

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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### 04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?



#### Greece

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As far as the persons in charge of an internal investigation are concerned, L. 4990/2022 on the protection of persons who report breaches of Union law provides for certain conditions that should be met when exercising their duties (ie, being impartial and abstaining when there is a conflict of interest), which also apply as general principles in all disciplinary procedures. Whistleblowing legislation stipulates that persons appointed to receive and investigate a whistleblowing procedure should meet certain conditions, including no penal proceedings against them, no disciplinary proceedings or convictions for specific offences, and no workplace suspensions.

Official disciplinary procedures are conducted by the competent bodies as described in the respective internal labour regulations.

Although not specifically regulated, support from external advisors (eg, lawyers) is allowed.

Last updated on 03/04/2023



#### Switzerland

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The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level<sup>[1]</sup>, if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

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<sup>[1]</sup> David Rosenthal et al., Praxishandbuch für interne Untersuchungen und eDiscovery, Release 1.01,

## 14. When does privilege attach to investigation materials?



### Greece

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Regarding L.4990/2022 for whistleblowers' procedures, many categories of privilege may occur during an investigation, such as: attorney-client privilege; doctor-patient privilege; and court or other proceedings' privilege deemed as classified. L.4990/2022 provides that its provisions do not affect any of these privileges and these privileges supersede<sup>[6]</sup>.

Privilege may also be attached to investigation materials in investigations relating to workplace harassment and violence incidents; however, since L.4808/2021 does not offer a specific provision and criminal proceedings may also commence, the matter of privilege must be examined ad hoc.

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<sup>[6]</sup> Law 4990/2022 art.5 par.2(b) and par.2(c)

Last updated on 03/04/2023



### Switzerland

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As outlined above, all employees generally have the right to know whether and what personal data is being or has been processed about them (article 8 paragraph 1, Swiss Federal Act on Data Protection; article 328b, Swiss Code of Obligations).

The employer may refuse, restrict or postpone the disclosure or inspection of internal investigation documents if a legal statute so provides, if such action is necessary because of overriding third-party interests (article 9 paragraph 1, Swiss Federal Act on Data Protection) or if the request for information is manifestly unfounded or malicious. Furthermore, a restriction is possible if overriding the self-interests of the responsible company requires such a measure and it also does not disclose the personal data to third parties. The employer or responsible party must justify its decision (article 9 paragraph 5, Swiss Federal Act on Data Protection).<sup>[1]</sup>

The scope of the disclosure of information must, therefore, be determined by carefully weighing the interests of all parties involved in the internal investigation.

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<sup>[1]</sup> Claudia M. Fritsche, *Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute*, p. 284 et seq.

Last updated on 15/09/2022

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