-step procedure of a domestic inquiry is also based on the Employment Act 1955 and by adhering to these legal provisions, modern companies can ensure fair treatment and due process for employees (Sabuhari, et al., 2020). There is an interplay between the inquiry process and Malaysia's legal framework, and this exemplifies the country's commitment to promoting fairness, justice, and harmonious workplace relationships.

Conclusion

In conclusion, the domestic inquiry process is a crucial aspect of human resources management in addressing allegations of employee misconduct. Each step in this process, as outlined in the discussion, serves a distinct purpose in ensuring fairness, transparency, and adherence to legal requirements. The initiation of the inquiry sets the stage by formally notifying the employee of allegations, emphasizing the importance of upholding organizational values and legal standards. The formation of the inquiry panel in the second step is pivotal, as it brings together neutral and unbiased individuals with a deep understanding of company policies. This step is designed to minimize the risk of bias and conflicts of interest, laying the foundation for an independent and credible inquiry.

The notice of inquiry, as discussed in the third step, plays a crucial role in informing the accused employee about the charges and the upcoming inquiry process. This formal written notice, as mandated by the Employment Act, ensures transparency and allows the employee to prepare a comprehensive defense. The pre-inquiry meeting, step four, further underscores the commitment to fairness by providing the accused employee with an opportunity to understand their rights and present preliminary submissions. This stage enables both parties to gather evidence, promoting a thorough and fair inquiry. The inquiry proceedings, cross-examination, and the rights of the accused, discussed in steps five to seven, are integral to the examination of evidence, ensuring a comprehensive exploration of the case. The cross-examination stage, in particular, plays a powerful role in uncovering the truth and testing the credibility of witnesses. Deliberation and conclusion, step eight, involve a careful analysis of the evidence to determine the employee's culpability in the alleged misconduct. Findings and recommendations, step nine, provide a critical reference for the organization's management to take appropriate disciplinary action in alignment with the company's values.

Finally, the right to appeal, the tenth step, exemplifies the commitment to fairness and justice. The appeal process, guided by the Employment Act, allows employees to seek redress if they believe the inquiry process was unfair, aligning with broader principles of justice and ensuring

a harmonious workplace environment. In essence, the domestic inquiry process, when conducted in accordance with the legal framework and organizational values, contributes to maintaining a positive work environment and upholding the principles of fairness and due process in the realm of human resources.

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