

Workplace Investigations

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

Hong Kong

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If the investigation is conducted in a manner that is contrary to an express term of the employment contract or the implied obligation of trust and confidence of the employer under common law (please see question 11), the employee may have a claim for breach of contract and possible remedies may include declaratory and injunctive relief against the investigation.

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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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