



International Employment Lawyer

GUIDE TO WORKPLACE INVESTIGATIONS

GREECE

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Starting an investigation

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

In Greece, workplace investigations are not heavily regulated.

However, internal disciplinary procedures are governed by certain general principles, while there is also legislation regulating certain aspects of investigations opened in the context of whistleblowing procedures or concerning complaints for workplace violence or harassment. These include Law 4990/2022, which transposed EU Directive 2019/1937 into Greek Law; and Law 4808/2021, which ratified the ILO's Violence and Harassment Convention, 2019 (No 190) and introduced relevant provisions. Also, for the purposes of conducting an internal investigation, data protection rules should be taken into account by the employer, including the provisions of the General Data Protection Regulation (GDPR), the Greek Law No.4624/2019 as well as decisions/guidelines issued from time to time by the Hellenic Data Protection Authority (HDDPA). Violations of data protection rules may lead, under certain circumstances, to considerable sanctions including administrative fines (imposed by the HDDPA) and civil law claims by affected employees for damages.

As far as disciplinary procedures in private-sector companies are concerned, employers that must have internal labour regulations in place (ie, those with more than 70 employees) or opt to adopt them voluntarily, can regulate the procedures themselves.

In the public sector, internal investigations are governed by disciplinary provisions included in the civil servant code.

2. How is a workplace investigation usually commenced?

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 in certain areas of EU law (e.g. environmental breaches, money laundering etc.).

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.

3. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

Internal labour regulations may allow for the suspension of an employee when there is reasonable

suspicion that a disciplinary offence has been committed. Given that under Greek law employees have the right to receive wages and to be employed, suspension without a specific provision in the internal labour regulation may only be imposed in an extreme case where the offence and the risk of keeping the employee employed during an investigation is obvious.

Payment of remuneration during suspension should not be withheld, otherwise, the suspension could be considered a disciplinary penalty not provided in law and imposed without completion of the disciplinary procedure, thus illegally harming the employee.

In any case, suspension is one of the ultimate measures that may be taken, in contrast to, for example, a change of work position.

4. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?

As far as the persons in charge of an internal investigation are concerned, L. 4990/2022 on the protection of persons who report breaches of Union law provides for certain conditions that should be met when exercising their duties (ie, being impartial and abstaining when there is a conflict of interest), which also apply as general principles in all disciplinary procedures. Whistleblowing legislation stipulates that persons appointed to receive and investigate a whistleblowing procedure should meet certain conditions, including no penal proceedings against them, no disciplinary proceedings or convictions for specific offences, and no workplace suspensions.

Official disciplinary procedures are conducted by the competent bodies as described in the respective internal labour regulations.

Although not specifically regulated, support from external advisors (eg, lawyers) is allowed. Also, support from the employer's Data Protection Officer (DPO), in case there is an appointed DPO, may be, under circumstances, requested in relation to any issue regarding disclosure of employees' personal data.

5. Can the employee under investigation bring legal action to stop the investigation?

Although there is no specific legal provision, access to legal action and judicial proceedings cannot be obstructed under any circumstances as this is a fundamental right under the Greek constitution. Thus, if an employee manages to bring legal action to stop the investigation (eg, a prolonged investigation for a frivolous complaint harms them), then the investigation may have to be temporarily paused or permanently terminated depending on the court decision.

Evidence gathering

6. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?

Indirectly involved employees may be interviewed as witnesses in the context of the investigation, as the employee has a duty of loyalty towards the employer originating from the employment relationship. However, they cannot be forced to do so (in contrast with criminal procedures). Any harmful act that could be considered retaliation against witnesses in the context of violence or harassment or whistleblowing investigation is prohibited. In addition, the identity of any employees as witnesses is also covered by the principle of confidentiality.

7. What data protection or other regulations apply when gathering physical evidence?

GDPR and the provisions of L. 4624/2019 regulate the gathering of physical evidence from a data protection perspective, providing, among other things, that personal data should be processed with transparency, lawfulness and to the extent necessary for the investigation (complying, among others, with the GDPR data minimization principle). Also, according with the GDPR purpose limitation principle, the specific purpose for conducting an internal investigation should be determined by the employer; that being said, blanket statements of purpose such as "compliance measures" or "internal investigations" are not sufficient from a data protection perspective.

The GDPR generally and L.4990/2022 more specifically requires of the employer to adopt all technical and organizational measures necessary for the implementation of the data protection framework, as well as for safeguarding the confidentiality of the identity of persons who report breaches of EU law. The adoption of such measures may be included in company policies.

8. Can the employer search employees' possessions or files as part of an investigation?

This issue is not regulated by explicit statutory provisions. As a first step, the employer should ask for the employee's permission to access their possessions and files. Employment contracts and internal labour regulations may include provisions regarding an employer's access to employees' documents created and kept for business purposes or related to business activity. Also, from a data protection perspective, employees should in principle be informed that the internal investigation is being conducted and regarding the processing of their personal data in accordance with Articles 13-14 GDPR. This may exceptionally not be applied in investigations undertaken pursuant to Law 4990/2022, to the extent judged necessary for the safeguarding of the integrity of the investigation.

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

L. 4990/2022 provides for specific requirements regarding the processing of reports, including among other things, the obligation to confirm receipt within 7 working days, the obligation to inform the complainant of the investigative actions undertaken by the company within 3 months at the latest and some restrictions of the complainant's right of access (Art. 15 GDPR) "whistleblower" and the employer's obligation to maintain a record of the relevant complaint and investigation for a reasonable period of time. Such provisions are expected to be further detailed by Ministerial Decisions in future.

Confidentiality and privilege

10. What confidentiality obligations apply during an investigation?

Confidentiality applies as a general principle in disciplinary investigations.

Moreover, L. 4990/2022, which transposed EU Directive 2019/1937 into Greek Law, regulates the issue of confidentiality during investigations that start based on an internal report. The managers conducting the investigation must respect and abide by the rules of confidentiality regarding the information they have become aware of when exercising their duties. They must also protect the complainant's and any third party's (referred to in the report) confidentiality by preventing unauthorised persons from accessing the report. Also, the employer is under the obligation to adopt all technical and organizational measures necessary for the safeguarding of confidentiality of all parties involved and employees' personal data according to the data protection legislation (e.g. pseudonymization techniques).

Finally, L. 4808/2021 provides that employers must create a procedure that should be communicated to employees regarding all the necessary steps of an investigation following a complaint. Throughout the whole process, the employer, managers and the employer's representatives responsible for the investigation must respect and abide by the rules of confidentiality in a manner that safeguards the dignity and personal data of the complainant and the person under investigation.

11. What information must the employee under investigation be given about the allegations against them?

As a matter of general principle, employees under investigation must have access to the necessary information to be able to defend themselves, in the context of their fundamental right to a fair trial and hearing.

Moreover, from a data protection perspective, they may be entitled to access their personal data in the respective files (right to access, art. 15 GDPR).

The above rights must be balanced with confidentiality and the need to safeguard the completion of the investigation and to protect the complainant from retaliation.

According to L.4990/2022, all data and information as well as the identity of the complainant are confidential, and any disclosure is only permitted where required by the EU or national legislation or during court proceedings, and only if it is necessary for the protection of the defence rights of the employee under investigation. The section of L.4808/2021 for the elimination of workplace violence and harassment does not regulate this specifically but provides a general obligation for confidentiality.

12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

According to express provisions of L.4990/2020, in principle personal data and any other information that may lead directly or indirectly to the identification of the complainant must not be disclosed to anyone other than the investigating individuals unless the complainant gives consent and that is why pseudonyms are indicated as highly recommended. The witnesses and third persons that aid the complainant are deemed as "mediators" by the Law and their contribution to the procedure should be confidential.

L.4808/2021 does not indicate when such disclosures permitted; however, based on general principles of law, the public interest and the fundamental rights of the involved persons should be considered in a balanced way to ensure the fullest protection possible of the rights of all parties. From a data protection perspective and according to Greek L.4624/2019 and 4990/2022, the right to access under Article 15 GDPR does not apply, to the extent that the information disclosed should remain confidential, according to law or in cases where the legal interests of a third party should be protected.

13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

NDAs are an option, especially to outline in detail the obligations of the persons conducting the investigation, which is also provided for in law. On the other hand, NDAs will not prevent persons involved from providing information to the competent authorities in the context of criminal or other similar procedures, where they must do so by law. Moreover, they may not protect confidentiality if persons who report breaches of Union law are entitled to make an external or public report, according to the requirements of L. 4990/2022. For example, this is the case for reports of breaches that the "whistleblower" has reasonable grounds to believe that they pose a danger to public interest, or an emergency or a danger of irreversible harm, or that there is limited probability of proper

investigation of the breach due to special circumstances, such as when pieces of evidence may be destroyed or when officials of the public authorities may be in collusion with the perpetrator of the breach.

14. When does privilege attach to investigation materials?

Regarding L.4990/2022 for whistleblowers' procedures, many categories of privilege may occur during an investigation, such as: attorney-client privilege; doctor-patient privilege; and court or other proceedings' privilege deemed as classified. L.4990/2022 provides that its provisions do not affect any of these privileges and these privileges supersede.

Privilege may also be attached to investigation materials in investigations relating to workplace harassment and violence incidents; however, since L.4808/2021 does not offer a specific provision and criminal proceedings may also commence, the matter of privilege must be examined ad hoc.

Rights to representation

15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?

Greek law does not specifically regulate the right to be accompanied or have legal representation during internal investigations for private-sector employees.

However, the right to legal representation established in article 6 of the European Convention on Human Rights could be interpreted to cover cases such as internal investigations in the workplace. In addition, according to article 136 of Civil Servant Code, the employee under investigation has the right to be represented by an attorney at law. There is an additional argument regarding private-sector employees and their right to legal representation, by applying this provision by analogy.

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

L.4990/2022 explicitly states that the exercise of employee rights that refer to consulting from representatives or trade unions and protection against any detrimental measure that results from those consultations does not affect the implementation of any legal provisions. The autonomy of social partners and their right to enter into collective agreements regardless of the level of protection provided by L.4990/2022 is also unaffected.

Under L.4808/2021, legal persons and associations of persons, including trade unions, that have a legitimate interest in doing so may, with the consent of the complainant, bring an action in the complainant's name before the competent administrative or judicial authorities. They may also intervene to support the complainant's case by providing evidence and legal arguments, but without becoming parties to the dispute in their own right.

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

According to L.4990/2022, any form of retaliation against complainants is prohibited, including threats of retaliation. 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). 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).

L. 4808/2021 states that the dismissal or termination of the legal relationship of employment and more generally any adverse treatment of the employee that constitutes retaliation for the lodging of a complaint is prohibited and invalid. Employees who consider that they have suffered retaliatory dismissal by their employer may enjoy a reversal of the burden of proof in litigation, provided that they can put forward enough facts to make the claim prima facie plausible. This is a deviation from the general rule of procedural law that demands that the claimant fully prove their allegations.

Issues during the investigations

18. What if unrelated matters are revealed as a result of the investigation?

If any unrelated matters are revealed as a result of an investigation and are of legal importance, the applicable legal provisions must be implemented and any relevant policies or agreements between the involved parties should be taken into account. For example, if the reporting procedure sheds light on other criminal acts, criminal law procedure may be followed if the matter is reported to the competent authorities. The same applies (i.e. data protection legislation should be applicable) if personal data of third parties are disclosed.

If these unrelated matters fall under the ambit of other company's policies, the relevant procedures may also be followed separately. However, the employee under investigation must be allowed to defend him or herself, otherwise he or she may raise complaints relating to the procedural guarantees of the investigation.

A ministerial decision regulating in detail the procedure of the receipt of whistleblowing reports provides that, if the person responsible for the receipt of such reports finds indications that certain crimes have been committed, they must forward the report to the Public Prosecutor.

19. What if the employee under investigation raises a grievance during the investigation?

This is not specifically regulated by Greek law. Employees under investigation frequently raise grievances during investigation procedures that are in practice dealt with on a case-by-case basis. The grievances raised by the employee under investigation are examined by the employees responsible for the investigation. They may either pause the relevant proceedings and review the grievance, especially if the claims of the employee under investigation are linked to a breach of his or her data protection or hearing rights, or they may continue the investigation.

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

In principle, the health of an ordinary employee would not prevent the investigation procedure from taking place (eg, interviews with witnesses or the collection of evidence would not be postponed or suspended). However, if the employee under investigation is unwell and they cannot participate in the procedure, the investigation may be suspended or postponed until the employee can take part. Bearing in mind that the majority of company internal policies and regulations governing workplace investigations provide for a specific framework and timetable for the whole procedure to be completed, the long-term sickness of an employee under investigation may impede the completion of the procedure in the prescribed time. As a result, the person conducting the investigation may seek alternative measures to facilitate participation (eg, teleconferencing).

21. How do you handle a parallel criminal and/or regulatory investigation?

Incidents of violence and harassment may be dealt with by certain independent authorities, such as the Labour Inspectorate Body and the Greek Ombudsman. The former is competent to impose sanctions on the employer if there is a breach of the general prohibition of violence and harassment at the workplace and the obligation of employers regarding the prevention of such incidents and the

obligation to adopt policies within the business. The Greek Ombudsman is competent to deal with disputes when there is violence or harassment in the workplace coupled with discrimination due to, for example, gender, age, disability, sexual orientation, religious beliefs, or gender identity. Moreover, the applicable legal framework stipulates that victims of violence and harassment are entitled to lodge a report before the Labour Inspectorate Body and the Greek Ombudsman. This is in addition to the judicial protection he or she may seek and the internal investigation procedure to which he or she may have recourse, without specifying whether internal proceedings may be suspended before the regulatory bodies decide on the matter.

On the other hand, the National Transparency Authority and in certain cases the Hellenic Competition Commission are external reporting channels for employees reporting breaches of Union law. In such cases, L.4990/2022 (article 11 paragraph 5) stipulates that the investigation before the National Transparency Authority is not suspended if reporting procedures before other regulatory authorities have been initiated.

Moreover, criminal investigations can run in parallel with internal probes.

Outcome of investigation

22. What must the employee under investigation be told about the outcome of an investigation?

The employer has an obligation, towards the alleged victim but also the alleged perpetrator, to carefully investigate the report and any existing evidence before making decisions. The employee under investigation must be informed about the outcome of the procedure and any measures adopted in this regard. The respective decision must have due justification.

23. Should the investigation report be shared in full, or just the findings?

There is no explicit legal provision stipulating that the whole report must be communicated with the employee under investigation. The legal framework (L.4990/2022 and L.4808/2021) is governed by strict confidentiality obligations and obligations to protect the complainant's data. From a data protection regulation perspective, the person under investigation may exercise his/her right of access. However, and according to Greek law 4624/2019 and 4990/2022, the right to access under Article 15 GDPR does not apply to the extent that the information disclosed should remain confidential according to law or in cases where the legal interests of a third party (e.g. the complainant) should be protected.

However, if the outcome of the investigation leads to the imposition of disciplinary measures, the right of the employee under investigation to request the whole investigation report, to aid in their defense is enhanced. Moreover, if a complaint is made in bad faith, it may be supported that the employee under investigation is entitled to receive full documentation so that he or she can seek adequate legal protection.

24. What next steps are available to the employer?

For workplace violence and harassment investigations, depending on the outcome of the internal investigation, the employer may adopt certain measures either to protect the victim or to discipline the perpetrator, including, for example, recommendations to the employee under investigation, changes to the employee's working hours and transfer to another department.

If the employer decides to terminate the employment relationship, without having previously followed existing corporate policies regarding reporting procedures or without having provided the alleged

perpetrator with the right to a fair hearing, the dismissal could be deemed invalid. Dismissal is generally considered a last-resort measure. In general, the measures adopted must be necessary, suitable and proportional to the act committed.

25. Who can (or must) the investigation findings be disclosed to? Does that include regulators/police? Can the interview records be kept private, or are they at risk of disclosure?

In principle, there is no specific obligation for the employer to disclose the findings of internal investigations. For proceedings before a court that have been initiated or investigated by the police or competent regulatory bodies, the relevant findings may be communicated under strict conditions and provided that the personal data of the parties involved are not publicly disclosed.

More specifically, under L. 4490/2022, in the context of whistleblowing procedures, personal data and any information that leads, directly or indirectly, to the identification of the complainant must not be disclosed to anyone other than employees involved in the investigation, unless the complainant consents. The identity of the complainant and any other information may only be disclosed in the context of investigations by competent authorities or judicial proceedings, to the extent necessary for the protection of the rights of defence of the employee under investigation. Competent authorities that receive information on breaches that includes trade secrets must not use or disclose those trade secrets for purposes going beyond what is necessary for proper follow-up.

26. How long should the outcome of the investigation remain on the employee's record?

Under the General Data Protection Regulation, employees' personal details and information must be kept in the business records for as long as is necessary for the purposes of the employment relationship and for the time necessary to comply with any legal obligations. Otherwise, stored data must be safely deleted. Under L.4990/2022, reports remain in the relevant record for a reasonable and necessary time, and in any case until the completion of investigations or proceedings before the courts that have been initiated as a consequence of a complaint against the employee under investigation, the complainant or any third parties.

27. What legal exposure could the employer face for errors during the investigation?

The employee can contest the decisions of disciplinary councils before the courts and request their annulment. In extreme cases, the employee may be entitled to compensation of moral damages if the disciplinary decision is offensive or disparaging, or to payment of the remuneration unlawfully withheld in cases of suspension.

Moreover, in the framework of L.4990/2022, a monetary penalty and prison sentence (to be defined by an implementing Ministerial Decision) may be imposed on any person violating confidentiality obligations concerning the identity and personal data of employees or third parties included in the investigation procedure, while monetary penalties are also provided for legal entities.

Moreover, administrative fines may also be imposed if the employer does not comply with the legal requirements concerning the prevention of violence and harassment in the workplace.

Furthermore, the employee under investigation may initiate proceedings before the courts under tort law, by claiming compensation for moral damages suffered if the company did not comply with its confidentiality obligations after the incident. This may also be linked with criminal law proceedings against the persons responsible for dealing with the investigation (and not against the legal person, since under Greek law there is no criminal liability for legal persons).

On the other hand, the employer may also be exposed to liability vis-à-vis the complainant, witnesses or facilitators, for breach of confidentiality or other obligations prescribed in the respective legal provisions, or if there are retaliation measures.