



International Employment Lawyer

# Guide to Workplace Investigations

Third edition

**Armenia**



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LAW FIRM

# Armenia

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## Starting an investigation

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

The labour legislation of the Republic of Armenia does not cover workplace investigation for alleged employee misconduct as such, though there are certain provisions that are applicable. Mostly those regulations provide additional protection to the employees. Employers may also implement internal policies that provide workplace investigation rules.

There are specific regulations when employee misconduct can give rise to criminal procedures, which will be discussed further if necessary, and in such case the term “investigation” will be used in the context of [Criminal procedure code of the Republic of Armenia](#).

### 2. How is a workplace investigation usually commenced?

There are no stipulated regulations regarding the grounds for commencing a workplace investigation. The grounds for such an investigation are the alleged misconduct brought to the employer's attention by any means, for example, a complaint from other employee(s), employer's internal audit, etc.

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

The only case in which an employee can be suspended from work during a workplace investigation is if the employee has been given the status of an accused person in a criminal investigation. During the suspension, the employee's position is preserved. The issue of remuneration of the employee (except for those in public service) is determined by the agreement of the involved parties. For public servants, a monthly compensation amounting to 50% of the base salary is paid, provided it is not less than the minimum monthly salary specified by law. Any remaining payment will be made in case of the completion of the criminal proceedings on a rehabilitative basis.

In practice, company policies often include provisions for situations where an employee may be prohibited from carrying out their duties during a workplace investigation. The key issue for employers to consider is that the employee's salary must be maintained during this period.

### 4. Who should conduct a workplace investigation – any qualifications/criteria?

The authorised person to assign a reprimand in cases of misconduct is the employer. However, due to the lack of specific legislation on the matter, there is no designated person or mandatory qualification required by law to conduct the investigation. It could be regulated by the internal policies of the employer. It is good practice to assign an independent investigator or team of investigators, and is advised to involve a member of the HR team.

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

In case of a criminal investigation, the accused may file a motion to terminate the criminal prosecution or the criminal case. Yet, regarding the internal investigation, there is no legislative regulation as such. However, if other legal provisions are violated during the investigation, the employee has the right to take legal action based on those violations, such as breaches of data protection laws. Otherwise, if, as a result of the workplace investigation, a disciplinary sanction is assigned or the employment contract is terminated, the employee may file a claim before the civil court of the Republic of Armenia.

## 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?

Since there is no law that provides for workplace investigation and possible interviews during it, co-workers could be engaged during the investigation as witnesses. However, there are no special protective regulations for them.

In criminal procedures, colleagues of the employee can also be questioned as witnesses. In such cases, the witness may refuse to testify or provide materials when it is reasonably believed that they may be used against them or their spouse or a close relative.

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

All data protection regulations defined by the RA Labour Code and the RA Law on Protection of Personal Data continue to apply. The collection of data must serve a lawful purpose, and data or documents irrelevant to the investigation cannot be collected. It is good practice to have internal policies that specify the limits of the data that could be gathered during an investigation.

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

There are no specific regulations on this matter either. However, since the investigation concerns alleged misconduct and involves the employer, work files and documents – being the property of the employer – may in principle be inspected by the employer without restriction and without the employee's consent. If the inspection includes a search of personal items (eg, personal handbags, personal mobile phone), even though not regulated by labour law, it will not be permissible without the employee's consent.

### 9. What additional considerations apply when the investigation involves whistleblowing?

Although Armenia does not have specific local regulations on whistleblowing, as a member of the European Convention on Human Rights, it is obligated to adhere to the rulings of the European Court of Human Rights (ECHR). Therefore, the obligations to protect whistleblowers established by the ECHR should be applied. Particularly in the field of labour law, employees should be safeguarded from unfair dismissal and other adverse employment actions. Furthermore, every whistleblower should be deemed to be acting in good faith if they had reasonable grounds to believe in the reliability of the information they provided, even if it later turns out to be

inaccurate, as long as the whistleblower was not pursuing any illegal or unethical objectives.

## Confidentiality and privilege

### 10. What confidentiality obligations apply during an investigation?

Since there is no legislation, the matter should be addressed through the employer's internal policies. The employer must ensure confidentiality throughout the investigation, protecting both reputation and personal data during the proceedings.

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

There is no mandatory information that should be given to the employee subject to the investigation. In the absence of specific legislation on the matter, it should be addressed through the employer's internal policies.

In criminal proceedings, the accused has the right to be immediately and thoroughly informed, in a language understandable to them, about the factual circumstances and legal assessment of the accusation against them.

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

The employer is not required to disclose the identity of the complainant, witnesses, or other sources of information to the employee involved in the investigation, therefore it could be kept confidential.

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

Yes, NDAs could be used to protect confidentiality, however, their enforceability is uncertain due to the lack of a judicial practice.

### 14. When does privilege attach to investigation materials?

In practice, investigation materials created during an internal investigation are not protected by privilege. They may be covered by the commercial secrecy of the employer, but this secrecy can be overridden if law enforcement authorities request the information and obtain a court order for disclosure.

Regarding attorney-client privilege, it fully covers all communications between the parties, including but not limited to the content and nature of the legal consultation provided, as well as any information and evidence (materials, media) independently acquired by the lawyer.

## Rights to representation

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

Yes, the person under investigation has a right to be accompanied or have legal representation during the investigation. The representative has the right to act on behalf of the employee, present complaints against the decisions, actions or inactions of the employer or the investigator(s), file motions, as well as appeal court decisions. To act on behalf of the employee before civil and criminal courts, the employee should have an attorney licence.

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

The works council or trade union typically does not have such rights, but they can be granted such powers through a collective agreement, even though it is not a widely recognised practice.

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

An employee with the status of the accused, including a person in public service, will have their job or position preserved from the moment of suspension in accordance with the procedure established by the Code of Criminal Procedure of the Republic of Armenia until the suspension is lifted. The employee's remuneration is determined by the agreement of the parties. For a person in public service, a monthly compensation of 50% of the basic salary is paid, but not less than the minimum monthly salary established by law. The remaining payment is made upon completion of the criminal proceedings on a rehabilitative basis. Apart from this, no specific additional rights are granted to the employees.

## Issues during the investigation

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

There are no specific rules governing the handling of the unrelated matters. Typically, the approach depends on the nature of the new information. If new facts emerge regarding a different alleged misconduct, they should be analysed and investigated, following the same principles applied to the original investigation. The employer may decide whether to extend the investigation to address these new matters as well or conduct a separate investigation.

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

There are no legislative requirements on the matter, but the employer will typically be required to address this grievance. If it concerns the potential unfairness of the process, the investigation process should be reviewed, and the complaint should be handled in accordance with established procedures to ensure compliance with relevant policies. A grievance that highlights issues in the workplace may also serve as a basis for initiating a new investigation.

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

The investigation is likely to continue without the employee unless their presence is essential due to the circumstances of the investigation. Before assigning a disciplinary sanction, the employer must request a written explanation from the employee regarding the violation, specifying a reasonable deadline. If the employee fails to provide a written explanation without valid reasons within the given timeframe, a disciplinary sanction may be assigned without the explanation.

Additionally, the assignment of a disciplinary sanction is time-barred if not imposed within one month after the violation is detected, except during periods of absence due to temporary disability, including sick leave. This means that if the employee is on sick leave during the investigation, the time limit for imposing a disciplinary sanction will be suspended. However, a disciplinary sanction cannot be assigned if six months have passed since the date of the violation, except in certain situations. Therefore, even if the time limit for imposing a sanction is suspended due to the employee's sick leave, the overall six-month limitation must still be observed to ensure that disciplinary actions are taken within the legal timeframe.

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

A criminal investigation always takes precedence over other investigations, however, there is no direct dependency between the two investigations. As there are no regulations regarding the matter, there is nothing forbidding them from being handled in parallel.

## **Outcome of investigation**

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

If the investigation ended in assigning a disciplinary sanction, the employer should send the order to the employee. The order should include the factual and legal grounds for the assignment of the sanction. There is no legal obligation to provide the employee with additional justification or proof of why the sanction was assigned. In this case, the employer bears the risk of proving the grounds for the sanction in court, if the employee files a lawsuit.

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

The employer is not obligated to share the investigation report. However, internal policies may dictate that the report or its findings be shared to the extent that protects the confidentiality of other employees and the whistleblower.

## **24. What next steps are available to the employer?**

Depending on the outcomes, the employer can assign a disciplinary sanction to the employee, terminate the employment contract, file a civil complaint (eg, if because of the employee's action or inaction the employer suffered damages), report the alleged crime to law enforcement bodies, or close the investigation.

## **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?**

There is no obligation to disclose the investigation report; it is at the employer's discretion. The employer is also not required to notify law enforcement or other state bodies of a misdemeanour. However, if criminal proceedings are initiated, the employer may be obligated to disclose relevant information.

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

If a disciplinary sanction is assigned, it remains active for one year. However, there is no legal obligation regarding the duration for which the outcomes must be kept on the employee's record.

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

It depends on the nature of the errors. If the errors during the investigation are minor, technical, and do not lead to legal violations, they generally will not affect the outcome of the investigation. However, if the employee's rights were violated, the employee can pursue legal action to have their rights restored and to seek compensation for damages. If a disciplinary sanction was assigned, it can be revoked, and if the employment contract was terminated, the employee may be reinstated to their previous position and receive compensation for any period of forced idleness.

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