

# Workplace Investigations

## Contributing Editors

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

### Belgium

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There is no specific legislation regarding a workplace investigation. In general, an employer has the right to investigate incidents at the workplace based on their authority over employees. However, the investigative powers of the employer are among others limited by the general right to privacy, which is also enshrined in Collective Bargaining Agreement No. 81 of 26 April 2002 to protect the privacy of employees concerning the control of electronic online data. If there are official complaints by employees due to sexual harassment, bullying or violence at work, well-being legislation provides a specific procedure. Also, upcoming whistleblower rules include some specifications for an investigation, but at the time of publication these are not yet final (we refer to is in more detail below). The information below is only valid for workplace investigations in the private sector. The public sector has a set of specific rules and principles, which are outside the scope of this chapter.

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### Ireland

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In Ireland, employees have a constitutional right and an implied contractual right to natural justice and fair procedures. If a workplace investigation is not conducted in accordance with these principles, an employee may allege that the investigation is fundamentally flawed. If such an allegation is made then an employee may seek recourse from the Workplace Relations Commission (WRC) or potentially the High Court. The WRC is the body in Ireland tasked with dealing with employment law-related claims, including unfair dismissal.

The constitutional rights that employees enjoy were specified in the Supreme Court case of *Re Haughey* in 1971. That case held that where proceedings may harm the reputation of a person, public bodies must afford certain basic protections of constitutional justice to a witness appearing before it. It further stated that article 40.3 of the Irish Constitution is a guarantee to the citizen of basic fairness of procedures. These

protections, known as “Re Haughey rights” are implied in each contract of employment.

A Code of Practice was introduced in 2000, namely S.I. No. 146/2000 - Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000 (the Code). The Code set out the procedures for dealing with grievances or disciplinary matters, which must comply with the general principles of natural justice and fair procedures and include:

- that employee grievances are fairly examined and processed;
- that details of any allegations or complaints are put to the employee concerned;
- that the employee concerned is allowed to respond fully to any such allegations or complaints;
- that the employee concerned is given the opportunity to avail of the right to be represented during the procedure; and
- that the employee concerned has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors or circumstances.

Further Codes of Practice on the prevention and resolution of bullying at work and on dealing with sexual harassment and harassment at work were published in 2021 and 2022, respectively. The provisions of these codes are admissible in evidence before a court, the WRC and the Labour Court.

In addition to the above, the Data Protection Commission published Data Protection in the Workplace: Employer Guidance in April 2023.

All employers should have specific and up-to-date policies dealing with how workplace investigations will be carried out that are suitable for their organisation. These policies may vary, depending on the subject of the investigation and the size and type of employer. However, all should adhere to the principles identified above to ensure that a robust policy is in place and can be utilised.

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## Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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