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When is an employer required to conduct an internal investigation?

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What are the typical subjects for employment investigations?

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How quickly must the employer conduct an investigation once it is aware of the conduct?

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What data privacy rules must the employer be aware of when conducting an investigation?

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Must employers involve collective employee representatives?

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What is best practice when using social media in an investigation?

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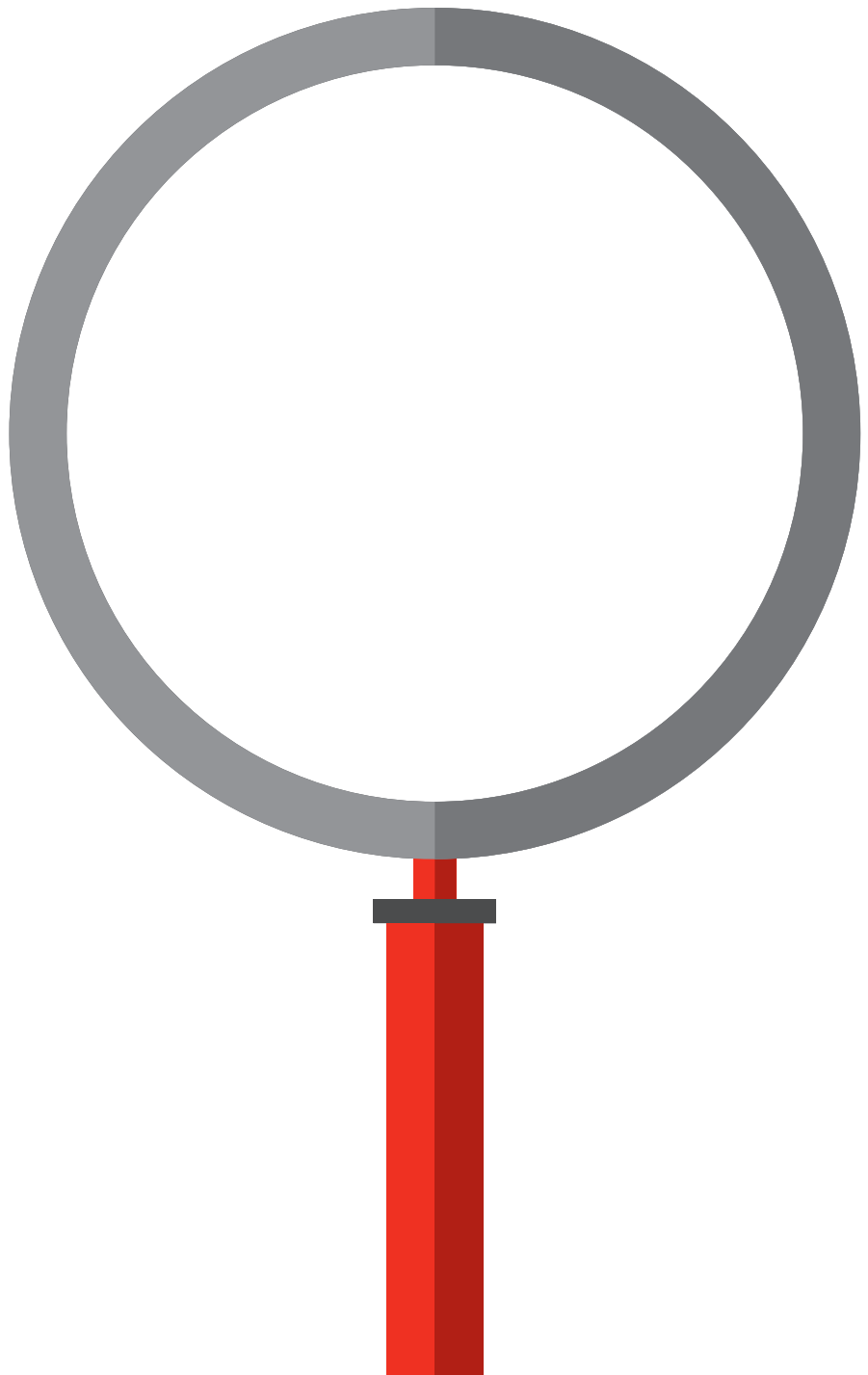
When investigating, can the employer read employees' email and covertly film employees under suspicion?

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Must the employer provide the employee with all gathered evidence?

# INTERNAL INVESTIGATIONS

Austria - Belgium - Brazil - Denmark - Finland - France - Germany  
Hungary India - Ireland - Italy - Luxembourg - Mexico - Norway  
Poland Russia - Spain - Turkey - Ukraine - United Kingdom  
United States



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MOSCOW - RUSSIA

## › When is an employer required to conduct an internal investigation?

The employer must conduct investigations into health and safety incidents and industrial diseases in relation to employees and any other individuals engaging in the business of the employer.

There are circumstances in which a failure to investigate might have adverse negative consequences so there is, in effect, also an indirect requirement to investigate. For example, if an employer suspects an employee of misconduct but disciplines him or her without investigating, this may be considered by the court or regulatory authority as unfair and unlawful. In this case, the employer will be forced to reverse any disciplinary action (e.g. annul a warning or reinstate an employee).

## › What are the typical subjects for employment investigations?

Investigations carried out by an employer in Russia typically include:

- › health and safety incidents and cases of professional sickness;
- › disciplinary procedures for misconduct, for example, disclosure of confidential information or conflicts of interest;
- › actions of senior management that adversely affect the organisation and stakeholders;
- › establishing an employee's liability (i.e. where harm is caused to employer by an employee's actions or inaction).

## › How quickly must the employer conduct an investigation once it is aware of the conduct?

The standard timeframes for investigation of health and safety incidents and cases of professional sickness are three to 15 days depending on the circumstances. In some cases the investigation may take longer.

There are no statutory timeframes for other investigations. However, if an employer intends to use evidence from an investigation to discipline an employee or prove liability, the timeframes for imposing disciplinary sanctions or claiming financial compensation should be taken into account.

Disciplinary action may be imposed on an employee no later than one month after the employer becomes aware of the misconduct, excluding time for any employee illness, annual leave or time required for liaising with trade unions.

Disciplinary action cannot be imposed once six months has passed from the date of the misconduct. For misconduct detected as a result, for example, of a review or audit of the business, disciplinary action cannot be imposed after two years has passed. These timeframes do not include the time required for criminal procedures. Special timeframes exist for claiming financial compensation from employee.

## › What data privacy rules must the employer be aware of when conducting an investigation?

Information collected in the course of investigations is likely to include significant personal data. The data protection principles apply to this.

Particularly relevant are the duties to process information fairly and for specified purposes. Processing must not be excessive. In summary:

- › the employer must obtain appropriate consent to processing (in most cases this is written and must contain certain information, including information about the data subject and controller];
- › the rules on cross-border transfers must be observed;
- › relevant agreements with data processors must be concluded;
- › security measures must be taken;
- › processing must be performed in accordance with an internal data processing policy.

Some restrictions must be taken into account:

- › The employer must not obtain and process personal data about an employee's political, religious and other views, private life, membership of public associations or union activity except where required by law.
- › The employer must not make a decision affecting an employee based on personal data obtained as a result of automated processing (e.g. by email) without documentary evidence.
- › The employer must not use technical means for covert surveillance. Purchasing technical equipment for covert surveillance is prohibited and subject to criminal liability.
- › The results of the internal investigation may not be admissible as evidence in the criminal courts unless this is necessary to comply with criminal procedure.
- › Evidence obtained in the course of an internal investigation will not be accepted by Russian courts without appropriate validation. The procedure may be divided into stages. First, the employer must issue an internal order on how the internal investigation will be carried out and it must set up an Investigation Committee. Second, the employer should obtain written consent from the employees subject to investigation to collect and process their personal data. Finally, the employer must request explanations from employees in the course of the internal investigation. As a result of the internal investigation the Investigation Committee must issue a written report outlining the main findings of the investigation. Written evidence must be provided in Russian but may be provided both in Russian and another language.

### › Must employers involve collective employee representatives?

There are certain requirements for the involvement of collective employee representatives for investigations into health and safety incidents and professional sickness (e.g. a representative of a trade union or other employee representation body must be included in an Investigation Committee).

Otherwise, there is no requirement to involve collective employee representatives in an investigation. However, involvement may be required if, for example, the employer decides to dismiss an employee as a result of the investigation.

### › What is best practice when using social media in an investigation?

General principles, rules and restrictions on processing personal data apply to the use of social media.

In order to use information obtained from social media as evidence of

an employee's misconduct the employer should obtain the employee's clear consent for processing the information for investigation or broader purposes. Without this consent the information may only be processed for purposes for which the social media exists (e.g. communication with friends and professional discussions). Processing for other purposes (including for the investigation) may be considered excessive and unlawful.

If an individual does not agree that he or she made a particular statement on social media, this can be very difficult to prove without engaging official investigation authorities. The employer must not take a decision affecting the interests of an employee based on personal data obtained solely as a result of automated processing (e.g. from social media).

### › When investigating, can the employer read employees' email and covertly film employees under suspicion?

#### *Emails*

Employees' work emails, conversations and information on behaviour obtained in the course of investigation may contain information about an employee's private life. Third parties who correspond with employees are protected by the Russian Constitution and other laws. Under the Constitution the right to privacy, private correspondence and conversations may be restricted only by a court.

Monitoring work emails, conversations and behaviour is possible provided that data protection principles, rules and restrictions are fulfilled and provided that private use of the employer's resources (e.g. emails, telephones and premises) is prohibited under the employer's internal policies.

#### *Camera surveillance*

Camera surveillance of employees' activities is generally prohibited by Russian law. In order to implement camera surveillance employees must be informed of the fact that it will be done. The internal rules of the employer must cover how the recording will be conducted and the employer must obtain the employees' consent to the recording, otherwise this may be in breach of the employees' constitutional rights.

### › Must the employer provide the employee with all gathered evidence?

There is no general obligation to provide all evidence gathered during an investigation to the employee. However an employee may receive evidence by requesting the employer provide the employee's personal data. This is because Russian employment law compels employers to provide employees with copies of any record or document containing personal data of the employee upon request.

Further, the employer must provide, upon request of the employee, copies of any document related to that employee's work.

If documents contain personal data about another individual, they must be withheld or redacted from the extracts provided to the data subject. Upon official request of a data subject, the data controller (e.g. the employer) must provide the following:

- › confirmation of the fact of data processing;
- › the legal grounds for data processing;
- › the purposes and manner of processing;

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- name and address of the data controller, all data processors and all those with access to personal data or who may have access under an agreement with the data controller;
  - categories of processed personal data and the source;
  - the terms of processing, including retention periods;
  - the rights of data subjects;
  - information on cross-border transfers (i.e. including proposed transfers);
  - other information if provided by law.

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