

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

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



South Korea

Author: *Hyunjae Park, Paul Cho, Jihay Ellie Kwack, Kyson Keebong Paek*
at Kim & Chang

It is not uncommon for an employee under investigation to raise grievances during or after the investigation. Below are some examples of claims an employee may raise:

- that the company reviewed the employee's electronic data without obtaining the requisite consent;
- that witnesses or the company committed defamation in violation of the Criminal Code;
- that the employee was coerced to comply with the investigation in violation of the Criminal Code;
- that the employee was disciplined without just cause; or
- that the employee was harassed by other employees for providing information during the investigation.

The actions the company should take would vary depending on the grievance raised.

Last updated on 15/09/2022



Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).



United Kingdom

Author: *Phil Linnard, Clare Fletcher*
at Slaughter and May

This is a relatively common tactic. The employer will need to decide whether to suspend the investigation to deal with the grievance, or conclude the investigation first, depending on the circumstances. It would usually be difficult to deal with both the grievance and the investigation concurrently, unless the facts overlap significantly.

If the employee becomes uncooperative and refuses to take part in the investigation, they should be told that the investigator may need to make a decision in the absence of their account based on all the other evidence available. The employer may decide to treat it as failure to comply with a reasonable management instruction and take disciplinary action on that basis.

Last updated on 15/09/2022

Contributors



South Korea

Hyunjae Park
Paul Cho
Jihay Ellie Kwack
Kyson Keebong Paek
Kim & Chang



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer



United Kingdom

Phil Linnard
Clare Fletcher
Slaughter and May