

Workplace Investigations

Contributing Editors

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

24. What next steps are available to the employer?

Belgium

Author: *Nicolas Simon*
at Van Olmen & Wynant

If the investigation leads to the establishment of grave errors by the employee, this can lead to sanctions. The employer must follow the procedure laid down in the internal work rules of the company and can only impose sanctions that are included in the internal work rules. In general, these are: a verbal warning; a written warning; a suspension (remunerated or not); a fine (capped to one-fifth of daily remuneration); and dismissal. If there are very serious errors leading to an immediate inability to continue the employment relationship with the employee, the employer can dismiss the employee with urgent cause without any notice period or indemnity in lieu of notice (following the specific procedure for these types of dismissals). In less serious cases, the employer could still dismiss the employee with a notice period or indemnity in lieu of notice. In principle, the employer has a right to dismiss the employee, even if this sanction is not included in the internal work rules.

As said previously, disciplinary sanctions (included in the internal work rules) must be communicated to the sanctioned employee the day after the employer or his delegate has established fault. The sanction must be registered in a sanction register, with the name of the employee, the date, the reason and the nature of the sanction. If there is a fine, the amount of the fine should be mentioned. The proceeds of the fines must be used for the benefit of employees. Where a works council exists, the use of the proceeds of the fines must be determined after consultation with it.

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Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*
at Mannheimer Swartling

An investigation may result in employment law measures (eg, support, training, relocation, warning, termination or dismissal). An investigation may also be inconclusive and not result in any action.

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Switzerland

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

If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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Nicolas Simon
Van Olmen & Wynant



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Sandra Schaffner
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