

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May

Clare Fletcher at Slaughter and May

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



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The PRC law is silent on how to deal with the conflict between internal investigation and criminal or regulatory investigation. In general, the employer should cooperate with the criminal or regulatory investigation being conducted by the investigating authority to avoid hindering official business.

According to the Civil Procedure Law of the PRC, the Administrative Procedure Law of the PRC, and the Criminal Procedure Law of the PRC, the investigating authorities (including the public security authority, the people's procuratorate, the people's court, and the supervision authority) have the power to investigate and verify evidence from the witness or the individuals or entities that have access to the evidentiary materials. Therefore, the investigating authorities have the power to compel the employer to share or provide evidentiary materials relating to the case, and the employer shall cooperate and provide such materials. If the employer refuses to cooperate, it may face administrative liability (such as warning, fine and detention of the directly responsible person), judicial liability (fine shall be imposed on the main person in charge or the directly responsible person, and detention may be granted to those who refuse to cooperate) and even criminal liability (those who conceal criminal evidence may be guilty of perjury).

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Incidents of violence and harassment may be dealt with by certain independent authorities, such as the Labour Inspectorate Body and the Greek Ombudsman. The former is competent to impose sanctions on the employer if there is a breach of the general prohibition of violence and harassment at the workplace and the obligation of employers regarding the prevention of such incidents and the obligation to adopt policies within the business. The Greek Ombudsman is competent to deal with disputes when there is violence or harassment in the workplace coupled with discrimination due to, for example, gender, age, disability, sexual orientation, religious beliefs, or gender identity. Moreover, the applicable legal framework^[13]

stipulates that victims of violence and harassment are entitled to lodge a report before the Labour Inspectorate Body and the Greek Ombudsman. This is in addition to the judicial protection he or she may seek and the internal investigation procedure to which he or she may have recourse, without specifying whether internal proceedings may be suspended before the regulatory bodies decide on the matter.

On the other hand, the National Transparency Authority and in certain cases the Hellenic Competition Commission are external reporting channels for employees reporting breaches of Union law. In such cases, L.4990/2022 (article 11 paragraph 5) stipulates that the investigation before the National Transparency Authority is not suspended if reporting procedures before other regulatory authorities have been initiated.

Moreover, criminal investigations can run in parallel with internal probes.

[13] Law 4808/2018 art.10

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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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