

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

19. What if the employee under investigation raises a grievance during the investigation?

Brazil

Author: *Patricia Barboza, Maury Lobo*
at CGM

If the object of the grievance is connected to the ongoing investigation, the investigator may pursue that grievance within the same procedure or open a separate matter, under the company's rules governing such a situation.

If the object of the grievance is not connected to the investigation, the employee must report the matter, or the investigator can do it, if the company's policies allow it.

Last updated on 14/09/2023

France

Author: *Pascale Lagesse, Valentino Armillei*
at Bredin Prat

The grievance may also have to be investigated (eg, moral/sexual harassment reported by an employee under investigation).

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India

Author: *Atul Gupta, Kanishka Maggon, Kopal Kumar*
at Trilegal

Indian labour statutes do not prescribe any particular process to be followed if the accused raises any grievances during the investigation and such situations would need to be dealt with on a case-by-case basis. For example, if the grievances relate to the fairness of the investigation or inquiry process, the lack of

impartiality of the investigators or the inquiry officer, those may need to be addressed upfront before proceeding further. Where grievances may be unrelated to the investigation or inquiry at hand (and potentially also a method to distract the employer from the core issues or delay or confuse the main investigative proceedings), it may be advisable to communicate to the employee that such grievances will have to be dealt with separately and other safeguards adopted to avoid calling the main investigation or inquiry proceedings into question (eg identifying an independent team to review the grievances).

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Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

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