



Internal investigations in Italy in a nutshell

Lexellent



INTERNAL INVESTIGATIONS – LEGAL FRAMEWORK

Internal corporate investigations in Italy regarding employees operate within a **strict regulatory framework** that **prioritizes employee protection**.

The **Workers' Statute (Law no. 300/1970)** represents the main constraint, with reference, for example, to **Article 4**, which **limits remote monitoring of employees, except for organizational or production needs**, subject to prior information and **union agreement** or **authorization** from the **Labor Inspectorate, Article 6**, which **limits personal searches** only in specific cases and **Article 8**, which **prohibits investigations into personal opinions**. In any case, the entire investigative process must always respect the principle of proportionality between means employed and purposes pursued.

Legislative Decree no. 231/2001 requires the **adoption of organizational models to prevent crimes**, including **internal reporting systems**. **Law no. 179/2017**, **EU Directive 2019/1937** and **Legislative Decree no. 24/2023** provide for **specific protections for whistleblowers in public and private sector**.

General Data Protection Regulation (GDPR) and Legislative Decree no. 196/2003 require **careful management of information acquired during investigations**, requiring that any **processing of personal data be legitimate, transparent, and proportionate and must respect** GDPR principles of data relevance and minimization.

This framework is completed by **Legislative Decree no. 81/2008 (Consolidated Health and Safety Law)**, which imposes **obligations of supervision and control** over the correct application of **health and safety procedures**.



DISCIPLINARY PROCEDURE IN CASE OF EMPLOYEE'S VIOLATION

The Italian **disciplinary procedure** is based on **Article 7 of the Workers' Statute** and requires a specific **procedural sequence**:

- posting of **disciplinary code**;
- specific and timely **written notification**;
- **employee's right to defense** within minimum 5 days, if not otherwise specified in the NCBA applied;
- **sanctions proportional** to the severity of the violation.

Internal investigations aimed to ascertain employees' violations must comply with principles of **fairness, good faith**, and **privacy**, with limitations already mentioned. The procedure has **time limitations (immediacy)**, **procedural constraints (specific and unchangeable allegations)**, and **other restrictions (proportionality of sanctions)**.

Sanctions range **from verbal or written warnings** for less serious violations **to fine, suspension from work and pay and disciplinary dismissal** for the more serious violation. Sanctions can be challenged before the Labor Inspectorate, arbitration boards, or Labor Court.

Disciplinary proceedings can **coexist with criminal proceedings** while remaining independent.



COMPANY CLIMATE SURVEY

A **climate survey detects and evaluates the perception** of employees regarding **what happens within the company itself**.

The **purpose** of analyzing the company climate is to **understand employees' states of well-being or discomfort** and to **identify any critical issues** to work on to improve the company climate.

Climate surveys represent a **complementary tool** to disciplinary investigations, **with a preventive** rather than punitive **purpose**. They are permitted provided they respect the principle of **data minimization** and are conducted **anonymously**.

Climate surveys can detect **signs of organizational discomfort before they translate into violations**, contributing to **workplace well-being protected by Art. 2087 of the Civil Code** and **Art. 28 of Legislative Decree no. 81/2008**, which requires the **assessment of all risks**, including those related to **work-related stress**, potentially detectable through targeted climate surveys.



COMPANY CLIMATE SURVEY

After the company climate survey, an internal investigation could take place. A climate investigation is a **structured assessment process** conducted by an organization in response to reports or concerns, aimed at verifying their authenticity.

This investigation uses **methods** such as **interviews** with personnel to gather information about the workplace environment. It serves both **corrective and preventive purposes**, with the primary goal of ensuring that employees have a **work environment where they feel protected and able to fully express their individual and professional identities**.

During an investigation, **participants may choose to remain anonymous or provide signed written statements** documenting their experiences, with **the latter** being preferred for **potential use in dispute** resolution scenarios.





LEGISLATIVE DECREE NO. 231/2001

In Italy, Legislative Decree No. 231/2001 regulates the **administrative liability** of **legal entities, companies and associations**, including those without legal personality, when **specified offences are committed in the interest or to the advantage of the Entity by individuals functionally linked to it** (both top-level management and employees).

Legislative Decree No. 231/2001 provides that **a company is exempt from penalties** if it can demonstrate that it has **adopted and effectively implemented** an **Organization, Management and Control Model (MOGC)** capable of **preventing the commission of such offences**, without prejudice to the personal liability of the individual who committed the offence. Therefore, this Model must be (i) suitable for **preventing the criminal offence** and (ii) **adequate** to the Entity's effective environment and circumstances, with reference to the **risk profile, the regulatory framework and the organizational structure** and must contain, among other aspects (i) the **list of relevant crimes and administrative offences**, (ii) the **internal control systems**, (iii) the **composition of, functioning and reporting to the Supervisory Board** and (iv) a **disciplinary system** suitable to **sanction non-compliance**.

The **voluntary adoption** and the subsequent **updating** of the MOGC is the **responsibility** of the **management body** of the Entity. The **Supervisory Board** is responsible for verifying the **adequacy, effective implementation, and effectiveness** of the MOGC, as well as **supervising** its operation and compliance, and ensuring its continuous updating.



THE ORGANIZATION, MANAGEMENT AND CONTROL MODEL (MOGC) - SANCTIONS

The **disciplinary system** should provide **detailed sanctions** for the following types of commission or omission, according to the **severity of the violations**:

- **Violations of the Code of Ethics** rules and **Entity procedures** referenced in the Model;
- **Failure** to fulfill **information reporting obligations** to the **Supervisory Board**;
- **Failure** to perform **required checks** by those entrusted with **supervisory responsibilities**;
- **Violations of whistleblower protection measures** or making deliberately **false or grossly negligent reports**.

Sanctions should range from **precautionary measures** for **minor violations** to **termination of the relationship** between the individual and the Entity for **more serious violations**. Different sanctions must be provided for **employees** (also in accordance with NCBA applied), **top management**, and **third parties** (such as consultants, collaborators, suppliers, partners and other external parties operating on behalf of the Company).

The Model must also **identify** the **competent body** for **initiating** the **investigation activities** and the **disciplinary procedure** and for **imposing sanctions**, upon **notification** from the **Supervisory Body** (generally this is the **Board of Directors** or, for example, the **HR Department** in case of **offences** that have **disciplinary relevance committed by employees**).



ISO STANDARDS AS A COMPLETION TO THE REGULATORY FRAMEWORK

ISO standards complement the national regulatory framework and **help improve the quality, efficiency and sustainability in various sectors and organizations.** These guidelines **are not laws and therefore are not binding.**

ISO 37002:2021 on **whistleblowing management systems** offers a structured approach to managing reports, often the origin of internal investigations, providing guidelines for the design, implementation, management, and continuous improvement of an effective system for **reporting and/or disclosure of information on illegal, unethical, or improper activities within the Company** carried out by employees, contractors, or third parties, ensuring confidentiality, impartiality, and protection against retaliation. This standard **harmonizes with Law 179/2017 and Legislative Decree no. 24/2023** on whistleblowing respectively in the public and private sector and naturally integrates into the 231 Model.

More specifically oriented to investigations is **ISO 37008:2023**, which outlines comprehensive guidelines defining standardized methodologies for the design, implementation, management, and continuous improvement of an effective system for conducting **a fact-finding process**, initiated by (or for) an organization, to **ascertain the facts in relation to (alleged or suspected) wrongful conducts, misconduct or non-compliance.** This standard codifies essential principles such as the independence and objectivity of investigators, process confidentiality, proportionality of measures, and timeliness of investigative action.



INTEGRATION BETWEEN INVESTIGATION TOOLS

Effective management of disciplinary issues in the workplace requires an **integrated approach combining various investigative tools**, each with a specific but complementary role:

- **climate surveys**: an essential **preventive tool** to identify areas of organizational criticism, discontent, or tensions among employees before they escalate into more serious problems, allowing for timely intervention in potential problem areas.
- **whistleblowing channels**: allow employees to **report illegal conduct or irregularities in a protected manner**. The legislation guarantees whistleblowers protection against retaliation and discrimination, thus facilitating the emergence of problematic behaviors that would otherwise remain hidden.
- **internal investigations**: aim to **gather evidence** when **suspensions of irregular conduct emerge**. It is essential that such investigations respect the **limits imposed by the Law**;
- **disciplinary procedure**: the possible **final phase of the investigation process**. It can be **activated** when the **elements** collected from the previous phases **justify the application of a disciplinary sanction**.



BENEFITS AND RISKS IN THE MANAGEMENT OF INTERNAL INVESTIGATIONS

When **managed effectively**, internal investigations allow organizations to:

- make **informed decisions** in the event of violations (of laws, regulations, industry codes, internal policies, procedures, or the organization's values and ethics);
- understand the **root causes of violations** and determine whether an allegation or suspicion is well-founded;
- assess the **financial loss** suffered by the organization;
- **mitigate the liability of the organization**, individual employees, and/or management (for breaches of criminal, privacy, labor, or other applicable laws);
- implement appropriate **mitigation measures** to prevent similar incidents from recurring;
- strengthen a **culture of compliance, ethics, and respect** for **internal procedures** within the organization;
- **cooperate with and inform competent authorities to** reduce the risk of sanctions or liability;
- **manage communication with stakeholders** (where necessary) to minimize reputational and compensation-related risks;
- make decisions regarding **disciplinary measures** against managers and/or employees, and the **termination** of relationships with managers, employees and/or third parties involved in unethical behavior;
- use the **findings and evidence** gathered in judicial, arbitration, or settlement **proceedings**, including disciplinary processes.

The corresponding risks will occur if these are not conducted or not conducted properly!



BEST PRACTICES FOR EFFECTIVE INVESTIGATION MANAGEMENT

To **maximize benefits while minimizing risks**, organizations should:

- **Structure and governance**

- Establish **clear investigation protocols** with defined **roles, responsibilities, and escalation paths**, fully integrated with the **disciplinary code** and **organizational model** (*Leg. Decree no. 231/2001, arts. 6 and 7*)
- Ensure **appropriate independence and objectivity of investigation teams**, by assigning oversight to the **Supervisory Body (ODV)** or an ad hoc **independent committee** (*Leg. Decree no. 231/2001, art. 6(1)(a)*)
- Maintain **comprehensive documentation** through **case management systems** ensuring **traceability**, chain of **custody**, and **accountability** (*GDPR art. 5(2); ISO 37301:2021 on Compliance Management System*)
- Implement appropriate **confidentiality and information security** measures, including data classification, access control, and DPIA for high-risk processing (*GDPR arts. 32–35; Leg. Decree no. 24/2023 on whistleblowing, arts. 12–13*)



BEST PRACTICES FOR EFFECTIVE INVESTIGATION MANAGEMENT

To **maximize benefits while minimizing risks**, organizations should:

- **Execution and quality control**

- Define **clear investigation scope** and objectives at the outset, using **investigation charter templates** to formalize **authority, timing** and **boundaries** (*Leg. Decree no. 24/2023, art. 13; ISO 37301:2021, clause 8*)
- Apply consistent **methodology** across **similar cases** (e.g. **workplace harassment, stress-related issues**), aligning with **existing policies and safety protocols** (*Leg. Decree no. 81/2008, art. 28 – work-related stress; UNI PdR 125:2022 on promotion and implementation of gender equality and women's empowerment*)
- Ensure **conclusions** are supported by **sufficient, reliable evidence**, collected via standardized procedures, witness interviews, and fact-mapping techniques (*GDPR art. 5(1)(d); Italian Civil Code, art. 2100 ss.*)
- Conduct **regular quality reviews**, including peer review or second-level audits for sensitive or high-risk **investigations** (*ISO 19011:2018 for auditing management system; Organizational model pursuant to Leg. Decree no. 231/2001, auditing obligations*).



BEST PRACTICES FOR EFFECTIVE INVESTIGATION MANAGEMENT

To **maximize benefits while minimizing risks**, organizations should:

- **Communication and remediation**

- Develop **appropriate communication strategies** for stakeholders (ODV, HR, whistleblower, DPO), ensuring **confidentiality** and **data protection** (*Leg. Decree no. 24/2023 arts. 12–13; GDPR, art. 14*)
- Implement timely and proportionate **remediation measures**, including **disciplinary measures** and **updates to internal procedures and controls** (*Leg. Decree no. 231/2001, art. 6(2)(e); L. no. 300/1970, art. 7*)
- **Track and validate control** effectiveness through **action plans, KPIs, and follow-up audits** (*ISO 37301:2021, clause 10; ISO 31000:2018 on risk management*)
- **Incorporate lessons learned** into **training, onboarding, and compliance updates** to **prevent recurrence** (*Leg. Decree no. 231/2001, art. 6(2)(b); Leg. Decree no. 81/2008, training obligations*)



Thank you!

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