

Workplace Investigations

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02. How is a workplace investigation usually commenced?

Philippines

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Workplace investigations are normally commenced either through a complaint filed by other employees in the workplace or by HR or other representatives of management.

Under the Safe Spaces Act, employers are required to commence an investigation and decide on complaints regarding gender-based sexual harassment, within ten days of the complaint being brought to their attention. For other workplace misconduct, management is given wide discretion regarding the means and method by which the workplace investigation may be carried out.

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Portugal

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Having been informed of an alleged infraction committed by an employee, the employer must prepare a detailed written accusation and notify the employee.

Moreover, if the alleged infraction constitutes gross misconduct and the employer is considering dismissal, a formal statement of the employer's intention to dismiss the employee should accompany the accusation. If this is not expressly done, the employer will be unable to dismiss the employee and may only apply one of the conservatory sanctions. A copy of these documents must be sent to the works council, if any, and, should the employee be a union member, to the respective trade union.

Notwithstanding this, if before preparing the accusation the employer needs to further investigate the facts and circumstances, it may open a preliminary investigation aimed at collecting all the facts and circumstances and conclude if there are grounds to bring an accusation against the employee.

The preliminary investigation must start within 30 days of the employer becoming aware of the facts, be diligently carried out (but with no maximum period laid down by law) and concluded within 30 days of the

last investigatory act. Furthermore, the preliminary investigation will suspend the relevant statutory deadlines and statutes of limitations (ie, 60 days from the date of acknowledgment, by the employer or a supervisor with disciplinary power, of the facts to enforce disciplinary action against the employee and one year from when the facts occurred, regardless of the employer's acknowledgment, unless the infraction also constitutes a criminal offence, in which case the longer statutes of limitation established in criminal law will apply).

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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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