

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

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

United States

Author: *Rachel G. Skaistis, Eric W. Hilfers, Jenny X. Zhang*
at Cravath, Swaine & Moore

In general, private sector employees have considerably fewer rights vis-à-vis a company-led internal investigation than their public sector counterparts. This is because many US states are “at will” employment states, which means that, absent an employment contract that provides otherwise, an employee can be terminated for any reason not prohibited by statute or public policy. Depending on the specific circumstances, however, an employee who is the subject of an internal investigation could bring or threaten legal action according to contract or tort principles to stop an investigation. An employee may also challenge an investigation because it was conducted in violation of certain federal, state or foreign laws, for example, the use of polygraph tests in violation of the Employee Polygraph Protection Act or foreign data privacy laws.

Last updated on 15/09/2022

Contributors

United States

Rachel G. Skaistis
Eric W. Hilfers
Jenny X. Zhang
Cravath, Swaine & Moore