

Workplace Investigations

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05. Can the employee under investigation bring legal action to stop the investigation?

Spain

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No, an employee under investigation has no direct legal option to stop an investigation. This is because conducting an enquiry is within the employers' legally acknowledged powers, attached to their capacity to manage their business and enforce employment contracts and internal policies.

Notwithstanding the above, if the investigation breaches an employee's rights (privacy, dignity, remuneration, etc), the individual could:

- file a lawsuit aimed at stopping said breach (and potentially seeking an award for damages); or
- file a claim with the Labour Inspectorate with the same purpose.

The result, in this case, would stop the enquiry.

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Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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Not usually, unless the investigation is being conducted in breach of a contractual policy (as sometimes happens in the NHS, for example), or if the investigation is not adjourned pending the outcome of criminal proceedings, and the employee can show that failure to do so is a breach of either an express term or the implied term of trust and confidence. The latter would be rare, but possible if the employee can demonstrate a real danger of a miscarriage of justice (see question 21).

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