

# Workplace Investigations

## Contributing Editors

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

### 09. What additional considerations apply when the investigation involves whistleblowing?

#### Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*  
at GERLACH

The provisions of the Whistleblowing Directive must be respected. In Austria, these have been implemented through the Whistleblower Protection Act (HSchG). If the whistleblower or the persons concerned fall within the scope of the Directive, their identity must be protected. Only authorised persons may access the report. Retaliatory measures are invalid or must be reversed. Within a maximum of seven days, the whistleblower must receive a confirmation of his or her complaint. Feedback to the whistleblower must then be provided within a maximum of three months.

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#### Spain

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

Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law, has been implemented in Spain through Law 2/2023 (Ley 2/2023, de 20 de febrero, reguladora de la protección de las personas que informen sobre infracciones normativas y de lucha contra la corrupción). This law limits the capacity of companies to retaliate or to take any action against employees who report workplace violations or breaches of the law. Any action taken against an employee in such a position would be considered null and void if challenged in court.

Spanish law allows anonymous reports to protect whistleblowers from retaliation.

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#### Switzerland

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

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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## Contributors



### Austria

Michaela Gerlach  
Sonia Ben Brahim  
*GERLACH*



### Spain

Sergio Ponce  
Daniel Cerrutti  
*Uría Menéndez*



### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*