

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?

China

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In practice, the following factors to be considered will be: (1) verification of the informant's identity; (2) whether the informant has any conflict of interest with the reported employee or whether it will affect the objectivity of their reporting; (3) how to persuade the informant to provide more information or evidence, or to cooperate in court as a witness; (4) how to increase the admissibility of evidence when the informant refuses to cooperate in court as a witness or fails to provide original evidence; (5) how to improve the evidence chain and protect the informant from being attacked or retaliated by the informant, etc.

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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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18. What if unrelated matters are revealed as a result of the investigation?

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If any matter unrelated to this investigation is revealed during the investigation and the matter is suspected of violating regulations, the employer may comprehensively consider whether it is necessary to investigate the new matter. If the employer assesses that a combined investigation will seriously affect and hinder the progress of the investigation or complicate the investigation, the employer can handle the unrelated matters through separate investigations.

In addition, Article 6 of the Personal Information Protection Law of the PRC requires that the processing of personal information shall be for a specific and reasonable purpose and shall be directly related to the purpose of the processing and shall adopt the method with minimum impact on individuals' rights and interests. If the result of the investigation reveals unrelated personal information, it means that the collection and storage of such personal information are unrelated to the purpose of the processing. According to paragraph 1 of Article 47 of the Personal Information Protection Law of the PRC, the employer as the personal information processor shall take the initiative to delete personal information. If the employer fails to delete such information, the employee is entitled to request for deletion.

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Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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