

# Workplace Investigations

## Contributing Editors

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## 01. What legislation, guidance and/or policies govern a workplace investigation?

### Philippines

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There are essentially two phases in a workplace investigation: the fact-finding phase and the administrative proceeding.

The fact-finding phase of workplace investigations is usually governed by the internal policies of the employer, save for investigations relating to gender-based sexual harassment in the workplace. Republic Act No. 11313, otherwise known as the Safe Spaces Act, sets the parameters for these kinds of investigations.

Philippine case law recognises the right of an employer to conduct investigations for other acts of misconduct in the workplace in the exercise of its management prerogative. The Supreme Court has held that it is an employer's right to investigate acts of wrongdoing by employees, and employees involved in such investigations cannot simply claim that employers are out to get them.

After the fact-finding aspect of the investigation, if the employer decides it has sufficient grounds to proceed to full-blown administrative proceedings, it needs to comply with the due process requirements outlined under the Philippine Labor Code. These requirements are:

- a first notice, or notice to explain, informing the employee of the charges against him or her;
- an opportunity for the employee to be heard; and
- a final notice on the outcome of the administrative action.

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### Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the

employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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## 16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



### Philippines

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Except if provided expressly under a collective bargaining agreement, the union does not have the right to be involved in the investigation. Given that the investigation is between the employee and the company, it follows that the union does not have any right to participate in the investigation proceedings.

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### Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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