

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?

Australia

Author: *Joydeep Hor, Kirryn West James, Chris Oliver*
at People + Culture Strategies

A complaint will be a whistleblowing complaint where a complainant has reasonable grounds to suspect that the information they are disclosing about the organisation concerns misconduct or an improper state of affairs or circumstances. The information can be about the organisation or an officer or employee of the organisation engaging in conduct that:

- breaches the Corporations Act 2001 (Cth);
- breaches other financial sector laws;
- breaches any other law punishable by 12 months' imprisonment; or
- represents a danger to the public or the financial system.

Since 2020, all public companies, large proprietary companies and trustees of registrable superannuation entities in Australia are required to have a whistleblower policy. Employers conducting an investigation will need to follow the processes outlined in their policy.

One of the key differences when conducting an investigation that involves whistleblowing is identity protection and the ability of the whistleblower to disclose anonymously and remain anonymous.

Last updated on 15/09/2022

Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*
at GERLACH

The provisions of the Whistleblowing Directive must be respected. In Austria, these have been implemented through the Whistleblower Protection Act (HSchG). If the whistleblower or the persons concerned fall within the scope of the Directive, their identity must be protected. Only authorised persons may access the report. Retaliatory measures are invalid or must be reversed. Within a maximum of seven days, the whistleblower must receive a confirmation of his or her complaint. Feedback to the whistleblower must then be provided within a maximum of three months.

Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

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.

Last updated on 15/09/2022

Contributors



Australia

Joydeep Hor
Kirryn West James
Chris Oliver
People + Culture Strategies



Austria

Michaela Gerlach
Sonia Ben Brahim
GERLACH



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer