

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?



South Korea

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Aside from the legal obligations imposed on the company when dealing with a whistleblower who is subject to the WPA as discussed in question 1, there are also practical considerations the company should keep in mind when dealing with a whistleblower, regardless of whether the whistleblower falls under the WPA.

For example, there have been instances where an employee who raised allegations filed a complaint with Korean authorities (such as the Anti-Corruption and Civil Rights Commission (ACRC) or the Labour Office) that the company took retaliatory action against the whistleblower. The company should carefully review the legal risks before taking action, such as personnel action or civil or criminal action, against an employee who raises allegations if that employee was also involved in the wrongdoing.

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Switzerland

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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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24. What next steps are available to the employer?



South Korea

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After completing an investigation, the company may consider the following measures, among others:

1. taking disciplinary action against the relevant employees;
2. taking legal action (eg, criminal action, civil action) against the relevant employees; and
3. taking appropriate remedial measures (eg, strengthening existing policies and establishing new policies, and conducting training).

The company may also consider making a voluntary report to the relevant authorities as discussed in question 25.

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Switzerland

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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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