

Workplace Investigations

Contributing Editors

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

24. What next steps are available to the employer?

China

Author: *Leo Yu, Yvonne Gao, Tracy Liu, Larry Lian*
at Jingtian & Gongcheng

The employer may take disciplinary actions against the employee based on the investigation result and pursue their civil, administrative and even criminal liabilities. To be specific: 1) the employer may criticize and educate the employee, or take disciplinary actions such as warning, demotion and removal according to the internal rules and regulations of the employer. If the misconduct of the employee constitutes one of the circumstances stipulated in Article 39 of the Employment Contract Law of the PRC, the employer is entitled to take the most severe disciplinary action, namely termination of employment contract; 2) if the employee has caused economic loss to the employer, the employer may lawfully initiate a civil litigation recourse procedure; 3) if the employee violates the Law on Administrative Penalties for Public Security Administration of the PRC, the employer may deliver the case to the administrative department for corresponding administrative penalties; 4) if the employee is suspected of a crime, the employer should deliver the case to the public security authority and pursue his/her corresponding criminal liabilities according to the law.

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Spain

Author: *Sergio Ponce, Daniel Cerrutti*
at Uría Menéndez

After the conclusion of the enquiry, a company may choose to:

- close the investigation without taking any additional action; or
- adopt disciplinary measures against the employee.

These could range from a verbal or written warning to the suspension of work and pay for a set period. Disciplinary dismissals are also possible, but they are reserved for very serious offences.

Note that any disciplinary measure will have to follow the procedures that might be established in the applicable collective bargaining agreement, such as informing employee representatives or following a grievance procedure before adopting the measure.

Switzerland

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

If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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Contributors

China

Leo Yu
Yvonne Gao
Tracy Liu
Larry Lian
Jingtian & Gongcheng

Spain

Sergio Ponce
Daniel Cerrutti
Uría Menéndez

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer