

Workplace Investigations

Contributing Editors

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21. How do you handle a parallel criminal and/or regulatory investigation?

Germany

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In principle, workplace investigations and criminal or regulatory investigations are not dependent on each other and can therefore be conducted in parallel. German public prosecutors have an ambivalent view of internal investigations. On the one hand, they are to some extent sceptical about workplace investigations. They fear that evidence will be destroyed and facts manipulated. On the other hand, they often do not have the resources to conduct investigations as extensive as the companies do. In any event, due to the principle of official investigation that applies in Germany, the investigating public prosecutor's office will usually reassess the results of an internal investigation and conduct independent investigations.

Regarding whether internal investigations reports and material have to be shared with or can be seized by the public prosecutor, please see question 14.

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Switzerland

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The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

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