

Quick Guide to Workplace Investigations in LATAM

From a Labor and Compliance perspective

No local laws re. how internal corporate investigations should be conducted.



Review the consent granted by the employee and its scope, to comply with the Colombian data protection regulation. Especially relevant if the cell phone or technological elements supplied by the employer to the employee are going to be checked.

Employer is, however, responsible for providing a safe and adequate workspace. So it is strongly advisable to have formal investigation processes in place to show diligence and care.



Who should conduct investigations? The investigation team (if any) or alternatively by legal, assisted by HR*.

*It is advisable to engage an expert lawyer in the field to get to the bottom of each investigation without losing sight of regulatory aspects.



No specific rules. Whoever conducts investigation should focus on objectivity, data privacy and data protection and protection of employee rights.



No specific rules. Whoever conducts investigation should focus on openness, objectivity, and protection of employee rights.



Investigation team always assisted by Legal.



The participation of a lawyer in the investigative measures is recommended by the Provision No. 188/2018 from the Brazilian Bar Association to assure the client-attorney privilege.



It depends on the structure of each company

No applicable timing requirements to conduct investigations, but the sooner the process is concluded the better – too long to act may be viewed as a tacit waiver in case a misconduct is later verified. Investigation should start within a few days/weeks of the allegation and concluded ASAP (ideally around 30 to 45 days thereafter, unless the matter is so specific that requires a deeper review, including from a forensic perspective).



The Venezuelan labor legislation provides that the employer must initiate dismissal proceedings before the competent Labor Office (for protected employees, who are the majority of the employees in the country), or dismiss the employee (for non protected employees) within the 30 consecutive days following the date on which the employer learned or should have learned about the employee's serious breach of obligations under the employment relationship. However, though each case must be analyzed separately based on its own facts, if the employer is not certain about the employee's breach but after the investigation has concluded, the employer should be able to argue that the 30-day term should be computed as of the date when the investigation was concluded.



The employer may terminate an employee only within 30 days following the date on which the employer learned the facts warranting termination.

Conducting the oral part of the review process (e.g. interviews) to avoid misunderstanding allegations and due to cultural differences, even in Spanish-speaking countries, it is highly recommended to (i) have someone from the country where the interviews take place and, (ii) conduct it in local language. With regard to documentation, although they may be prepared in foreign language (including the investigation report), in case of a dispute in court, they will need to be necessarily translated into local language.



Except, however, in case of foreign employees who are not fluent in Spanish and who thus could claim the opposite (that they misunderstood the questions or allegations when formulated in local language). Records of any interrogations conducted in English or another foreign language, should be translated into Spanish, preferably by an authorized Public Interpreter.



There is no need to inform the labor union or any other local employee representative body of an internal investigation.



No need unless the employee is unionized and this has been agreed in the collective bargaining agreement.



If the employee is covered by the Collective Labor Agreement or in any event if the Internal Regulations establish the particular obligation.

It is possible for companies to put employees on a paid administrative leave during a review, but certain aspects, including relating to timing must be considered in advance.



No law regulates this topic, but jurisprudence has admitted it under specific circumstances. However, this paid leave should be for a short period of time.



Unilateral suspension is not allowed, so employee should consent to paid leave.



No law regulates this topic, but it is recommended the Company Code of Conduct includes the possibility of putting the employee on a paid leave to avoid claims of employees' rights' violation in Court.



The company can decide to put the employee in vacations if they have any unused vacation days.



In Venezuela, suspension of the employment relationship on the grounds of conducting an investigation cannot be imposed unilaterally by the employer, and must be agreed upon by the parties, preferably in writing. Though this is not regulated and is thus unclear, perhaps the exception to this rule could occur where there is a written policy or procedure in place contemplating this measure, which policy or procedure was agreed upon by the employees in writing.

Be mindful of cultural differences, especially if investigators are from foreign countries.



It is advisable to: (i) have at least two people conducting the interview, one asking questions and the other taking notes; and, (ii) warn the employee, the lawyers present at the interview represent the company and not the individual.



It is also advisable to ask the individuals under interrogation to sign a written statement confirming their responses.

Investigation reports must be as accurate and detailed as possible, so that they can be later useful in case of a dispute.



Also, so that they can be used to support any steps taken, including dismissal.

Although there are no express statutory restrictions on informing and sharing the results of the investigation, privacy and confidentiality of those involved should be preserved.



Employer is generally responsible for confidentiality of employee information known as a result of the employment relationship, including information arising out of an investigation.



Also, it is advisable to clarify with whom the report will be shared, considering that the consent granted by the employee must be related to these people.



Attention to privilege, which may apply to both in house and outside counsel.



Having a diverse compliance and labor team reduces the risk of allegations of discrimination or bias by those under investigation and nurtures fairer debate and decision-making.

CONTACTS

Argentina



Alberto González-Torres

Partner
Employment & Compensation
alberto.gonzalez-torres
@bakermckenzie.com



Vanina Caniza

Partner
Pharmaceuticals & Healthcare
– Corporate Compliance
vanina.caniza@bakermckenzie.com

Brazil



Leticia Ribeiro*

Partner, Trench Rossi Watanabe
Employment & Compensation
leticia.ribeiro@trenchrossi.com



Heloisa Uelze*

Partner, Trench Rossi Watanabe
Compliance & Investigations
heloisa.uelze@trenchrossi.com

Chile



Andrés Valdés

Partner
Employment & Compensation
andres.valdes@bakermckenzie.com



Sebastian Doren

Head
Compliance & Investigations
sebastian.doren@bakermckenzie.com

Colombia



Tatiana Garcés

Partner
Employment & Compensation
tatiana.garces@bakermckenzie.com



Carolina Pardo

Partner
Compliance & Investigations
carolina.pardo@bakermckenzie.com

Mexico



María del Rosario Lombero

Partner
Employment & Compensation
mrosario.lombero-gonzalez
@bakermckenzie.com.



Jonathan Adams

Partner
Compliance & Investigations
jonathan.adams@bakermckenzie.com

Peru



Mónica Pizarro

Partner
Employment & Compensation
monica.pizarro@bakermckenzie.com



Teresa Tovar

Partner
Compliance & Investigations
teresa.tovar@bakermckenzie.com

Venezuela



Carlos Felce

Partner
Employment & Compensation
carlos.felce@bakermckenzie.com



Jesús Dávila

Partner
Compliance & Investigations
jesus.davila@bakermckenzie.com

*Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law

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