

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?

Portugal

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Once the preliminary investigation ends, the employer must decide whether or not, in its view, there are grounds to bring an accusation against the employee and enforce disciplinary action or if it should be dismissed due to a lack of evidence.

When the employer decides to enforce disciplinary action, the following sanctions may be applied:

- verbal warning;
- written warning;
- financial penalty;
- loss of holiday;
- suspension with loss of pay and length of service;
- dismissal with cause and without compensation.

The first five penalties are usually called conservatory sanctions, enabling the continuity of the employment relationship, as opposed to dismissal, which is deemed a measure of last resort.

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Spain

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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.

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Switzerland

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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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