

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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02. How is a workplace investigation usually commenced?

Australia

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A workplace investigation will generally be triggered by an employee making a complaint; however, issues may also be brought to the attention of an employer through an anonymous tip, by suppliers or contractors, from customers or because of observations and hearsay.

Complaints can be made directly to Human Resources (HR), anonymously, by email to a line manager or a third party. While complaints do not need to be written and can be informal, brief or verbal, complaints of this nature can make the process harder and more information may be required.

The receipt of a complaint does not necessarily mean that an employer needs to undertake an investigation immediately. A grievance policy ordinarily contains a multi-step approach to dealing with complaints, starting with internal resolution options such as informal discussions, conciliation and mediation. However, an investigation should be commenced where:

- the complaint alleges serious misconduct or unlawful conduct;
- the employer is required to conduct a workplace investigation as per an employment contract, policy, procedure or industrial instrument; or
- the complaint is complex and requires clarity on what has occurred to establish the facts.

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Austria

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In general, an internal investigation is only initiated if there is suspicion of a violation. The decision to commence an internal investigation is up to the company, and it has to weigh the pros and cons. For limited liability companies, which are subject to the Association Responsibility Act, an internal investigation may exempt them from criminal liability. Disadvantages may include investigation costs, disruption of operations, discovery of information requiring later disclosure, possible negative media coverage and

increased risk of exposure to external parties.

Investigations can relate to specific individuals, departments, or the entire company. An investigation may include various measures, such as obtaining and analysing files and documents, conducting questionnaires and employee interviews, monitoring internet use, video or telephone surveillance of employees and setting up whistleblowing hotlines. Not all measures are acceptable without restrictions. The provisions of labour law and data protection law must always be complied with.

To avoid wasting resources, the objectives of the investigation should be defined in advance. In addition, the selection and sequence of instruments to be used should be determined. A legal assessment of the chosen measures is essential to avoid legal complications.

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Belgium

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First, the employer should appoint an investigator or investigative team that will be responsible for conducting the investigation. Next, the employer or the investigators might think about communicating with the involved employees. It depends on the situation if this is a good idea or not. In general, it can be recommended that the employer is transparent towards the involved employees and openly communicates about the (start of the) investigation process. This is definitively the case if it is already clear that the involved employees are under scrutiny because of their actions. In this case, the actual investigation can begin with a hearing of the involved employees. However, if there is a risk that employees will hide or destroy evidence or will collude to prevent the employer from finding the truth, the investigation can also start without any communication. In this case, it would be better to start collecting evidence before hearing from the employees involved.

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Brazil

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Workplace investigations usually commence on the receipt of an allegation, which can be presented orally or in writing to an assigned member of the company (usually, within the HR, Compliance or Legal Departments, or to a direct supervisor) or via an external channel, as determined by the company's policy.

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China

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The employer will generally obtain clues of employees' misconduct, actively or passively, through such means as internal audit, employee whistleblowing, whistleblowing from suppliers or partners, regular or irregular compliance management assessment of the employer and management concerns, and carry out investigation based on such clues. Meanwhile, the employer will further investigate whether the employees involved have committed other acts of misconduct.

The investigation is usually carried out from outside to inside and from the macro level to the specific level. That is to first interview the provider of the clues and other insiders for verification and obtaining further information. Then to conduct internal and external system and written documents review based on the investigation clues. Preliminary evidence will be formed after the basic verification of facts. Finally, the employer will interview the employees involved and listen to their explanations, and finally determine the subsequent handling method.

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Finland

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When the employer becomes aware of possible misconduct, the employer must commence an investigation immediately, in practice within about two weeks. The information may come to the employer's knowledge via, for example, the employer's own observations, from the complainant or their colleagues or an employee representative.

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France

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When a report of wrongdoing is brought to the employer's attention, whether through a whistleblower or another channel, and an internal investigation is expected, it may be either mandatory or optional, depending on the facts of the alleged wrongdoing.

The investigation will be mandatory when the alleged wrongdoing relates to an ethical issue according to anti-corruption regulations, the employer's duty of due diligence regarding, for example, human rights or environmental matters, or where the works council has issued an alert relating to a "serious and imminent danger" (or to "fundamental human rights"), but also whenever it relates to the employer's obligation to ensure employee safety (eg, moral or sexual harassment).

If the investigation is not mandatory, it is up to the employer to decide whether or not to carry out the investigation. Several key questions can help the employer determine whether or not it is appropriate to carry out an investigation, such as:

- What are the benefits of doing nothing? The company will have to draw up a list of the pros and cons of an investigation, bearing in mind that in some cases a poorly conducted investigation could make the situation worse;
- What is the priority (eg, obtaining or securing evidence, or correcting the irregularity)?
- What rules or codes of ethics must the company comply with?
- Should external legal counsel only advise the company or should they play a major role in the investigation process by becoming an investigator?

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Germany

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Typical triggers for a workplace investigation may be internal hints (eg, from employees), internal audits, compliance or the legal department. However, investigations by the public prosecutor or other authorities can also lead to a workplace investigation.

There are no strict guidelines for the course of the investigation. The measures to be taken and the sequence in which they will be carried out to clarify the facts must be decided on a case-by-case basis. However, the first step should be to secure evidence. All relevant documents and records (eg, e-mails, hard disks, text messages, data carriers, copies) should be collected and employees may be interviewed. The second step should be to evaluate the evidence and the third step is to decide how to deal with the results (eg, whether any disciplinary measures should be taken or the intended procedures should be adjusted).

Irrespective of how a workplace investigation is commenced, when it comes to severe breaches of duty by an employee, a two-week exclusion period for issuing a termination for cause must be observed at all stages. This two-week period starts when the employer becomes aware of the relevant facts but is suspended as long as the employer is still investigating and collecting information, provided that the investigation is carried out swiftly.

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Greece

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Internal investigations can be initiated either upon a complaint or report by an employee, (or other persons providing services or seeking employment, etc) in the workplace or by the employer as part of their managerial right.

If from an employee, the complaint or report may fall within the scope of an internal disciplinary procedure, if any, or may concern an alleged workplace violence or harassment incident, or fall within the scope of L.4990/2022 on the protection of persons who report breaches of Union law.

Reports by whistleblowers are submitted to the manager with responsibility for receiving and monitoring reports, a person appointed for that purpose under L.4990/2022. Complaints for incidents and harassment in the workplace can also be submitted, according to L.4808/2022, to the person or internal body specifically assigned to receive such complaints. Both laws require the employer to define the persons competent for receiving and monitoring complaints or reports and notifying the employees *stricto sensu* and any other persons falling within the scope of the respective provisions.

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Hong Kong

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The circumstances in which an employer commences a workplace investigation may vary. However, it is common that an employer will consider it necessary to commence a workplace investigation upon receipt of a complaint concerning a fellow employee. Sometimes, the complaint may be made anonymously. If the employer considers there to be substance in the complaint, it may commence an investigation to find out the truth of the matter, resolve the complaint and, if necessary, improve its systems and controls to prevent the reoccurrence of any misconduct.

A workplace investigation may be warranted if the employer receives an enquiry from a regulator

concerning its affairs or an employee's conduct. The investigation findings could enable the employer to respond to the regulator (which could be a mandatory obligation) and at the same time assess its risk exposure.

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India

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As a precursor to the actual disciplinary process, investigations are usually initiated when the employer becomes aware of an allegation or complaint of misconduct, or observes any acts or omissions by an employee constituting workplace misconduct. The employer (or investigating committee – which could also be an outside agency like an auditor or law firm appointed by the employer) would generally commence the investigation by speaking with the complainant (or whistleblower) to gather as many details as possible (relevant facts, evidence, list of witnesses, etc) concerning the allegations, so that the next steps and approach can be determined upfront.

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Ireland

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Investigations can start in multiple ways. They usually stem from an employee raising a grievance, a bullying complaint, or a possible protected disclosure. Investigations may also stem from the employer in a disciplinary context, or indeed can be commenced if an external complaint or issue is raised by a third party of the organisation.

The first thing the employer must consider is whether an investigation is necessary. It may be that the issue at hand can be resolved informally or is of such a nature that it cannot be investigated, either through a lack of detail or simply because the subject of the complaint is no longer an employee. Any such decision to investigate or not should be carefully documented.

The next step to determine is the nature of the investigation. It should be clear at the outset whether the investigation is simply a fact-gathering exercise or if the investigator will be tasked with making findings on the evidence. The distinction is significant as a fact-gathering investigation can proceed without prompting the full panoply of rights, but the basic principles of fairness should still be applied. A fact-gathering investigation should determine whether there is or is not, a case to answer. If a disciplinary hearing follows then the rights outlined in question 1 will apply at that stage. If it is a fact-finding investigation, the rights apply from the outset of the process. The employee who is required to respond to the issues (the respondent) should be fully aware of the extent of the investigation. The investigator appointed to do the investigation should be clear about what is expected of them.

If the employer believes an investigation is necessary, it should be acknowledged and started without delay. In particular, according to the Protected Disclosures legislation, a report should be acknowledged within seven days.

An employer should consider and identify the scope of the investigation and establish who will investigate the matter. Terms of reference under which the investigation will be carried out should be established by the employer and shared with the employee raising the issue (the complainant). An employer should not seek agreement on the terms, but invite commentary to ensure that the full scope of the investigation is captured within the terms of reference. Robust terms of reference that lay down the clear parameters of

the investigation will assist the investigator and all parties involved in the process.

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Italy

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Generally speaking, a workplace investigation can commence either as a consequence of facts reported by employees or third parties (either anonymous or not), for instance within a whistleblowing procedure or as part of normal and periodical activity carried out by internal auditing.

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Japan

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The trigger for an investigation in the workplace may be:

- when an employee makes a report (eg, a report of harassment, a report of misconduct by another employee, etc);
- when an investigation is conducted by the Labour Standards Inspection Office or another regulatory agency;
- when a criminal or illegal act is discovered in the workplace; or
- when an internal audit conducted by the company reveals a problem.

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Netherlands

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The workplace investigation can be exercised by an internal (ad hoc) investigation department of the company itself, for example under the direction of the internal audit department or compliance department. This is possible if there is sufficient manpower with the necessary independence, knowledge and experience. Case law, however, shows that courts tend to be more critical of internal investigations than external investigations. For more complex and sensitive investigations, a forensic accountant or lawyer is often involved. The advantage of involving a lawyer is that the investigation and its outcome are covered by privilege. This guarantees the confidentiality of the investigation, also regarding supervisors and investigating authorities. Yet, at the same time, there is increasing debate about the role of lawyers as investigators, given their inherent bias to work in the interests of their client (the employer).

The investigation starts with a plan of approach that must be signed by the contractor. This plan of approach outlines the legal framework of the investigation, such as the scope, the means to be used, how it will deal with data, the use of experts, how the interviews will be conducted, the way of reporting and confidentiality. Furthermore, there must be a protocol for how the investigator conducts the investigation and that applies to all parties involved.

Gathering information can be done in various ways. For example:

- An inventory can be made of the household effects of a company. In the event of theft, an inventory can be an appropriate means of establishing exactly what has been stolen.
- An investigation of the books: this is an investigation of all documents of the company. These are not private documents of employees, but documents of the company itself. For an investigator, an interview can be a good way to gather more information, for example by interviewing witnesses. In practice, there are almost always several interviews with the suspects, the employer and other people involved.
- Open source research, which often involves researching a person's social media, or public documents relevant to the research. In principle, "open sources" refers to all public documents in the world; nowadays, many public documents are digitised.
- A workplace search, which includes everything present in the workplace: diaries, computer files, e-mails, letters, and even the contents of a wastebasket.
- A digital data investigation: this is a frequently used tool in fraud investigations. Most communication and documents are digital nowadays. It is, therefore, very likely that evidence can be found in digital data. Each of these means of investigation must respect the principles of an internal investigation and comply with the GDPR principles .

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Nigeria

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A workplace investigation is conducted to verify alleged misconduct within a workplace.^[1] Once a complaint is made regarding wrongdoing, misconduct or unethical behaviour by an employee or group of employees within a workplace, an investigation is required to confirm the complaint and if it is confirmed, the body in charge of supervising the employees (usually the HR specialist, disciplinary committee or line managers) determine and implement necessary corrective or disciplinary actions.

[\[1\] Conducting Internal Investigations In Organisation - Health & Safety - Nigeria \(mondaq.com\)](#)

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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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Poland

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There are no legal requirements in this respect – it depends on the internal policies or practices at a given working establishment. Based on our experience – an internal investigation usually commences with a preliminary assessment of a reported irregularity. If the preliminary assessment leads to a conclusion that a reported situation may be an irregularity, an investigation is launched by appointing a commission or team that conducts the investigation or selecting an investigator. Then, a plan of investigation is established. Depending on the circumstances, the investigation plan may involve a collection of documents or files, their analysis, and interviews with a victim, witnesses or a subject (although the procedure depends on the type of case, internal rules and practice). At the end of the process, the report is prepared by the commission or team with facts established during the process, recommendations, and other suggestions as to the investigated issue.

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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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Singapore

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A workplace investigation usually commences with the receipt of feedback, a complaint or a grievance, by named or anonymous persons, in respect of a work-related matter or event, or the conduct of an employee.

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South Korea

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There are many different ways a workplace investigation concerning employee misconduct could commence. Below are some key examples from our experience:

- an employee reports allegations concerning another employee's misconduct through an ethics hotline or other means (eg, email, phone call);
- an outsider such as a former employee or a vendor reports allegations concerning employee misconduct to a company officer;
- an internal audit reveals potential employee misconduct;
- media reports raise allegations of employee misconduct; and
- an external investigation begins (eg, by criminal authorities or administrative agencies) concerning alleged employee misconduct.

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Spain

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Given that Spain lacks legislation in this area (see question 1), each company commences workplace investigations following its internal guidelines, policies or practices, if any. In our experience, investigations begin with a formal decision to commence the enquiry, which is set out in writing for record-keeping purposes.

This decision will normally mention:

- the facts that will be investigated;
- the reasons to investigate the facts (eg, they could be a breach of company policies);
- how the investigation will be conducted; and
- the individuals who will conduct the enquiry.

Depending on the company, the decision to initiate the investigation may take the form of a decision by the competent employee or officer (ethics or compliance officer) or the minutes of the relevant corporate body (board of directors or compliance committee).

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Sweden

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An investigation can be initiated in several ways. It is usually as a result of whistleblowing or a report on work environment deficiencies, or through other channels (eg, HR, the police, media coverage).

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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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Thailand

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Usually, a complainant submitting a grievance to the company would be a trigger for proceeding with a workplace investigation. The LPA does not specify when a workplace investigation should commence but it is subject to the employer's work rules and regulations, including the whistleblowing policy, as the investigation usually commences after an employee or a whistle-blower has filed a complaint to the employer. In some cases, there might be a whistleblower and the start of the workplace investigation would be subject to the whistleblowing policy and the employer's discretion. Also, if a questionable transaction or activity is detected, fiscal audits may be the source that triggers a voluntary workplace investigation.

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Turkey

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The need to initiate an internal investigation may arise from the receipt of information from various sources. Reporting is one of the most common sources and can be in different forms. In Turkey, while conventional methods such as reporting to a direct supervisor, human resources or executives is quite common, whistleblowers also use reporting mechanisms such as web-based forms, telephone hotlines or e-mail, if such mechanisms exist. It is critical to obtain as much information as possible from the complainants at this initial contact, to make a sound decision on whether or not to commence an investigation. There is no requirement to decide to start an investigation and it can be commenced through a corporate resolution (eg, ethics committee resolution or board resolution) of a decision-making body or a decision of the body or person who has such authority under the company policies. The investigation team who will conduct the process may also be approved by the company's decision-making body. It is also advisable to have a preliminary inquiry for the complaints, before commencing a fully-fledged investigation.



United Kingdom

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The trigger could come from several sources, such as a grievance from a current or former employee, a complaint from external sources, a whistleblowing disclosure, or as the result of internal governance measures.

In each case, the employer will need to decide if an investigation is warranted. It may be required by internal policies or regulatory requirements in some circumstances. Consideration must be given to whether an investigation is feasible; for example, is the evidence still in existence and accessible? Are key witnesses still employed or contactable?

If the employer concludes that an investigation is warranted, it should start without unreasonable delay. The first step would usually be to set terms of reference, which outline the purpose and remit of the investigation. These should be closely drafted and continually referred to, to avoid the investigation's scope expanding when new points arise (as they almost always will). An investigator will also need to be appointed (see question 4).

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United States

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A workplace investigation is often, although not always, prompted by a complaint of workplace misconduct, usually made directly by the employee who was harmed by the conduct, a third party who witnessed the conduct, or a manager or supervisor who was made aware of the issue and has reporting obligations as a result of his or her role in the organisation.

It is best practice – and often a legal requirement depending on the applicable state law – for companies to clearly outline a complaint process in their policies and to provide employees who experience, have knowledge of, or witness incidents they believe to violate the company's policies with one or more options for making a report. Although the specific complaint procedure may vary depending on the size of the organisation, the nature of the business and the type of complaint at issue, many companies provide for (or require) making a report through one of the following channels:

- a company-managed hotline or online equivalent;
- human resources;
- an affected employee's supervisor or manager; or
- a member of the legal or compliance department.

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Vietnam

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The circumstances in which an employer commences a workplace investigation may vary, either through a

whistleblower, through an internal system, email or phone call; complaints from suppliers, contractors, or customers; or accounts from observations and hearsay. Sometimes, it comes from anonymous complaints. However, it is common for an employer to verify whether the report or complaint is substantiated, partially substantiated, or unsubstantiated, which is sufficient to initiate and commence a workplace investigation.

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17. What other support can employees involved in the investigation be given?



Australia

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Employers should be conscious that the investigation may have an impact on the complainant, respondent and witnesses. Employers will need to consider how to support their employees. The level of support provided will often depend on the size of the organisation and programmes already in place.

Many employers have an Employee Assistance Programme and employees should be reminded about this programme if further support or assistance is required. An employer's HR team may also be able to assist if an employee has concerns about the progress of an investigation.

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Austria

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There is no additional support for the employees concerned. However, the employer may offer support measures to the employees to ensure better cooperation. The choice of support measures is at the employer's discretion. For example, the employer could offer to bear lawyer's fees, if the employee is cooperative. Such decisions must always be made on a case-by-case basis.

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Belgium

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There are no other mandatory support measures. However, an employer is free to offer additional support, for example, by granting leave from work. If tensions at the workplace are high, it may be a good idea to ask the employee under investigation to take some leave. Some companies also provide certain legal, moral or even psychological support. If the complaint concerns sexual harassment, bullying or violence at work, the prevention adviser can also recommend that the employer take additional measures to support certain employees.

Furthermore, under the whistleblower rules, an external reporting authority can grant any support measure (eg, legal advice or financial, technical, psychological or media-related, social support).

For complaints due to sexual harassment, violence or bullying at work, and if the facts are serious, the prevention adviser should, during the examination of the request and before giving his or her opinion to the employer, propose protective measures to the employer. These measures are necessary to avoid serious damage to the complainant's health or a significant deterioration in the situation (for example, causing opposing parties to commit criminal offences). The final decision on taking these measures rests with the employer. This means that the employer does not necessarily have to take the measures proposed by the prevention adviser. They may take other measures that provide an equivalent level of protection for the employee.

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Brazil

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It is highly recommended that investigation interviews are conducted in the interviewed person's native language, even if the individual speaks the language used for business within the company, to ensure that there is no miscommunication or loss of accuracy in the determination of the facts. Also, speaking their native tongue reduces the discomfort of participating in the interview and potential extra work due to post-interview correction or confirmation. Depending on the scope of the investigation, the company can have attorneys who speak both the individual's language and the company's business language conducting interviews.

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China

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The relevant laws and regulations in the PRC have not made explicit requirements regarding the supports received by the employee involved in the investigation. In practice, the employer will usually prepare an internal time schedule before carrying out the investigation. Although the detailed time schedule will not be disclosed to the employee, the employer will usually inform the employee of each investigation in advance. In order to improve the transparency of the investigation, we recommend that employer should make positive and proper responses to employee who enquires about the progress of the investigation, so as to avoid employee's suspicion.

In addition, the Personal Information Protection Law of the PRC stipulates the rights of individuals in the process of personal information processing. In the scenario of internal investigation of an employer, the investigated party may, in accordance with such provisions, ask the employer for the right to review and even copy the personal information collected. Where the employee finds that the personal information collected by internal investigation is inaccurate or incomplete, he/she is entitled to request for correction or supplementation.

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Finland

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They can request assistance, for example, from an occupational health and safety representative, a shop steward or the occupational healthcare provider.

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France

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Apart from being informed of any facts and data concerning them being collected during the investigation, employees involved in the investigation do not have any specific rights. Some companies choose to use external firms specializing in psychosocial risk management, not only to conduct internal investigations, but also to provide additional psychological support for their employees, as part of the employer's safety obligation.

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Germany

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Generally, when employees may also use their devices for private purposes, the employer should ensure it allows its employees to tag their private data as "private". This tagging may facilitate the differentiation between business data (relevant for the investigation) and (non-usable) private data in the event of e-mail and electronic data screening.

In addition, the employer may, in appropriate cases, assure the employee that, if there is complete and truthful disclosure of facts to be clarified, the employer will refrain from imposing sanctions under labour and civil law (eg, a warning, termination of employment and the assertion of any claims for damages). In practice, assistance in finding a lawyer and the payment of legal fees is sometimes offered. However, such amnesty programmes are commonly only useful if there is a large number of cases that are particularly complex, poorly documented and difficult to resolve without amnesty offers.

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Greece

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According to L.4990/2022, any form of retaliation against complainants is prohibited, including threats of retaliation^[9]. The complainants have the right to cost-free legal advice about possible acts of retaliation as well as cost-free provision of psychological support (to be defined by Ministerial Decisions)^[10]. In terms of other types of support, the complainants are not in principle liable for the acquisition of information or releasing the information they reported under specific conditions (eg, the acquisition or access does not independently constitute a criminal offence, if they had reasonable grounds for believing that a report was necessary to reveal the violation)^[11].

L. 4808/2021 states that the dismissal or termination of the legal relationship of employment and any other discrimination that constitutes an act of revenge or retaliation is prohibited and invalid^[12].

[9] Law 4990/2022 art.17

[10] Law 4990/2022 art.19

[11] Law 4990/2022 art.18 par.1(a)

[12] Law 4808/2021 art.13

Last updated on 03/04/2023



Hong Kong

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It could be stressful for employees to be involved in a workplace investigation, whether as the victim, the subject of an investigation or a witness. More transparency in the process would help reduce stress. This could be achieved by providing the relevant employees with the timeline for different stages of the investigation and regular updates.

The employer may also consider providing mental health support to the employees concerned, for example in the form of counselling services or medical consultations. Where appropriate, the employer may also consider making reasonable adjustments to the employee's workload and work schedule to facilitate his participation in the investigation.

Last updated on 15/09/2022



India

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Every workplace investigation is unique and varies based on the facts and circumstances of each case. As a result, the nature or type of support to be given to an employee would also vary from case to case. The bare minimum should be an assurance that there will be no retaliation against them for participating in the investigation. Other measures may include:

- changing the reporting relationship if the accused is the reporting manager or boss of the complainant;
- conducting investigations and interviews virtually or through videoconferencing in cases where parties or witnesses may not be able to physically appear before the investigating authorities; and
- allowing witnesses to be cross-examined virtually or through a written questionnaire where there is a fear of intimidation or retaliation from the parties.

The employer should be mindful that any interim measures or support it extends does not prejudice any particular party.

Under the SH Act, employers are legally required to assist the complainant if he or she chooses to file a complaint about workplace sexual harassment with the police under the Indian Penal Code or any other law that is in force. Further, the complainant can also seek interim protective measures from the IC, such as a request for transfer for the accused or the complainant or to grant leave to the complainant for three months.

Last updated on 15/09/2022

Ireland

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If an employee assistance programme is in place, an employee irrespective of their role in the investigation should be directed to the programme and encouraged to avail of the services. Investigations can become protracted and employees should be kept informed as to progress and what is required of them regarding participation. Regular checks of the health and well-being of employees should also be made. Even if such a programme is not in place, occasionally and depending on the issues giving rise to the investigation, it may be appropriate for the employer to cover the cost of counselling to a certain extent.

Last updated on 11/10/2023

Italy

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According to the law, there is no other specific kind of support other than what is mentioned above.

Last updated on 15/09/2022

Japan

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There is no legally established assistance programme.

Last updated on 15/09/2022

Netherlands

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The employer can offer employees to be accompanied by another person, or by legal counsel, especially if the outcomes of the investigation could have consequences for their employment.

Last updated on 15/09/2022

Nigeria

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An employee being investigated has a right to be heard before a decision being made by the employer. Further, the body responsible for investigating the employee must be independent, so as not to be considered biased.

Last updated on 15/09/2022



Philippines

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Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

Last updated on 26/01/2023



Poland

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They may be supported by, for example, allowing an alternative work environment (eg, remote work to avoid direct contact with people involved in the case). Depending on circumstances of the case, this solution will be offered to the subject or the victim. However, it is important that such actions do not infringe the rights of other people (eg, the subject itself).

Employees may also be sent on leave (by a unilateral decision of the employer – if possible under currently binding law provisions) or the parties to an employment contract may mutually agree to use such leave. Moreover, if the employer thinks it is necessary, they may assign the employee to another job for a period not exceeding three months (only if it does not result in a reduction in the employee's remuneration and corresponds to the employee's qualifications).

Also, depending on the employer's decision – psychological or even legal assistance can be provided by the employer to a whistleblower or a victim.

Last updated on 20/04/2023



Portugal

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Employees are usually assisted by lawyers when they are subject to an investigation or disciplinary procedure.

Last updated on 15/09/2022



Singapore

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Employers may provide support, such as:

1. offering counselling for its employees to encourage open discussions and communication on any issues that they may be facing or clarify any questions they may have in respect of the investigation process;
2. reminding its employees of its zero-retaliation policy; and, if need be
3. making the necessary work arrangement to minimise potential interaction that would further aggravate the conflict or situation between the employees involved.

Employers may also inform employees of the external resources available to them if they require any assistance in respect of the investigation provided by external parties such as TAFEP, the Singapore National Employers Federation, National Trade Union Congress, and Legal Aid Bureau.

Last updated on 15/09/2022



South Korea

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There could be some instances where an employee involved in an investigation may be entitled to support from the company. To give an example, there have been some cases where a whistleblower claimed they suffered workplace harassment or their employer took retaliatory action (eg, wrongful transfer) and they sought damages or other relief.

Last updated on 15/09/2022



Spain

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For the reasons outlined in question 15, companies sometimes choose to voluntarily provide support to employees involved in the investigation (to ensure that evidence was lawfully obtained during the interview and is valid).

For investigated employees, one available support mechanism is for the company to cover the legal fees of an external counsel during the investigation or to offer to involve employee representatives. Reassurance may be provided to witnesses by guaranteeing, in writing, that their involvement in the investigation will be kept confidential and will not result in a detriment.

Last updated on 15/09/2022



Sweden

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The employer is responsible for the work environment and must ensure that employees are not at risk of mental (or physical) illness due to an investigation. If an employee, in connection with an investigation, requires support or if risk of ill health is otherwise anticipated, the employer is obliged to assess the situation and provide said employee with sufficient support (eg, counselling or work adjustments).

Last updated on 15/09/2022

Switzerland

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The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

^[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

Last updated on 15/09/2022

Thailand

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The employees may then file a complaint with the labour inspection officer of the Labour Protection and Welfare Department to investigate the situation if they view that the conduct of the employer in the investigation violates the LPA. For example, if the employer issues a written order for suspending an employee for more than seven days. The labour inspection officer may issue an order requesting compliance, where failure to comply with such an order would result in a criminal penalty.

Last updated on 15/09/2022

Turkey

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The employees involved in the investigation should be granted their personal needs (such as refreshments or access to the bathroom), as well as translation services or transportation, if needed. A breach of these rights or needs during the process may constitute a violation of the law and adversely affect the validity of the results to be obtained from the investigation.

Last updated on 15/09/2022

United Kingdom

United Kingdom

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The employer needs to consider the health and wellbeing of all staff involved in the investigation, since this can be a very stressful process. The employer and investigator can assist by ensuring that all parties are aware of what is expected of them. Timings are also important; having a clear and expeditious timetable and providing updates if the timetable slips will help. Regular catch-ups by managers can be used to monitor how employees are coping. They should be reminded about any resources to help support them, such as employee helplines or employee assistance programmes.

Where an employer has particular concerns about an employee's health, a referral to occupational health can assist. The employer may also wish to consider whether employees should be given additional time off, or whether any other adjustments can be made to the investigation process. For particularly serious allegations, the employer may consider facilitating the provision of independent legal advice for the employee, or making a contribution towards legal fees.

Last updated on 15/09/2022

United States

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The employer's counsel should provide an *Upjohn* warning at the start of any interview, and delivery of the warning should be documented by a note-taker. An *Upjohn* warning is the notice an attorney (in-house or outside counsel) provides a company employee to inform the employee that the attorney represents only the company and not the employee individually.

Last updated on 15/09/2022

Vietnam

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It is quite stressful for an employee, whether as the victim, the subject of an investigation, or a witness, to be involved in a workplace investigation. Thus, transparency in the investigation process would alleviate the employees' stress and anxiety. This could be achieved by providing involved and concerned employees with the timeline for different stages of the investigation and regular updates. Further, the employer can make necessary work arrangements to minimise potential interaction with other involved employees so that it would not further aggravate the conflict or situation, (eg, days off or temporary suspension of work).

Last updated on 25/09/2023

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