

Private workplace investigations

Prepare for the 16 December deadline

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Introduction

Employers wishing to conduct or commission private investigations involving their employees must have an internal investigation policy in place by 16 December 2026. This requirement forms part of the Belgian Private Investigation Act (PIA), which entered into force on 16 December 2024. Its scope extends beyond private detectives and external investigation firms to include internal workplace investigations that fall within the Act.

A key obligation introduced by the PIA concerns the implementation of an internal policy governing private investigations involving employees. Employers have been granted a two-year transition period to adopt such a policy. This transition period expires on 16 December 2026.

Organisations that have not yet implemented a compliant framework should therefore act without delay. After this date, investigations conducted without the required policy may be declared null and void, potentially undermining the evidentiary value of their findings and exposing employers to additional legal risks.

What is a "private investigation" under the PIA?

Under Article 3 of the PIA, a private investigation consists of collecting and processing information concerning persons, facts or circumstances to protect the legitimate interests of a principal, particularly in the context of an existing or potential dispute.

Consequently, the PIA is not limited to investigations carried out by professional private detectives. Internal investigations conducted by employers may also qualify as private investigations. Investigations into the following matters may fall within scope:

- Suspected fraud
- Theft of company assets
- Conflicts of interest
- Breaches of company policies or codes of conduct
- Unfair competition
- Harassment or integrity-related concerns
- Employee misconduct
- Fact-finding exercises carried out in preparation for a dismissal for serious cause

Which employers are concerned?

The requirement is not limited to large organisations or employers with dedicated investigation teams, since the obligation applies irrespective of the size of the organisation, the number of employees, the frequency of investigations or the existence of a specialised investigation department.

Any employer wishing to retain the possibility of conducting workplace investigations involving employees may fall within the scope of the legislation.

This includes not only Belgian companies but also international groups carrying out investigations concerning employees located in Belgium.

As a result, the PIA is particularly relevant for human resources (hr), legal, compliance, internal audit and risk management teams.

The obligation to establish an internal policy

One of the most important measures concerns the obligation laid down in Article 65 of the PIA.

Where the person concerned by the investigation is an employee of the principal, a private investigation may only be conducted if the employer has previously established a policy that explicitly and transparently authorises these investigations and determines the rules governing such investigations in the workplace.

This obligation applies regardless of who conducts the investigation: an external investigation provider, an internal investigation service, a compliance department, a dedicated investigations team or the HR department.

Once the transitional period expires, the policy must be in place before an investigation involving an employee is started.

What must the policy contain?

The PIA does not prescribe a detailed template for the policy. However, the policy should ensure transparency and provide employees with sufficient information regarding the employer's investigation powers.

At a minimum, the policy should address:

1. Authorisation to conduct investigations

Employees must be informed that the employer may conduct private investigations under specific circumstances.

2. Scope of investigations

The policy should describe which facts or situations may justify an investigation, such as suspected theft, fraud, integrity breaches or other forms of misconduct.

3. Persons authorised to investigate

The policy should identify which departments, functions or external service providers may conduct investigations on behalf of the employer.

4. Investigation methods

The policy should define the investigative measures that may be used and the conditions under which they may be deployed.

5. Procedural safeguards

The policy should explain how investigations will be carried out in practice and which safeguards apply to employees throughout the process.

The objective is to ensure transparency, predictability and legal certainty for both employers and employees.

Other obligations under the PIA

The obligation to implement a policy is only one aspect of the new legal framework.

The PIA also introduces requirements relating to the individuals and services carrying out investigation activities. Under Article 7 of the PIA, companies or internal investigation services conducting private investigations may be required to obtain prior ministerial authorisation.

Furthermore, Article 43 of the PIA provides that investigators must generally hold an identification card. These authorisations are valid for five years and can be renewed.

An important exception exists for HR departments investigating their own employees in personnel-related matters. While they remain subject to the substantive provisions of the PIA, they are exempt from certain licensing and identification requirements.

In addition, once an investigation is initiated, further procedural obligations may arise depending on the investigative measures used, such as interviews, confrontations or observations.

Because the PIA is considered a matter of public policy, compliance must be ensured from the very first step of the investigation process.

Consequences of non-compliance

The risks associated with non-compliance should not be underestimated. Where an investigation concerning an employee is conducted after 16 December 2026 without the required policy in place, the investigation findings may be considered null and void.

This may have significant consequences, including:

- Inadmissibility or exclusion of investigation findings in legal proceedings
- Difficulties in substantiating disciplinary sanctions
- Challenges when justifying a dismissal for serious cause
- An increased risk of litigation

In practice, an employer may invest substantial time and resources in an investigation only to discover that the resulting evidence cannot be relied upon because the statutory requirements were not respected from the outset.

What should employers do before 16 December 2026?

With the deadline approaching, organisations should take proactive steps to assess their compliance position.

The upcoming deadline of **16 December 2026** is therefore of critical importance. By that date, employers wishing to conduct investigations involving employees must have a compliant internal policy in place. Failure to do so may render future investigations ineffective and jeopardise the employer's ability to rely on investigation findings in disciplinary or judicial proceedings.

Given that almost every organisation may eventually face allegations of fraud, theft, policy breaches or other forms of misconduct, employers should not wait until an investigation becomes necessary. The time to review and implement a compliant investigation framework is now.

Feel free to reach out to our legal advisers for further information and support in complying with the PIA and preparing an internal policy.