

Workplace Investigations

Contributing Editors

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

02. How is a workplace investigation usually commenced?

Australia

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

A workplace investigation will generally be triggered by an employee making a complaint; however, issues may also be brought to the attention of an employer through an anonymous tip, by suppliers or contractors, from customers or because of observations and hearsay.

Complaints can be made directly to Human Resources (HR), anonymously, by email to a line manager or a third party. While complaints do not need to be written and can be informal, brief or verbal, complaints of this nature can make the process harder and more information may be required.

The receipt of a complaint does not necessarily mean that an employer needs to undertake an investigation immediately. A grievance policy ordinarily contains a multi-step approach to dealing with complaints, starting with internal resolution options such as informal discussions, conciliation and mediation. However, an investigation should be commenced where:

- the complaint alleges serious misconduct or unlawful conduct;
- the employer is required to conduct a workplace investigation as per an employment contract, policy, procedure or industrial instrument; or
- the complaint is complex and requires clarity on what has occurred to establish the facts.

Last updated on 15/09/2022

Switzerland

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

Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

^[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

Last updated on 15/09/2022

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



Australia

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

Employers should be conscious that the investigation may have an impact on the complainant, respondent and witnesses. Employers will need to consider how to support their employees. The level of support provided will often depend on the size of the organisation and programmes already in place.

Many employers have an Employee Assistance Programme and employees should be reminded about this programme if further support or assistance is required. An employer's HR team may also be able to assist if an employee has concerns about the progress of an investigation.

Last updated on 15/09/2022



Switzerland

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

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.

Last updated on 15/09/2022

Contributors



Australia

Joydeep Hor
Kirryn West James
Chris Oliver
People + Culture Strategies



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com