

PERSPECTIVES

SHOULD HR REPORT A CRIME COMMITTED BY AN EMPLOYEE TO THE AUTHORITIES?

Employers often face complex situations when employee misconduct overlaps with potential criminal offences, for example drug/substance use, harassment, theft, fraud, or corruption. These cases raise a critical question: should the matter be handled internally through HR processes, or does the employer have a legal duty to report it to the authorities?

General Duty

Under Section 13 of the Criminal Procedure Code (CPC), any person aware of the commission of an offence punishable under the Penal Code or other written laws must report it to the police, unless they have a reasonable excuse. This duty is reinforced by Section 202 of the Penal Code, which criminalises the intentional omission to report information one is legally bound to give. While enforcement of these provisions is rare in employment contexts, they become relevant when employers have actual knowledge of a crime and not just vague suspicions. Arguably, the general duty to report does not impose a legal obligation to disclose criminal conduct, unless specific statutory provisions expressly require it.



Specific duty to report

Beyond general reporting duties, certain Malaysian laws impose specific obligations. For instance, Section 25 of the Malaysian Anti-Corruption Commission Act (MACC) 2009 requires anyone offered or receiving a bribe to report it to the Malaysian Anti-Corruption Commission. Similarly, under Section 14 of the Anti-Money Laundering Act (AMLA) 2001, reporting institutions such as banks, insurers, and legal firms must file reports on suspicious transactions. Employers in regulated sectors like finance, healthcare, and education may also be subject to industry-specific reporting requirements.

Employers' responsibilities in practice

If an employer merely suspects wrongdoing, for example based on anonymous tips or unverified complaints there is no immediate legal duty to report. In such cases, HR should initiate internal investigations, document findings, and follow established disciplinary procedures. However, once there is credible evidence or confirmation of a criminal act, employers are expected to cooperate with enforcement agencies and, in serious cases, consider proactive reporting. This approach not only protects the organisation's integrity but also demonstrates a commitment to legal compliance.

To manage these situations effectively, HR practitioners should ensure that employee handbooks clearly define misconduct and outline procedures for handling cases that may involve criminal elements. Policies should include provisions for escalating serious matters to authorities when appropriate. Managers must be trained to recognise red flags, conduct fair investigations, and maintain thorough documentation. A consistent and transparent process helps safeguard both the organisation and its employees, ensuring that disciplinary actions are fair, defensible, and aligned with Malaysian legal standards.