

# Hostile Work Environment & Retaliation Prevention Checklist: 5 Steps to a Fair Workplace

*A practical guide for HR professionals and in-house counsel, drawn from the Industrial Court award in *Kuhendran a/l Rajan v American Express (Malaysia) Sdn Bhd*.*

**1. Investigate every grievance independently — and protect the complainant**

Acknowledge all complaints without unreasonable delay. Assign an investigator who has no connection to the accused and is free from influence. Once a complaint is lodged, the employee must not experience any adverse change in treatment, duties, or working conditions. The Industrial Court in *Kuhendran* found that the company had shielded the very supervisor accused of bullying—and that the dismissal was a “malicious act of retaliation” for raising concerns.

**2. Use a Performance Improvement Plan before any discipline**

If performance is genuinely in question, issue a formal PIP with specific, measurable goals and a reasonable timeframe. Allow the employee a fair chance to improve. The court criticised the company for failing to put *Kuhendran* on a PIP, and for “nitpicking” his every action. Vague, subjective performance claims will not survive scrutiny.

**3. Make show-cause charges specific — and rule out retaliation**

Charges must be clear and detailed enough for the employee to respond meaningfully. The decision-maker must not be the person accused of misconduct. Critically, examine the timeline: if disciplinary action follows closely after a complaint, the risk of a retaliation finding is high. In *Kuhendran*, the show-cause letter arrived within three months of his complaint to New York — the court called it a “swift maneuver to do damage control.”

**4. Enforce respectful communication — and keep records**

Before retrenching, consult employees’ representatives or trade unions. Take positive steps to minimise workforce reduction—limit recruitment, restrict overtime, reduce working hours, offer retraining, or consider transfers. The court looks for evidence that alternatives were genuinely explored.

**5. Review every dismissal independently before it is final**

Before confirming a dismissal, have someone independent of the investigation review the entire process for fairness, consistency, and any sign of retaliation. Consider whether a less severe outcome is appropriate. The company’s failure to apply an independent lens in *Kuhendran* contributed to the finding that malice was “all over” its actions.