

Workplace Investigations

Contributing Editors

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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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09. What additional considerations apply when the

investigation involves whistleblowing?

Spain

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Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law, has been implemented in Spain through Law 2/2023 (Ley 2/2023, de 20 de febrero, reguladora de la protección de las personas que informen sobre infracciones normativas y de lucha contra la corrupción). This law limits the capacity of companies to retaliate or to take any action against employees who report workplace violations or breaches of the law. Any action taken against an employee in such a position would be considered null and void if challenged in court.

Spanish law allows anonymous reports to protect whistleblowers from retaliation.

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Switzerland

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If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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