Workplace Investigations

Contributing Editors

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01. What legislation, guidance and/or policies govern a workplace investigation?

France

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No specific rules directly govern a workplace investigation in the event of employee misconduct. However, several rules, both legal and administrative, affect the conduct of such an investigation. In addition, codes of conduct, internal regulations or guidelines may also exist within companies.

A new law (No. 2022-401) came into effect on 1 September 2022 and constitutes one of the cornerstones for future regulation of workplace investigations. This law transposes into French law the European directive relating to whistleblower protection. It does not, however, constitute a revolution, as a previous French law dated 9 December 2016 (the so-called Sapin 2 Law) already provided the whistleblower with a specific status and protection. These laws are fundamental when considering an internal investigation as the rules protecting the whistleblower and requiring the establishment of an internal whistleblowing channel (eg, a dedicated email or hotline) affect the degree of flexibility available to companies in conducting the investigation.

A new decree has been adopted (No. 2022-1284), dated 3 October 2022, for application of these new provisions. This decree sets out several obligations relating to the internal whistleblowing reporting process. The reporting channel will necessarily contribute to shape the internal investigation triggered by situations which have been reported by that channel. Companies subject to this decree may define the reporting procedure using the supporting tool of their choice (company collective agreement, internal memorandum, etc.), as long as the employee representative bodies are duly consulted on the matter. The decree also specifies that an acknowledgement of receipt of the alert must be provided to the author of the alert in writing within seven days from the company receiving the alert. The author of the alert must also be informed in writing, within a reasonable period not exceeding three months from acknowledgement of receipt of the alert, of the measures envisaged or taken to assess the accuracy of the allegations and, where appropriate, to remedy the situation which had been reported, as well as the reasons for these measures and, finally, the closure of the case.

More generally, not only do all the “pure” labour law rules relating to the protection of the human rights of employees need to be complied with (right to privacy, data protection under the GDPR, etc), but also the disciplinary rules and regulations that protect employees from unfounded sanctions imposed by their employer. For example, an employer can only sanction an employee's misconduct if the disciplinary procedure begins within two months of when the misconduct was committed or when the employer

becomes aware of it. In this respect, an internal investigation can be necessary for the employer to obtain full knowledge of the facts alleged to have been committed by the employee. It is nonetheless recommended that the internal investigation be completed within these two months to avoid the risk of the disciplinary action being time-barred.

Administrative rules produced by the French anti-corruption agency should also be taken into consideration (good practice, guidelines and recommendations relating to senior management’s commitment to implement anti-corruption measures, corruption risk mapping, corruption risk management measures and procedures), as well as the guidelines produced by the French Ministry of Employment relating to the prevention of sexual harassment and gender-based violence or the recommendations of the Human Rights Defender, which is a French special institution aimed at protecting fundamental rights.

When the investigation in question concerns moral or sexual harassment or violence in the workplace, the national interprofessional agreement of 26 March 2010 should be <referred to. This text stipulates that in the event of an investigation procedure, it should be based on, but not limited to, the following guiding principles:

- it is in everyone's interest to act with the discretion necessary to protect everyone's dignity and privacy;
- no information, unless it is anonymized, should be divulged to parties not involved in the case in question;
- complaints must be investigated and dealt with without delay;
- all parties involved must be listened to impartially and treated fairly;
- complaints must be supported by detailed information;
- deliberate false accusations must not be tolerated, and may result in disciplinary action;
- external assistance may be useful, notably from occupational health services.

Many are calling for the adoption of legislative rules governing such investigations, and their coordination with general whistleblower protection measures.

Finally, a company must take its own rules and regulations into account. Every company with at least 50 employees has the legal obligation to draw up internal rules and regulations, which notably set out the disciplinary sanctions applicable to employees, as well as a reminder of certain employees' rights.

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Nigeria

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- The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- The Criminal Code Act
- Penal Code Law
- Money Laundering (Prohibition) Act 2011 (as amended)
- Freedom of Information Act 2011
- Terrorism (Prevention) Act 2013
- Independent Corrupt Practices and other related offences Act 2000
- Code of Conduct Bureau and Tribunal Act
- Companies and Allied Matters Act 2020
- Nigerian Code of Corporate Governance 2018
- Economic Financial Crime Commission (Establishment) Act 2004
- Investment Securities Act 2007
- Central Bank of Nigeria Act 2007
- Banks and Other Financial Institutions Act 2020
- Whistleblowing Programme under the Ministry of Finance

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02. How is a workplace investigation usually commenced?

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When a report of wrongdoing is brought to the employer's attention, whether through a whistleblower or another channel, and an internal investigation is expected, it may be either mandatory or optional, depending on the facts of the alleged wrongdoing.

The investigation will be mandatory when the alleged wrongdoing relates to an ethical issue according to anti-corruption regulations, the employer's duty of due diligence regarding, for example, human rights or environmental matters, or where the works council has issued an alert relating to a "serious and imminent danger" (or to "fundamental human rights"), but also whenever it relates to the employer's obligation to ensure employee safety (eg, moral or sexual harassment).

If the investigation is not mandatory, it is up to the employer to decide whether or not to carry out the investigation. Several key questions can help the employer determine whether or not it is appropriate to carry out an investigation, such as:

- What are the benefits of doing nothing? The company will have to draw up a list of the pros and cons of an investigation, bearing in mind that in some cases a poorly conducted investigation could make the situation worse;
- What is the priority (eg, obtaining or securing evidence, or correcting the irregularity)?
- What rules or codes of ethics must the company comply with?
- Should external legal counsel only advise the company or should they play a major role in the investigation process by becoming an investigator?

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Nigeria

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A workplace investigation is conducted to verify alleged misconduct within a workplace.[1] Once a complaint is made regarding wrongdoing, misconduct or unethical behaviour by an employee or group of employees within a workplace, an investigation is required to confirm the complaint and if it is confirmed, the body in charge of supervising the employees (usually the HR specialist, disciplinary committee or line managers) determine and implement necessary corrective or disciplinary actions.

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[1] Conducting Internal Investigations In Organisation - Health & Safety - Nigeria (mondaq.com)

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03. Can an employee be suspended during a

05. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

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An employee may be suspended or relocated during a workplace investigation by:

- suspending the employee as a precautionary measure (eg, pending a confirmation of dismissal);
- temporarily assigning the employee to another site; or
- exempting the employee from having to work while continuing to pay them their salary.

The employee can be suspended as a precautionary measure, pending confirmation of dismissal, but this implies that disciplinary proceedings have already begun and that the investigation is therefore at a relatively advanced stage and that there is sufficient evidence to suggest the need for disciplinary action. It should be made clear to the employee that the suspension is a provisional measure (in the absence of specifying this, the suspension could be interpreted as a disciplinary layoff constituting a sanction and, in some jurisdictions, as depriving the employer of the possibility of dismissing the employee for the same facts).

Temporary reassignment can also be considered. However, this contractual change must not apply for long and the measure taken must be temporary. The employer must act promptly – the measure is only valid for as long as the investigation continues. Failing this, and because of the absence of concurrent disciplinary proceedings, there is considerable risk that the temporary reassignment may be reclassified by a judge as an illegal modification of the employment contract or as a disciplinary sanction preventing the employee from subsequently being dismissed.

Finally, paid exemption from work is also possible and consists of temporarily suspending, by mutual agreement, the obligation of the employer to provide work for the employee and the employee's obligation to work, without affecting their remuneration. Such a measure must generally be taken with the consent of the employee, because it implies a suspension (and therefore a modification) of the employment contract. This measure may be useful in temporarily removing an employee with whom the employer maintains a good relationship. This may be an employee who is or feels they are a victim of harassment, especially when the employee is not on sick leave.

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Nigeria

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Yes, an employee can be suspended during an investigation to allow the employer to investigate the allegations against the employee unhindered and without undue interference by that employee. A suspension under the law merely prevents the employee from discharging the ordinary functions of his or her role without any deprivation of his rights during the period of the suspension. Thus, unless there is an express provision in the contract of employment or employee's handbook stating that the employee can be suspended with or without half pay, the employee would be entitled to a full salary.

Further, the duration for which the employee may be suspended should be as contained in the employee's contract, employee's handbook, or letter of suspension.

In the recent case of *GLOBE MOTORS HOLDINGS NIGERIA LIMITED v. AKINYEMI ADEGOKE OYEWOLE (2022)*,

the court held, *"Since suspension is not a termination of the employment contract nor a dismissal of the employee, the implication is that the employee is still in continuous employment of the employer until he is recalled or formally terminated or dismissed. Pending his recall or dismissal, a suspended employee is entitled to his wages or salary during the period of suspension, unless the terms of the contract of employment or the letter of suspension itself is specific that the suspended employer will not be paid salaries during the period of suspension"*.

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04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?

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In determining who is to conduct a workplace investigation, the main objective is to ensure that the team is independent or at least that it is perceived as being independent. The key people in the investigation team can be identified in a pre-established procedure. It is good practice to give decision-makers the possibility to set up, on a case-by-case basis, the team most appropriate to the situation.

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Nigeria

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Typically, the legal department, the chief compliance officer, the HR manager, the audit committee or any other committee as may be set up by the company may conduct a workplace investigation. However, in other instances, the company may engage the services of independent external personnel to assist with conducting an internal investigation.

The minimum qualification or criteria of the person conducting the investigation should be as contained in the relevant company policies. Criteria may include independence, objectivity and impartiality.

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05. Can the employee under investigation bring legal action to stop the investigation?

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An internal investigation is not a police enquiry or a judicial instruction; there is no legal provision enabling an employee to stop the investigation. At the same time, there is no legal provision enabling the employer to force an employee to be interviewed. Interviewing an employee within the context of an internal investigation is also not a disciplinary matter. Therefore, the employee has no right to be assisted by another employee or an employee representative. The employee could, however, lawfully request the presence of their lawyer, especially if the company's lawyer is part of the investigation team.

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Generally, issues surrounding workplace investigations are usually embedded in either the employee's contract or handbook, which is binding on the employee. Thus, an employee cannot validly bring an action to stop the investigation unless his rights as guaranteed by the Constitution, the Employee's handbook, and other laws such as a right to a fair hearing are violated during the investigation.

Consequently, the employee may apply to the National Industrial Court for an order of interim relief against his or her employer restraining further prejudicial investigation.

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06. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?

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Co-workers can spontaneously act as witnesses and provide statements to superiors before, during or after the interviews. Co-workers can also be interviewed as witnesses at the investigator's request, although they are not under any obligation to answer the questions and they cannot be compelled to do so. The investigators have an absolute obligation of discretion during the investigation and cannot reveal any details of the information gathered.

Certain employees may benefit from whistleblower status, which implies that they may be exempt from potential criminal and civil liability relating to their report or testimony and they are protected from any retaliatory measures from the employer. "Facilitators" who helped the whistleblower and the individuals connected with the whistleblower and risk retaliatory measures by testifying as a witness may also benefit from this status, as of 1 September 2022.

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The employee's contract, employee handbook or company policies typically mandate an employee to cooperate and participate in good faith in any lawful internal investigation undertaken by the company, and also protects an employee acting as a witness in an internal investigation. Some of the legal protections available to an employee acting as a witness during workplace investigations are freedom from intimidation, threats or the loss of employment.

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07. What data protection or other regulations apply when gathering physical evidence?

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GDPR principles fully apply to data gathering, as well as case law protecting the right to respect one's private life and the secret of correspondence.

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Nigeria

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When gathering evidence, the person being investigated is protected by the Constitution, the Freedom of Information Act and the Nigerian Data Protection Regulation (NDPR), among others.

The Constitution, particularly section 37, guarantees the right of a person to privacy.

The NDPR is the main data protection regulation in Nigeria. It regulates the processing and transfer of personal data.

Further, the Freedom of Information Act, 2011 prohibits the disclosure of information gathered during an investigation to the public.

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08. Can the employer search employees' possessions or files as part of an investigation?

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In internal investigations, the fundamental rights and freedoms of employees are at stake, including the right to privacy, respect for the privacy of home life and correspondence, freedom of expression, and the obligation of loyalty in searching for evidence.

In principle, work emails and files can be reviewed, even without the employee's consent, prior knowledge or warning. This includes: work email accounts; files stored on a work computer or a USB key connected to a work computer; and SMS messages and files stored on a work mobile phone and documents stored in the workplace unless they are labelled as “personal”. On the other hand, it is not permissible for an employer (or an investigator) to review “personal” emails and files, such as documents or emails identified as “personal” by the employee, or personal email accounts (Gmail, Yahoo, etc), even if accessed from a work computer.

There are certain exceptions to the above principle. An employer is allowed to check “personal” emails or data in any of the following cases:

- if the employee is present during the review;
- if the employee is absent, but was duly notified and invited to be present;
- if there is a particularly serious “specific risk or event”;
- if the review is authorised by a judge (this means having to prove a legitimate reason justifying not informing the employee).

When documents or emails are not marked as “personal” but contain information of a personal nature, the employer may open and review the data but may not use such documents or emails to justify applying disciplinary measures to the employee or use such documents or emails as evidence in court if they indeed relate to the employee’s private life.

Special attention must be given to employee representatives who must be entirely free to carry out their duties.

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Nigeria

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Yes, an employer can search the possessions or files of an employee as part of an investigation where the employee’s contract or handbook authorises such a search and there is a reasonable suspicion of wrongdoing.

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09. What additional considerations apply when the investigation involves whistleblowing?

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Evidence obtained in the context of an investigation must specify who provided it and the date it was provided. No retaliatory measures may be taken against the whistleblower for the act of whistleblowing.

In certain cases, the whistleblower report must be forwarded to the judicial authorities (eg, when there is an

obligation to assist persons in imminent danger, for serious offences or a disclosure that a vulnerable person is in danger (ie, minors under 15 or a person who is unable to protect themselves)).

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Nigeria

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Consideration must be given to the confidentiality or anonymity of the whistleblower, when an investigation involves whistleblowing.

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10. What confidentiality obligations apply during an investigation?

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Interviewers, investigators, interviewees or any others involved in the investigation are often bound by a reinforced confidentiality obligation, particularly when the internal investigation is triggered by a whistleblower alert. In addition, every person that comes to know of the investigation, facts or people involved is bound by an obligation of discretion. Furthermore, investigators should specifically be trained for interviews and be reminded of their obligations relating to the investigation.

The investigators will need to determine the order of the tasks to be carried out in the investigation, as this will have a significant impact on confidentiality management. Should they start with the hearings or a review of documents? The answer may depend on the subject matter of the investigation. It is advisable to first review the documentation before organising interviews, particularly to avoid the destruction of certain documents by employees acting in bad faith or by those wishing to erase the traces of alleged wrongdoing. Sometimes, however, it is possible to start with the interviews, especially in the case of harassment, as there may be no documents to review. If the decision is taken to conduct the documentation review after the interviews, it could be useful to ask the employees involved to sign a document stating that they must preserve and retain documents, meaning that if they delete or destroy documents, they would be acting against the company and in breach of the law.

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Nigeria

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Workplace investigations should be kept strictly confidential to protect the parties involved in the investigation from victimisation. Some of the confidential obligations that apply during investigations are the identities of the parties involved in the process (whether as a complainant, respondent or witnesses), the confidentiality of reports, recordings and other documents generated or discovered during the

investigation, as well as attorney-client privilege between the employee and his or her attorney, provided that such privilege is within the bounds of the law.

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11. What information must the employee under investigation be given about the allegations against them?

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According to the French data protection authority, the employee under investigation must be informed of the name of the person in charge of the investigation, the alleged facts that have led to the whistleblowing alert and their rights to access and rectify data collected about them. This information must be given as soon as the data collection starts, before the interviews, as per GDPR principles.

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Nigeria

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An employee must be given the full details of the allegations against him or her to enable the employee to make adequate representations against the complaints made against him or her.

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12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

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The identity of the complainant must be kept confidential and cannot be disclosed. There are two exceptions: if the complainant consents to the disclosure; or if the employer is asked for this information by the judicial authorities.

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Nigeria

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Typically, the identities of the complainant, witnesses and sources of information for the investigation are kept confidential.

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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

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Most of the time, the legal protection afforded by the legally prescribed confidentiality obligation that applies to whistleblowing is sufficient. This is all the more so given every person involved is bound by an obligation of discretion. However, there is no legal obstacle to the creation of an NDA between the employer and the people involved.

NDAs setting out a strict and reinforced obligation of confidentiality and discretion during the investigation should be signed by any external parties involved (eg, translation agency, IT expert) or when the internal investigation is outside the scope of whistleblowing regulations.

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Nigeria

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NDAs are usually part of an employee’s contract and, as such, create a contractual obligation between the parties privy to it. However, where the subject matter of an investigation borders on matters of a criminal nature, it might be impossible for parties to the NDA to continually uphold the obligation under the NDA because the parties have an obligation to the state to disclose facts of a criminal nature.

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14. When does privilege attach to investigation materials?

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Privilege does not generally apply to internal investigation materials as the investigation does not constitute a relationship between a lawyer and their client, and even less so a judicial investigation. However, if a lawyer is appointed as an investigator, privilege may apply to materials exchanged between the lawyer and that client.

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Privilege attaches to investigation materials when a legal practitioner facilitates the internal investigation. Documents prepared during a workplace investigation will not automatically attract legal professional privilege, unless the investigation is facilitated by a legal practitioner.

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15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?

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The employee under investigation has the right to be assisted by a lawyer during the interviews and, if the employee chooses to be so, the lawyer must also always be present. The employee may not, however, be accompanied by anyone other than a legal representative (ie, another employee cannot attend the interview).

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Nigeria

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The Constitution guarantees the right of every person to legal representation during investigations and interrogations by law enforcement agencies. However, our labour legislation is silent on whether an employee has a right to be accompanied or have legal representation during an investigation. Whether an employee has a right to legal representation will depend on the policy of the employer as well as the nature of the interrogation.

In practice, an employee is usually not accompanied or represented legally during an investigation. However, unless it is stipulated in the employee’s policy, nothing prohibits the employee from being accompanied or represented legally during an investigation.

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16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?

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Neither the works council nor the trade unions have any right to be informed or involved in the investigation. It is the employer who is responsible for carrying out the investigation. However, when the investigation is triggered due to a works council issuing an alert relating in particular to a “serious and imminent danger”, one member of the works council must be involved in the investigation process.

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Nigeria

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The law is silent on whether a member of a trade union has the right to be informed or involved in the investigation. Typically, this is dependent on the employee’s contract, handbook or other policies of the employer.

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

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Apart from being informed of any facts and data concerning them being collected during the investigation, employees involved in the investigation do not have any specific rights. Some companies choose to use external firms specializing in psychosocial risk management, not only to conduct internal investigations, but also to provide additional psychological support for their employees, as part of the employer's safety obligation.

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Nigeria

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An employee being investigated has a right to be heard before a decision being made by the employer. Further, the body responsible for investigating the employee must be independent, so as not to be considered biased.

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

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Unrelated matters revealed during the investigation do not necessarily mean that another investigation will be opened. Nevertheless, if reprehensible acts unrelated to the current investigation are revealed, the employer will need to take action and sanction the perpetrator (after checking the facts). Sometimes the only way to check the facts is to carry out another investigation on a separate matter. However, the investigation team may also consider if there is enough connection between the matters to widen the scope of the current internal investigation.

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Where unrelated matters are revealed as a result of the investigation, the body investigating the employee is expected to inform the employee of the new matters and give him adequate time to respond.

However, there are exceptional cases where a crime is revealed during an investigation. In such instances, the employer is required to report its findings to the police for investigation and possible prosecution.

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19. What if the employee under investigation raises a grievance during the investigation?

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The grievance may also have to be investigated (eg, moral/sexual harassment reported by an employee

under investigation).

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It is not unusual for an employee under investigation to raise a grievance during the investigation. This grievance may be on the same subject matter as the complaint being investigated or may disclose new facts outside the scope of the matter being investigated.

Where the issue discloses new facts, the employer is required to investigate those facts without suspending the investigation. However, where the grievance relates to the same subject matter as the complaint being investigated, the employer may either suspend the investigation to allow the investigation to recognise the grievance and the complaint against the employer or proceed with the investigation while noting that the matter disclosed is being or will be investigated.

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20. What if the employee under investigation goes off sick during the investigation?

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The investigation will likely be able to continue with the other employees and, as soon as the employee under investigation returns from sick leave, they will be able to be interviewed.

However, as disciplinary sanctions are time-barred after two months from the moment the misconduct was committed or from when the employer becomes aware of it, if the sick leave lasts for the whole of that period, the investigation must be conducted anyway. In this instance, the investigator can ask the employee to attend the interview despite being on sick leave or arrange for the interview to take place using other means (eg, conference call). As a last resort, a questionnaire can be sent to the employee, but the pros and cons must be assessed as this is a way of information gathering that carries a certain amount of risk, could be less reliable and is of less probative value.

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The investigation would be suspended until the employee returns from sick leave. The investigation will immediately restart upon the return of the employee.

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

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A criminal investigation always takes precedence over other investigations. However, this does not mean that the internal investigation has to stop. It can and should continue, and the report drawn up upon completion of the investigation could be used by the authorities in the criminal investigation. In some cases, especially when privilege does not apply, police or regulatory authorities may request that the employer share such evidence. However, even when privilege does apply, there is no certainty that the evidence would not have to be communicated to certain authorities.

Some administrative authorities often challenge the application of legal privilege or try to reduce its scope. For example, the French financial markets authority (AMF) regularly puts forward its view of legal privilege, according to which an email where a lawyer is only copied (and is not one of the main recipients) in from one of their clients is not confidential and can therefore be disclosed in proceedings. However, if the AMF investigators impose disclosure of privileged documents, this should result in the annulment of the investigation procedure. By way of exception, legal privilege cannot be invoked against certain other authorities, such as the URSSAF (authority in charge of collecting social security contributions) or the DGCCRF (directorate-general for competition, consumer protection and anti-fraud investigations). Where legal privilege is enforceable, the judge must first determine whether the documents constitute correspondence relating to defence rights and, second, must cancel the seizure of documents that they find to be covered by legal privilege due to the principle of professional secrecy of relations between a lawyer and their client and the rights of defence.

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Where an employee has committed misconduct at work that is also the subject of a police investigation, the employer can conduct its own investigation and does not have to await the outcome of the criminal proceedings. The Supreme Court, in the case of Dongtoe v CSC Plateau State (2001), held that it is preposterous to suggest that the administrative body should stay its disciplinary jurisdiction over a person who had admitted criminal offences.

Further, the police or regulator may compel the employer to share evidence with it in the interests of justice.

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22. What must the employee under investigation be told about the outcome of an investigation?

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The employee under investigation, like the other employees interviewed and the whistleblower, must be informed that the investigation has been completed. However, there is no obligation to provide them with the report and, for reasons of confidentiality, it is very often best not to do so.

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The employee under investigation must be informed of the outcome of the investigation as soon as a decision is reached.

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23. Should the investigation report be shared in full, or just the findings?

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There is no obligation to share the investigation report. The findings, or a summary of them without revealing any confidential information, may be disclosed, but it is the employer's responsibility to keep the identity of every person interviewed confidential.

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The employer needs to balance the interests of the employee investigated, and the interests of other persons involved in the investigation such as the complainant and witnesses. Thus, the employer may either share the findings of the investigation or the full investigation report, provided that the identities of all other persons involved in the investigation are kept confidential.

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24. What next steps are available to the employer?

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France

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The employer can decide to sanction the person who was under investigation or to close the case. The employer may also need to protect any victims, witnesses and whistleblowers. If, during the investigation, it is discovered that a supplier or other commercial partner is implicated, the relevant contract may be terminated. The employer can take legal action , file a complaint (if the company is a direct victim of a criminal offence) or report the offence to the public prosecutor's office. The employer must archive the file or ensure its lawful preservation after a certain period.

Last updated on 15/09/2022

Nigeria

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Upon the completion and receipt of the findings of the investigation, the employer may affirm the employee's innocence or take disciplinary action against them.

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25. Who can (or must) the investigation findings be disclosed to? Does that include regulators/police? Can the interview records be kept private, or are they at risk of disclosure?

France

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The findings must be submitted to the employer or management, but there is no obligation to disclose them to anybody else. The only exception is if a judicial investigation has been opened. In this case, the entire report must be provided to the authorities if the judge requests this. Normally the investigators only take written notes and there is no audio or video recording, unless the employee consents. Whether or not to make a voluntary disclosure of wrongdoing is a tactical decision for companies. Disclosure may mitigate fines and penalties or even help the employer avoid liability entirely. However, the downsides of disclosure include increased costs, the possibility of a follow-on government investigation and exposure to penalties. Thus, most companies assess their options on a case-by-case basis to determine what steps would be in the best interests of the company.

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Nigeria

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Investigation findings may be disclosed to the employee and every other person having an interest in the investigation. Where it is discovered that a crime has been committed, the investigation findings may be disclosed to the regulators or police.

Typically, interview records are kept private and will not be disclosed unless it is interest of justice.

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26. How long should the outcome of the investigation remain on the employee's record?

France

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If the outcome of the internal investigation has led to the sanctioning of an employee, this sanction may no longer be invoked to support a new sanction after three years. Moreover, under the GDPR principles, the duration of retention must be proportional to the use of the data. Therefore, the data must be retained only for a period that is "strictly necessary and proportionate". If the employer wants to keep information about the investigation in the longer term, it is possible to archive the employee's record even though the employer will no longer be able to use it against the employee after three years.

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Nigeria

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The law does not provide for the time the outcome of the investigation may remain on the employee's record. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

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27. What legal exposure could the employer face for errors during the investigation?

France

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Within the context of an investigation following a whistleblower alert, any violation of the confidentiality

obligation is punishable by two years' imprisonment and a €30,000 fine.

If the employer fails to comply with its obligation to protect its employees' safety, the employer will be liable for damages resulting from any failings during the investigation (eg, if sexual harassment is reported and no action is taken by the employer)

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Nigeria

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- Violation of Fundamental Rights of the Employee
- Breach of Contract of Employment or wrongful termination

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