

Workplace Investigations

Contributing Editors

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

16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?

China

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The relevant laws and regulations in the PRC have not expressly provided the employer's obligation to inform the trade union of the internal investigation or the right of the trade union to participate in the employer's internal investigation. In practice, given the confidential nature of internal investigation, the employer usually does not voluntarily inform the trade union of such information. However, in accordance with Article 25 of the Measures for the Supervision of Labor Law by Trade Unions of the PRC, the trade union shall have the right to conduct an investigation if the employer has violated the labor laws and regulations or infringed the legitimate rights and interests of the employee. Therefore, it is still possible that the employer, in the course of the internal investigation, may be investigated by the trade union if it has violated the labor laws and regulations or infringed the legitimate rights and interests of the employee (e.g. being suspected of infringing personal information or privacy).

In addition, if the employer determines that the employee has committed a serious disciplinary offence based on the result of the internal investigation and thus decides to terminate the employment contract unilaterally, it shall notify the trade union of the reasons for termination in advance. If the employer has violated the laws, administrative regulations or the provisions of the employment contract, the trade union is entitled to request the employer to make corrections.

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Netherlands

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There is, in principle, no role for the works council in an "isolated or single" internal investigation. When it comes to structural forms of employee monitoring to measure behaviour (such as video surveillance), the proposed decision to implement such a monitoring system in principle requires the prior approval of the works council.

In addition, according to the Act on the Protection of Whistleblowers, an employer who is not obliged to set up a works council needs the consent of more than half of the employees when adopting the internal reporting procedure under the Act, unless the substance of the procedure has already been laid down in a collective bargaining agreement.

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Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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