

Workplace Investigations

Contributing Editors

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

21. How do you handle a parallel criminal and/or regulatory investigation?



India

Author: *Atul Gupta, Kanishka Maggon, Kopal Kumar*
at Trilegal

Often the tests or standards applied by external agencies (such as the police or regulators) in their investigations vary significantly in comparison to those that apply for internal investigations that are focused on potential disciplinary action against an accused employee. For example, the standard of proof required for taking an internal disciplinary measure is one of a preponderance of probability and does not require the employer to establish guilt beyond a reasonable doubt, which is the standard applied in criminal proceedings. Depending on the circumstances, conducting or continuing an internal investigation can also place the organisation in a better position to collaborate with external agencies such as the police or a regulator in their investigations, and be better prepared to share information that such agencies may request. It may also help demonstrate that the organisation does not tolerate potential violations of law or its policies and that it proactively investigates and addresses such issues. This may also help in protecting innocent members of management from liability from external agencies. To that extent, a parallel criminal or regulatory investigation may not normally be a reason for the organisation to suspend its internal investigation.

In the context of sexual harassment claims, the complainant has the right to file a police complaint against the alleged harasser (and the organisation must support her in doing so). However, a parallel police investigation would not take away the organisation's responsibility to address the grievances through its IC, which would be expected to complete its proceedings within 90 days.

Last updated on 15/09/2022



South Korea

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

There is no obligation to stay the workplace investigation while the parallel criminal or regulatory investigation is being conducted. In practice, companies often proceed with, or even accelerate, the workplace investigation to find out the facts and defend themselves against the parallel criminal or

regulatory investigation being conducted. The company should be careful not to engage in activities that may raise suspicions as to whether the company is impeding the government investigation or concealing or destroying evidence.

While the investigation report would typically not be privileged, the company may consider explaining to the authorities that the investigation findings are not conclusive, should the police or regulator request the internal investigation report.

Last updated on 15/09/2022

Switzerland

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

The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

Last updated on 15/09/2022

Contributors

India

Atul Gupta
Kanishka Maggon
Kopal Kumar
Trilegal

South Korea

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

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer