

Workplace Investigations

Contributing Editors

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

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

Switzerland

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

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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United Kingdom

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

In the UK, the primary employment legislation of relevance to a workplace investigation includes the Employment Rights Act 1996 (ERA 1996), the Equality Act 2010 (EA 2010), and the Employment Relations Act 1999 (ERA 1999).

Other legislation includes the retained EU law version of the General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018), the Investigatory Powers Act 2016 (IPA 2016) and the Investigatory Powers (Interception by Businesses etc for Monitoring and Record-keeping Purposes) Regulations 2018 (IP Regs 2018), and the Humans Rights Act 1998 (HRA 1998).

In terms of guidance, the Advisory, Conciliation and Arbitration Service (ACAS) have produced a [Code of Practice on Disciplinary and Grievance Procedures](#) (the ACAS Code) as well as a [Guide to conducting workplace investigations](#). The Information Commissioner's Office (ICO) have their [Employment Practices Code](#), and other pieces of guidance on the data protection aspects of investigations (see question 7).

Most employers will have internal policies governing how workplace investigations should be conducted. The level of detail may vary considerably; public sector and regulated employers may be more prescriptive

in their policies, which may even have contractual force. There may also be provisions of the employment contract that are relevant (particularly as regards suspension – see question 3).

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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?



Switzerland

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

In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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United Kingdom

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

Aside from the statutory right to be accompanied (see question 15), any further involvement by the works council or trade union would depend on the terms of the relevant works council or trade union recognition agreement.

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Contributors



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer



United Kingdom

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