

# Workplace Investigations

## Contributing Editors

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### 04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?



#### Spain

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As set out in question 1, workplace investigations must be proportional and companies must use the least intrusive means to affect employees' rights. This translates into the following principles on who conducts the investigation:

- the enquiry must involve a minimal number of employees;
- only those employees with competencies on the investigated matters should be involved (normally human resources or compliance); and
- employees conducting the investigation must be qualified and have the power and seniority to do so proficiently (although a formal qualification is not required).

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#### Switzerland

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The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level<sup>[1]</sup>, if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

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<sup>[1]</sup> David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 18.

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## 08. Can the employer search employees' possessions or files as part of an investigation?



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Please see question 7.

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The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.<sup>[1]</sup> The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.<sup>[2]</sup>

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<sup>[1]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

<sup>[2]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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