

Workplace Investigations

Contributing Editors

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

09. What additional considerations apply when the investigation involves whistleblowing?

Germany

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In 2023, Germany has implemented the EU Whistleblowing Directive into national law with the German Whistleblower Protection Act (HinSchG).

The German Whistleblower Protection Act provides that companies with at least 50 employees must establish internal reporting channels as further set out in the law. Among other things, the confidentiality of the whistleblower as well as of the individuals affected by the report must be protected.

Further, whistleblowers must be protected from negative consequences that may arise from their reports. If the employment of a whistleblower were terminated or if the whistleblower were to be denied promotion after reporting a violation, the employer would have to prove that this was not related to the whistleblowing but was based on justified reasons.

Employers should familiarise themselves with the provisions of the new law.

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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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