

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?

Ireland

Author: *Bláthnaid Evans, Mary Gavin*
at Ogier

Most whistleblowing policies will include a section that provides for an initial assessment of the complaint as to whether it meets the definition of a protected disclosure. This assessment, which ought to be carried out by a designated person who has been appointed to deal with disclosures, is a useful tool as some matters which may be labelled as whistleblowing may fall under the grievance procedure.

Where there are grounds, an investigation will be commenced. Under the Protected Disclosures (Amendment) Act 2022, whistleblowers are protected from penalisation for having made a protected disclosure, under the Act.

Penalisation may include; suspension, lay-off or dismissal; demotion, loss of opportunity for promotion or withholding of promotion; transfer of duties, change of location or place of work; reduction in wages or change in working hours; the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty); coercion, intimidation, harassment or ostracism; or discrimination, disadvantage or unfair treatment.

If an employee (which includes trainees, volunteers, and job applicants) alleges that they have suffered penalisation as a result of making a protected disclosure, they may apply to the Circuit Court for interim relief within 21 days of the date of the last act of penalisation by the employer.

A claim for penalisation may also be brought before the WRC within six months of the alleged act of penalisation. If an employee alleges that they were dismissed for having made a protected disclosure, the potential award that the WRC can make increases from the usual unfair dismissal cap of two years' pay to up to five years' gross pay, based on actual loss.

Where a complaint of whistleblowing is made, employers should ensure that they appoint investigators with the appropriate knowledge and expertise to deal with such a matter and comply with the time limits set by legislation.

Last updated on 11/10/2023

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.

Last updated on 06/11/2023

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.

Last updated on 15/09/2022

Contributors

Ireland

Bláthnaid Evans
Mary Gavin
Ogier

Spain

Sergio Ponce
Daniel Cerrutti
Uría Menéndez

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

