

Workplace Investigations

Contributing Editors

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

09. What additional considerations apply when the investigation involves whistleblowing?

Switzerland

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

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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Thailand

Author: *Ratthai Kamolwarin, Norrapat Werajong*
at Chandler MHM

It is down to the employer's discretion and subject to the whistleblowing policy (if any) to commence the investigation resulting from a complaint from a whistleblower. Whistleblowers and those who cooperate with an investigation should be protected. Normally the employer would not try to identify the whistleblowers. Also, it is best not to reveal the identity of the witness or the source of information; otherwise, they may feel uncomfortable giving information or raising their concerns next time. Any allegations of retaliation that surface during the investigation should be treated as a new report of possible misconduct that could be subject to additional investigation.

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20. What if the employee under investigation goes off sick during the investigation?

Switzerland

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

The time spent on the internal investigation by the employee should be counted as working time^[1]. The general statutory and internal company principles on sick leave apply. Sick leave for which the respective employee is not responsible must generally be compensated (article 324a paragraph 1 and article 324b, Swiss Code of Obligations). During certain periods of sick leave (blocking period), the employer may not ordinarily terminate the employment contract; however, immediate termination for cause remains possible.

The duration of the blocking period depends on the employee's seniority, amounting to 30 days in the employee's first year of service, 90 days in the employee's second to ninth year of service and 180 days thereafter (article 336c paragraph 1 (lit. c), Swiss Code of Obligations).

[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

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Author: *Ratthai Kamolwarin, Norrapat Werajong*
at Chandler MHM

If the absence is anticipated to be brief, the employer may wait until the employee's return before concluding the investigation. If the employee's absence is expected to be prolonged, the investigator may alter the time of meetings or request that the employee submits a witness statement. The key point would be that all necessary measures should be taken to give the employee a chance to participate.

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Contributors

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

Thailand

Ratthai Kamolwarin
Norrapat Werajong
Chandler MHM