

Workplace Investigations

Contributing Editors

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02. How is a workplace investigation usually commenced?

Poland

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There are no legal requirements in this respect – it depends on the internal policies or practices at a given working establishment. Based on our experience – an internal investigation usually commences with a preliminary assessment of a reported irregularity. If the preliminary assessment leads to a conclusion that a reported situation may be an irregularity, an investigation is launched by appointing a commission or team that conducts the investigation or selecting an investigator. Then, a plan of investigation is established. Depending on the circumstances, the investigation plan may involve a collection of documents or files, their analysis, and interviews with a victim, witnesses or a subject (although the procedure depends on the type of case, internal rules and practice). At the end of the process, the report is prepared by the commission or team with facts established during the process, recommendations, and other suggestions as to the investigated issue.

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Spain

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Given that Spain lacks legislation in this area (see question 1), each company commences workplace investigations following its internal guidelines, policies or practices, if any. In our experience, investigations begin with a formal decision to commence the enquiry, which is set out in writing for record-keeping purposes.

This decision will normally mention:

- the facts that will be investigated;
- the reasons to investigate the facts (eg, they could be a breach of company policies);
- how the investigation will be conducted; and
- the individuals who will conduct the enquiry.

Depending on the company, the decision to initiate the investigation may take the form of a decision by the competent employee or officer (ethics or compliance officer) or the minutes of the relevant corporate body (board of directors or compliance committee).

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Switzerland

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Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

^[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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