

Workplace Investigations

Contributing Editors

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

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

Netherlands

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Workplace investigations, if they are to be of value, must be conducted by an expert, professional and independent party. To safeguard the independence of the investigation, it is crucial that neither the contractor nor any other third party can influence how the investigation is to be conducted or how the outcome should be reported. The investigation must be conducted according to the protocol drawn up at the start and the investigator must not be involved in the follow-up to the outcome.

There is an ongoing discussion of whether lawyers can conduct an objective and independent investigation, due to the bias inherent to their profession. On the other hand, investigation bureaus or committees are also not necessarily independent, as they are not regulated and not subject to disciplinary law.

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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^[1], if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

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

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17. What other support can employees involved in the investigation be given?

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The employer can offer employees to be accompanied by another person, or by legal counsel, especially if the outcomes of the investigation could have consequences for their employment.

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The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

^[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

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