

Workplace Investigations

Contributing Editors

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02. How is a workplace investigation usually commenced?

Japan

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The trigger for an investigation in the workplace may be:

- when an employee makes a report (eg, a report of harassment, a report of misconduct by another employee, etc);
- when an investigation is conducted by the Labour Standards Inspection Office or another regulatory agency;
- when a criminal or illegal act is discovered in the workplace; or
- when an internal audit conducted by the company reveals a problem.

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Switzerland

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Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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United States

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A workplace investigation is often, although not always, prompted by a complaint of workplace misconduct, usually made directly by the employee who was harmed by the conduct, a third party who witnessed the conduct, or a manager or supervisor who was made aware of the issue and has reporting obligations as a result of his or her role in the organisation.

It is best practice – and often a legal requirement depending on the applicable state law – for companies to clearly outline a complaint process in their policies and to provide employees who experience, have knowledge of, or witness incidents they believe to violate the company’s policies with one or more options for making a report. Although the specific complaint procedure may vary depending on the size of the organisation, the nature of the business and the type of complaint at issue, many companies provide for (or require) making a report through one of the following channels:

- a company-managed hotline or online equivalent;
- human resources;
- an affected employee’s supervisor or manager; or
- a member of the legal or compliance department.

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