

Workplace Investigations

Contributing Editors

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



Brazil

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There is no specific law governing workplace investigations in Brazil, but Law 14.457/2022 states that companies must have rules that relate to sexual and other forms of harassment in their internal policies, address the rules for receiving and processing accusations, assess the facts, and discipline any individuals directly and indirectly involved in acts of sexual harassment or violence.

If the investigation has any connection with anticorruption matters, the investigation procedure must comply with Law 12846/2013 (Brazilian Anticorruption Act) and Decree 8420/2015.

As a result, Brazilian employers usually follow the rules determined by internal corporate policies, which often result from international regulations and principles that differ from the Brazilian ones, which inadvertently expose the Brazilian subsidiary to liability. The answers below will highlight common examples of this, when appropriate.

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Nigeria

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- The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- The Criminal Code Act
- Penal Code Law
- Money Laundering (Prohibition) Act 2011 (as amended)
- Freedom of Information Act 2011
- Terrorism (Prevention) Act 2013
- Independent Corrupt Practices and other related offences Act 2000
- Code of Conduct Bureau and Tribunal Act
- Companies and Allied Matters Act 2020

- Nigerian Code of Corporate Governance 2018
- Economic Financial Crime Commission (Establishment) Act 2004
- Investment Securities Act 2007
- Central Bank of Nigeria Act 2007
- Banks and Other Financial Institutions Act 2020
- Whistleblowing Programme under the Ministry of Finance

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Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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Vietnam

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There are no specific legislative requirements for workplace investigations in Vietnam. However, Labor Code No. 45/2019/QH14 dated 20 November 2019 (2019 Labor Code), which is currently the primary legislation governing employment relationships, requires employers that have more than ten employees to provide a mechanism and procedure for handling sexual harassment cases in the workplace. Other than that, an employer may incorporate policies and guidelines on how to deal with workplace investigations into its handbook.

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02. How is a workplace investigation usually commenced?



Brazil

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Workplace investigations usually commence on the receipt of an allegation, which can be presented orally or in writing to an assigned member of the company (usually, within the HR, Compliance or Legal Departments, or to a direct supervisor) or via an external channel, as determined by the company's policy.

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Nigeria

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A workplace investigation is conducted to verify alleged misconduct within a workplace.^[1] Once a complaint is made regarding wrongdoing, misconduct or unethical behaviour by an employee or group of employees within a workplace, an investigation is required to confirm the complaint and if it is confirmed, the body in charge of supervising the employees (usually the HR specialist, disciplinary committee or line managers) determine and implement necessary corrective or disciplinary actions.

^[1] [Conducting Internal Investigations In Organisation - Health & Safety - Nigeria \(mondaq.com\)](#)

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Switzerland

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Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

^[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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Vietnam

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The circumstances in which an employer commences a workplace investigation may vary, either through a whistleblower, through an internal system, email or phone call; complaints from suppliers, contractors, or customers; or accounts from observations and hearsay. Sometimes, it comes from anonymous complaints. However, it is common for an employer to verify whether the report or complaint is substantiated, partially substantiated, or unsubstantiated, which is sufficient to initiate and commence a workplace investigation.

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



Brazil

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Yes, an employee can be suspended during or before a workplace investigation. However, suspending an employee is not a legal requirement in Brazil. It is also not standard business practice and entails legal risk, as detailed below.

While internal policies in line with a company's global investigation approach may determine whether investigated employees are suspended during an investigation, the suspension of an accused employee is not recommended. The only exception is when the accused employee, upon becoming aware of the existence of the investigation, poses a clear and imminent risk of physical danger to other employees or interfering with the investigation.

The suspension of an employee during an investigation makes it difficult for the company to keep the investigation confidential, because the absence of the investigated employee will have to be explained to his or her colleagues and business contacts. As a result, the investigated employee may be exposed to the stigma of being associated with potential misconduct.

Even if the accusation is confirmed and the individual is terminated with cause, the employer cannot disclose the reason for the termination or that the contract was terminated for a cause or violation in the employee's employment records. Also, if the employer shares such information with prospective employers they may be liable for damages.

Termination for cause on the grounds of dishonest conduct, if not upheld by the labour court, usually leads to liability for damages to the former employee due to the accusation and the stigma associated with it.

Therefore, if the company decides to suspend the employee during the investigation and terminate his or her employment at the end of the investigation, the suspension will be associated with wrongdoing, and the individual will have grounds to claim damages for the association between the termination, the investigation and wrongdoing, which will likely be presumed by a labour court (damage *in re ipsa*).

On the other hand, if the accusation is deemed groundless, the connection between the employee and potential wrongdoing resulting from his or her suspension can be used as grounds for damages because of the resulting environment at the workplace or the development of mental health conditions such as depression or anxiety by the investigated employee due to the investigation and uncertainty about the negative effect of it on his or her reputation.

Because suspension during an investigation is not a disciplinary measure, if the company decides to suspend, the employee's salary cannot be affected. Also, the suspension period must be as short as possible, and can in no circumstance be longer than 30 days. If it exceeds 30 days, it would trigger termination for cause by the company, which increases the amount of statutory severance due to the employee.

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Nigeria

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Yes, an employee can be suspended during an investigation to allow the employer to investigate the allegations against the employee unhindered and without undue interference by that employee. A suspension under the law merely prevents the employee from discharging the ordinary functions of his or her role without any deprivation of his rights during the period of the suspension. Thus, unless there is an express provision in the contract of employment or employee's handbook stating that the employee can be suspended with or without half pay, the employee would be entitled to a full salary.

Further, the duration for which the employee may be suspended should be as contained in the employee's contract, employee's handbook, or letter of suspension.

In the recent case of *GLOBE MOTORS HOLDINGS NIGERIA LIMITED v. AKINYEMI ADEGOKE OYEWOLE (2022)*, the court held, *"Since suspension is not a termination of the employment contract nor a dismissal of the employee, the implication is that the employee is still in continuous employment of the employer until he is recalled or formally terminated or dismissed. Pending his recall or dismissal, a suspended employee is entitled to his wages or salary during the period of suspension, unless the terms of the contract of employment or the letter of suspension itself is specific that the suspended employer will not be paid salaries during the period of suspension"*.

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Switzerland

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It is possible to suspend an employee during a workplace investigation.^[1] While there are no limits on duration, the employee will remain entitled to full pay during this time.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 181.

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Vietnam

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Article 128 of the 2019 Labor Code explicitly states that an employer has the right to temporarily suspend an employee who is being investigated for committing an alleged act of misconduct in breach of the labour rules, if the following conditions are met:

- the misconduct committed is complex in nature, and any further work carried out by the employee may jeopardise the ongoing investigation. The law does not clearly define "complex nature"; it may be open to various interpretations by the employer. In practice and from our experience, allegations of sexual harassment may be considered complex misconduct and, therefore, can be a ground for suspension;
- the employer has consulted with (and effectively obtained the approval of) the grassroots-level representative organisation of the employee. No formal process is stipulated under the law for such consultation with this organisation. From our experience, the consultation can be in the form of a

meeting between the management of the employer and the executive committee of the organisation. However, the organisation should require the employee to acknowledge their consent in writing by signing the meeting minutes;

- the period of suspension cannot exceed 15 days or 90 days in “special circumstances”. The law does not define what falls under “special circumstances”. In our view, this will be subject to the interpretation and discretion of the employer after consulting with the grassroots-level representative organisation of the employee; and
- the employee must be paid 50% of his or her wage that would be due during the period of the temporary suspension in advance. When the temporary suspension ends, if no disciplinary measure is imposed on the employee, the employer must pay the full wage for the period of the suspension by paying the remaining 50%.

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04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?



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There is no statutory rule, and therefore the investigator can be chosen by the company.

In sensitive matters, it is recommended that attorneys undertake the investigation due to legal privilege. Engaging external lawyers increases the confidence of witnesses and parties in the independence and lack of bias of the investigation process, especially when the allegations involve senior employees.

Additionally, attorneys are trained to collect information based on legal thresholds that apply to the allegations, allowing the decision-makers to understand the events as they would be posed before a labour judge or a prosecutor, and enabling them to clearly assess the legal risk involved in the situation.

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Nigeria

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Typically, the legal department, the chief compliance officer, the HR manager, the audit committee or any other committee as may be set up by the company may conduct a workplace investigation. However, in other instances, the company may engage the services of independent external personnel to assist with conducting an internal investigation.

The minimum qualification or criteria of the person conducting the investigation should be as contained in the relevant company policies. Criteria may include independence, objectivity and impartiality.

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Switzerland

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The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level^[1], if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 18.

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Vietnam

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There are no statutory minimum qualifications or criteria for someone to conduct a workplace investigation. The employer can simply delegate the investigation task to anyone. However, it is good practice for qualified persons with proper training in workplace investigations to conduct the investigation as these involve intricate issues. It is also important that investigators are fair, unbiased, and impartial. In addition, they should not be related to any parties involved in the investigation.

In complex cases or cases involving a senior or high-ranking employee, the employer should appoint a person with a higher authority or rank in the company to lead and oversee the conduct of the investigation. This also applies in instances where it is foreseeable that the investigation may lead to disciplinary action, summary dismissal of the employee, or a report to an authority.

There are instances when engaging with external parties or professional advisors may be necessary. This is especially the case if the conduct under investigation is serious or widespread, which may lead to regulatory consequences if the employer does not have the expertise to handle the investigation.

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



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Employees are not legally prohibited from bringing legal action, but because investigations are within an employer's powers, a legal action to broadly stop an investigation (as opposed to an injunction to prevent a limited measure within an investigation, such as the review of private messages) would likely be deemed groundless.

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Nigeria

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Generally, issues surrounding workplace investigations are usually embedded in either the employee's contract or handbook, which is binding on the employee. Thus, an employee cannot validly bring an action to stop the investigation unless his rights as guaranteed by the Constitution, the Employee's handbook, and other laws such as a right to a fair hearing are violated during the investigation.

Consequently, the employee may apply to the National Industrial Court for an order of interim relief against his or her employer restraining further prejudicial investigation.

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Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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Vietnam

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The employee can only bring legal action to stop the investigation if he or she claims that his or her rights have been clearly and blatantly violated during the investigation. However, the employee bears a heavy legal burden of proof to substantiate his or her claims. Based on our experience, most of the time, it is very difficult for the employee to prove this and successfully stop the investigation.

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06. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?

Brazil

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Employees cannot be compelled to act as witnesses. Employers may have trouble enforcing internal policies stating that employees who refuse to participate in investigations will be disciplined (warned,

suspended or have their contract terminated for cause), but can terminate their contract without cause.

There are no explicit legal protections for employees acting as witnesses, but it is common best practice to have witnesses' identities protected to the extent necessary for the investigation, and to protect them from retaliation.

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Nigeria

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The employee's contract, employee handbook or company policies typically mandate an employee to cooperate and participate in good faith in any lawful internal investigation undertaken by the company, and also protects an employee acting as a witness in an internal investigation. Some of the legal protections available to an employee acting as a witness during workplace investigations are freedom from intimidation, threats or the loss of employment.

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Switzerland

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Due to the employee's duty of loyalty towards the employer and the employer's right to give instructions to its employees, employees generally must take part in an ongoing investigation and comply with any summons for questioning if the employer demands this (article 321d, Swiss Code of Obligations). If the employees refuse to participate, they generally are in breach of their statutory duties, which may lead to measures such as a termination of employment.

The question of whether employees may refuse to testify if they would have to incriminate themselves is disputed in legal doctrine.^[1] However, according to legal doctrine, a right to refuse to testify exists if criminal conduct regarding the questioned employee or a relative (article 168 et seq, Swiss Criminal Procedure Code) is involved, and it cannot be ruled out that the investigation documentation may later end up with the prosecuting authorities (ie, where employees have a right to refuse to testify in criminal proceedings, they cannot be forced to incriminate themselves by answering questions in an internal investigation).^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

^[2] Same opinion: Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

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Vietnam

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There are no provisions in Vietnamese law that impose any statutory or legal obligation on an employee to act as a witness in an investigation. Hence, an employer does not have the power to compel its employees to act as witnesses in an investigation. However, a request for an employee to provide evidence or give details of an event that he or she knows of may reasonably be deemed to be a lawful and reasonable directive from an employer. Consequently, an employee's refusal to act as a witness may be tantamount to an act of insubordination, which may lead to disciplinary action by the employer. In any circumstances, if an employee refuses to attend an interview or is generally not cooperating with an investigation, the reasons for this will need to be considered carefully by the employer.

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



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The Brazilian General Data Protection Law (LGPD) does not have specific rules or principles that apply to internal investigations conducted within private organisations. Despite that, the general principles and obligations set forth by the LGPD apply to any processing of personal data carried out within the context of such investigations. As a result, the company must ensure the transparency of such processing activities through a privacy notice addressed to the data subjects; only process the personal data that is necessary for the investigation; define the lawful basis that applies to such processing activities (especially for sensitive data); and apply any other obligations established by the LGPD.

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Nigeria

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When gathering evidence, the person being investigated is protected by the Constitution, the Freedom of Information Act and the Nigerian Data Protection Regulation (NDPR), among others.

The Constitution, particularly section 37, guarantees the right of a person to privacy.

The NDPR is the main data protection regulation in Nigeria. It regulates the processing and transfer of personal data.

Further, the Freedom of Information Act, 2011 prohibits the disclosure of information gathered during an investigation to the public.

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Switzerland

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The Swiss Federal Act on Data Protection applies to the gathering of evidence, in particular such collection must be lawful, transparent, reasonable and in good faith, and data security must be preserved.^[1]

It can be derived from the duty to [disclose and hand over benefits received and work produced](#) (article 321b, Swiss Code of Obligations) as they belong to the employer.^[2] The employer is, therefore, generally entitled to collect and process data connected with the end product of any work completely by an employee and associated with their business. However, it is prohibited by the Swiss Criminal Code to open a sealed document or consignment to gain knowledge of its contents without being authorised to do so (article 179 et seq, Swiss Criminal Code). Anyone who disseminates or makes use of information of which he or she has obtained knowledge by opening a sealed document or mailing not intended for him or her may become criminally liable (article 179 paragraph 1, Swiss Criminal Code).

It is advisable to state in internal regulations that the workplace might be searched as part of an internal investigation and in compliance with all applicable data protection rules if this is necessary as part of the investigation.

^[1] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 52.

^[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 148.

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Decree No. 13/2023/ND-CP on personal data protection is the main data protection regulation in Vietnam. It regulates the processing of personal data, including the collection or gathering of data. If the physical evidence contains personal data of an individual, the gathering of physical evidence must comply with this decree.

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08. Can the employer search employees' possessions or files as part of an investigation?



Brazil

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No; employers are only generally allowed to search the work tools they provide to employees, such as company mobile phones, electronic files, and company email and other electronic communications. However, they may also request that employees turn over any company documents in their possession.

Searches of employees' private possessions or files during an investigation can only occur with the verifiable consent of the employee.

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Nigeria

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Yes, an employer can search the possessions or files of an employee as part of an investigation where the employee's contract or handbook authorises such a search and there is a reasonable suspicion of wrongdoing.

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Switzerland

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The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.[\[1\]](#) The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.[\[2\]](#)

[\[1\]](#) Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

[\[2\]](#) Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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Vietnam

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As part of an investigation, an employer may search the objects or files that are part of the company's property (eg, company or employers' laptops or phones for business purposes and emails or messages stored on the company's servers) without prior notice and without the need of the consent of the employee. However, the employer has no right to search an employee's personal possessions without consent.

To further avoid arguments or conflicts as to the right of ownership of a particular object or property, employers may specify in their internal policies, labour contracts, and handover documents what is to be regarded as the company's assets and subject to a search in a workplace investigation.

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09. What additional considerations apply when the investigation involves whistleblowing?



Brazil

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If the investigation involves matters within the scope of a specific whistleblowing policy, the policy rules should prevail against the general investigation rules if there is a conflict.

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Nigeria

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Consideration must be given to the confidentiality or anonymity of the whistleblower, when an investigation involves whistleblowing.

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Switzerland

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If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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It is up to the employer to determine whether or not to open an investigation after a complaint from a whistleblower. It is very important that the identity of the whistleblower is protected and that the employer also should not reveal the identity of the witness or the source of information, as the sources and witnesses may fear retaliation and feel uncomfortable or hesitant in giving information or raising concerns again.

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10. What confidentiality obligations apply during an investigation?



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Law 14.457/2022 states that companies must guarantee the anonymity of accusers. As a result, it is best practice that companies allow for anonymous submissions, or allow accusers to voluntarily disclose their identity while acknowledging that they agree that it will be kept confidential to the extent required by the investigation.

Also, companies should have internal rules stating that all parties involved in an investigation (accusing party, accused party, witnesses, investigators, and any other person that has any contact with the investigation) must keep the existence of the investigation and of the events related to the investigation confidential to the extent required by the investigation, and discipline any individuals that violate this.

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Nigeria

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Workplace investigations should be kept strictly confidential to protect the parties involved in the investigation from victimisation. Some of the confidential obligations that apply during investigations are the identities of the parties involved in the process (whether as a complainant, respondent or witnesses), the confidentiality of reports, recordings and other documents generated or discovered during the investigation, as well as attorney-client privilege between the employee and his or her attorney, provided that such privilege is within the bounds of the law.

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Switzerland

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Besides the employee's duty of performance (article 319, Swiss Code of Obligations), the employment relationship is defined by the employer's duty of care (article 328, Swiss Code of Obligations) and the employee's duty of loyalty (article 321a, Swiss Code of Obligations). Ancillary duties can be derived from the two duties, which are of importance for the confidentiality of an internal investigation.[\[1\]](#)

In principle, the employer must respect and protect the personality (including confidentiality and privacy) and integrity of the employee (article 328 paragraph 1, Swiss Code of Obligations) and take appropriate measures to protect the employee. Because of the danger of pre-judgment or damage to reputation as well as other adverse consequences, the employer must conduct an internal investigation discreetly and objectively. The limits of the duty of care are found in the legitimate self-interest of the employer.[\[2\]](#)

In return for the employer's duty of care, employees must comply with their duty of loyalty and safeguard the employer's legitimate interests. In connection with an internal investigation, employees must therefore keep the conduct of an investigation confidential. Additionally, employees must keep confidential and not

disclose to any third party any facts that they have acquired in the course of the employment relationship, and which are neither obvious nor publicly accessible.[\[3\]](#)

[\[1\]](#) Wolfgang Portmann/Roger Rudolph, BSK OR, Art. 328 N 1 et seq.

[\[2\]](#) Claudia Fritsche, *Interne Untersuchungen in der Schweiz*, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 202.

[\[3\]](#) David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 133.

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Vietnam

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Workplace investigations should be conducted in a strictly confidential manner to preserve the integrity and professionalism of the investigation and to protect the identity of the employee under investigation. This means that all information gathered, received, and shared during the investigation (ie, the subject employee and any material witnesses) should only be disclosed on a need-to-know basis.

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



Brazil

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There is no obligation to inform an employee under investigation that this is the case, and it should not happen automatically.

While some policies require that the investigated employee be informed about the allegations against them at the beginning of the investigation, from a local perspective it is recommended that the accused employee be notified about the existence of the allegations if, after a reasonable review, there are elements that suggest that the accusation may be material.

In this context, the employee should be informed about the accusation and be allowed to confirm, deny, provide further context or justify each reported or identified event; offer evidence; and indicate persons or sources of information that could corroborate his or her defence. Information about the accusation must be focused on facts rather than on how the company obtained the information.

If the accusation is found to be groundless after initial review, involving the accused employee at the beginning of the process may have triggered unjust and unnecessary stress and a disruption in the employment relationship that may not be satisfactorily repaired by a determination that the accusation was void. This may result in a legal liability for the company or HR issues that could otherwise have been

avoided.

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An employee must be given the full details of the allegations against him or her to enable the employee to make adequate representations against the complaints made against him or her.

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As a result of the employer's duty of care (article 328, Swiss Code of Obligations), employees under investigation have certain procedural rights. These include, in principle, the right of the accused to be heard. In this context, the accused has the right to be informed at the beginning of the questioning about the subject of the investigation and at least the main allegations and they must be allowed to share their view and provide exculpatory evidence.^[1] The employer, on the other hand, is not obliged to provide the employee with existing evidence, documents, etc, before the start of the questioning.^[2]

Covert investigations in which employees are involved in informal or even private conversations to induce them to provide statements are not compatible with the data-processing principles of good faith and the requirement of recognisability, according to article 4 of the Swiss Federal Act on Data Protection.^[3]

Also, rights to information arise from the Swiss Federal Act on Data Protection. In principle, the right to information (article 8, Swiss Federal Act on Data Protection) is linked to a corresponding request for information by the concerned person and the existence of data collection within the meaning of article 3 (lit. g), Swiss Federal Act on Data Protection. Insofar as the documents from the internal investigation recognisably relate to a specific person, there is in principle a right to information concerning these documents. Subject to certain conditions, the right to information may be denied, restricted or postponed by law (article 9 paragraph 1, Swiss Federal Act on Data Protection). For example, such documents and reports may also affect the confidentiality and protection interests of third parties, such as other employees. Based on the employer's duty of care (article 328, Swiss Code of Obligations), the employer is required to protect them by taking appropriate measures (eg, by making appropriate redactions before handing out copies of the respective documents (article 9 paragraph 1 (lit. b), Swiss Federal Act on Data Protection)).^[4] Furthermore, the employer may refuse, restrict or defer the provision of information where the company's interests override the employee's, and not disclose personal data to third parties (article 9 paragraph 4, Swiss Federal Act on Data Protection). The right to information is also not subject to the statute of limitations, and individuals may waive their right to information in advance (article 8 paragraph 6, Swiss Federal Act on Data Protection). If there are corresponding requests, the employer must generally grant access, or provide a substantiated decision on the restriction of the right of access, within 30 days (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 paragraph 4, Ordinance to the Federal Act on Data Protection).

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 390.

[3] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 390.

[4] Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

Last updated on 15/09/2022



Vietnam

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There is no legal requirement as to what particular information should be stated in the allegations; however, such information must be provided to the employee under investigation. The information provided by the employer to the employee must be sufficiently clear and specific so that the latter understands the case or alleged issues against him or her and can respond to it.

Last updated on 25/09/2023

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



Brazil

Author: *Patricia Barboza, Maury Lobo*
at CGM

Yes, the identity of the complainant, witnesses and sources of information for the investigation should be kept confidential.

Last updated on 14/09/2023



Nigeria

Author: *Adekunle Obebe*
at Bloomfield LP

Typically, the identities of the complainant, witnesses and sources of information for the investigation are kept confidential.

Last updated on 15/09/2022



Switzerland

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As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused's interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.^[1]

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

Last updated on 15/09/2022



Vietnam

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The identity of the complainant and witnesses must be kept confidential and cannot be disclosed to anyone, unless both the complainant and witnesses consent to its disclosure or if the employer is asked to disclose this information by the competent authorities under Vietnamese law.

Last updated on 25/09/2023

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



Brazil

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Yes, NDAs may be executed to reinforce the confidentiality obligations outlined in the company's policies and reinforced in interviews.

Last updated on 14/09/2023



Nigeria

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NDA's are usually part of an employee's contract and, as such, create a contractual obligation between the parties privy to it. However, where the subject matter of an investigation borders on matters of a criminal nature, it might be impossible for parties to the NDA to continually uphold the obligation under the NDA because the parties have an obligation to the state to disclose facts of a criminal nature.

Last updated on 15/09/2022

Switzerland

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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

Last updated on 15/09/2022

Vietnam

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Generally, NDA's can be used to keep the facts and substance of a workplace investigation confidential. There are no express prohibitions against such NDA's. However, there are cases set out under Decree No. 13/2023/ND-CP on personal data protection where personal data is allowed or required to be disclosed without the data subject's consent, in instances that are necessary to serve the public interest or to protect the life and health of the data subject.

Last updated on 25/09/2023

14. When does privilege attach to investigation materials?

Brazil

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Privilege attaches to investigation materials when attorneys conduct interviews and take notes, and when they write reports and recommendations.

However, if other persons participate in an interview or write a report, and they are not attorneys, they can be required to testify about what they witnessed while participating in the interview or to discuss or disclose their investigation report.

For this reason, when starting an investigation, and depending on the matters to be investigated, it is

important to determine whether it is convenient to allocate lawyers to certain roles to increase the company's control of corporate confidentiality resulting from third-party involvement in the investigation.

Attorneys should also clearly state to participants of the investigation that they are attorneys representing the company and that their work papers fall under attorney-client privilege and will not be shared with them.

Last updated on 14/09/2023

Nigeria

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Privilege attaches to investigation materials when a legal practitioner facilitates the internal investigation. Documents prepared during a workplace investigation will not automatically attract legal professional privilege, unless the investigation is facilitated by a legal practitioner.

Last updated on 15/09/2022

Switzerland

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As outlined above, all employees generally have the right to know whether and what personal data is being or has been processed about them (article 8 paragraph 1, Swiss Federal Act on Data Protection; article 328b, Swiss Code of Obligations).

The employer may refuse, restrict or postpone the disclosure or inspection of internal investigation documents if a legal statute so provides, if such action is necessary because of overriding third-party interests (article 9 paragraph 1, Swiss Federal Act on Data Protection) or if the request for information is manifestly unfounded or malicious. Furthermore, a restriction is possible if overriding the self-interests of the responsible company requires such a measure and it also does not disclose the personal data to third parties. The employer or responsible party must justify its decision (article 9 paragraph 5, Swiss Federal Act on Data Protection).^[1]

The scope of the disclosure of information must, therefore, be determined by carefully weighing the interests of all parties involved in the internal investigation.

^[1] Claudia M. Fritsche, *Interne Untersuchungen in der Schweiz*, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 284 et seq.

Last updated on 15/09/2022

Vietnam

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Generally, privilege does not apply to internal workplace investigation materials as the investigation does

not constitute a relationship between a lawyer and his or her client, and even less so a judicial investigation. However, if a lawyer is appointed to represent a specific party in an investigation, for example, as an investigator, the privilege may apply to materials exchanged between the lawyer and that client.

Last updated on 25/09/2023

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



Brazil

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Legally, a minor or someone with limited mental capacity must be represented by his or her parents or legal guardian in a meeting at work. Besides that, employers are not legally required to allow any external person to accompany employees during investigations, since these are internal proceedings and, generally, employee participation should be voluntary and not subject to retaliation, including if the employee refuses to participate.

Last updated on 14/09/2023



Nigeria

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The Constitution guarantees the right of every person to legal representation during investigations and interrogations by law enforcement agencies. However, our labour legislation is silent on whether an employee has a right to be accompanied or have legal representation during an investigation. Whether an employee has a right to legal representation will depend on the policy of the employer as well as the nature of the interrogation.

In practice, an employee is usually not accompanied or represented legally during an investigation. However, unless it is stipulated in the employee's policy, nothing prohibits the employee from being accompanied or represented legally during an investigation.

Last updated on 15/09/2022



Switzerland

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In the case of an employee involved in an internal investigation, a distinction must be made as to whether the employee is acting purely as an informant or whether there are conflicting interests between the company and the employee involved. If the employee is acting purely as an informant, the employee has, in principle, no right to be accompanied by their own legal representative.[\[1\]](#)

However, if there are conflicting interests between the company and the employee involved, when the employee is accused of any misconduct, the employee must be able to be accompanied by their own legal representative. For example, if the employee's conduct might potentially constitute a criminal offence, the involvement of a legal representative must be permitted.^[2] Failure to allow an accused person to be accompanied by a legal representative during an internal investigation, even though the facts in question are relevant to criminal law, raises the question of the admissibility of statements made in a subsequent criminal proceeding. The principles of the Swiss Criminal Procedure Code cannot be undermined by alternatively collecting evidence in civil proceedings and thus circumventing the stricter rules applicable in criminal proceedings.^[3]

In general, it is advisable to allow the involvement of a legal representative to increase the willingness of the employee involved to cooperate.

[1] Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

[2] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 59.

[3] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 392; Niklaus Ruckstuhl, BSK-StPO, Art. 158 StPO N 36.

Last updated on 15/09/2022



Vietnam

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Yes, the employee under investigation has a right to be accompanied or have legal representation during the investigation. Before the start of investigation proceedings, the employee under investigation must be informed about his or her right to have someone present with him or have a legal representative during the investigation.

Last updated on 25/09/2023

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



Brazil

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No, there is no such right.

Last updated on 14/09/2023



Nigeria

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The law is silent on whether a member of a trade union has the right to be informed or involved in the investigation. Typically, this is dependent on the employee's contract, handbook or other policies of the employer.

Last updated on 15/09/2022



Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

Last updated on 15/09/2022



Vietnam

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In Vietnam, the "trade union" is the only organisation solely dedicated to protecting employees' legitimate rights and interests. Under the 2012 Labor Code, the term referring to trade unions was changed to "grassroots-level representative organisation of employees". But the essence of this organisation remained and was later defined as "the executive committee of a grassroots trade union or the executive committee of the immediate upper-level trade union in a non-unionised company". As such, it could be said that it was old wine in a new bottle.

As required under article 70.1 of Decree No. 145/2020/ND-CP, which serves as a guide to the Labor Code on working conditions and labour relations, when suspecting that an employee has committed a violation of labour discipline, the employer has to make a record of the violation at the time and notify the grassroots-level representative organisation of employees of which the employee is a member, or the legal representative of the employee if they are under 15 years of age. If the employer detects a violation after it has occurred, it will collect evidence to prove it. In this instance, the employer has no obligation to inform or involve the trade union or grassroots-level representative organisation of employees during the workplace investigation stage.

Also, an employee who is a member of the trade union or organisation has the right to seek assistance from this organisation and may authorise the trade union's representative to represent and get involved in the workplace investigation.

Last updated on 25/09/2023

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



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It is highly recommended that investigation interviews are conducted in the interviewed person's native language, even if the individual speaks the language used for business within the company, to ensure that there is no miscommunication or loss of accuracy in the determination of the facts. Also, speaking their native tongue reduces the discomfort of participating in the interview and potential extra work due to post-interview correction or confirmation. Depending on the scope of the investigation, the company can have attorneys who speak both the individual's language and the company's business language conducting interviews.

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Nigeria

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An employee being investigated has a right to be heard before a decision being made by the employer. Further, the body responsible for investigating the employee must be independent, so as not to be considered biased.

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Switzerland

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The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

Last updated on 15/09/2022



Vietnam

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It is quite stressful for an employee, whether as the victim, the subject of an investigation, or a witness, to be involved in a workplace investigation. Thus, transparency in the investigation process would alleviate the employees' stress and anxiety. This could be achieved by providing involved and concerned employees with the timeline for different stages of the investigation and regular updates. Further, the employer can make necessary work arrangements to minimise potential interaction with other involved employees so that it would not further aggravate the conflict or situation, (eg, days off or temporary suspension of work).

Last updated on 25/09/2023

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



Brazil

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If unrelated matters are revealed as a result of the investigation, the company must be notified and must start a new investigation regarding them per the appropriate rules, without affecting the original investigation.

Last updated on 14/09/2023



Nigeria

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at Bloomfield LP

Where unrelated matters are revealed as a result of the investigation, the body investigating the employee is expected to inform the employee of the new matters and give him adequate time to respond.

However, there are exceptional cases where a crime is revealed during an investigation. In such instances, the employer is required to report its findings to the police for investigation and possible prosecution.

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Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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Vietnam

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If unrelated matters are revealed during the investigation, the employer should consider whether an investigation is needed. If necessary, the employer should decide whether it is appropriate to incorporate the new matters into the scope of the existing investigation by expanding the terms of reference. However, such action may not be appropriate if different individuals are involved or the inclusion of a new unrelated matter would unduly complicate or delay the progress of the existing investigation. If that is the case, the employer should investigate that matter separately.

Also, as detailed in article 19 of the 2015 Criminal Code of Vietnam, there is a legal duty on any person who is aware that a certain violation is being committed or has been committed to report it to the police unless otherwise provided for under law. Failure to comply with this requirement may lead to criminal liability for the offender.

Last updated on 25/09/2023

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



Brazil

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at CGM

If the object of the grievance is connected to the ongoing investigation, the investigator may pursue that grievance within the same procedure or open a separate matter, under the company's rules governing such a situation.

If the object of the grievance is not connected to the investigation, the employee must report the matter, or the investigator can do it, if the company's policies allow it.

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Nigeria

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It is not unusual for an employee under investigation to raise a grievance during the investigation. This grievance may be on the same subject matter as the complaint being investigated or may disclose new facts outside the scope of the matter being investigated.

Where the issue discloses new facts, the employer is required to investigate those facts without suspending the investigation. However, where the grievance relates to the same subject matter as the complaint being investigated, the employer may either suspend the investigation to allow the investigation to recognise the grievance and the complaint against the employer or proceed with the investigation while noting that the matter disclosed is being or will be investigated.

Last updated on 15/09/2022

Switzerland

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In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

Last updated on 15/09/2022

Vietnam

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The employer should require the employee to raise any grievance under the company's existing policy on grievance reporting, disciplinary, and investigation processes, so that it can determine if the grievance is relevant to the current investigation. The grievance can be investigated together with the ongoing investigation. It can also be dealt with separately and independently from the existing investigation.

Last updated on 25/09/2023

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

Brazil

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Sick leave suspends the employment agreement, and as a rule the employee should not be contacted during such a suspension. The investigation may continue without the participation of the investigated employee while that employee is absent, have its conclusion suspended while he or she is on leave, and resume once the employee returns to work.

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Nigeria

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The investigation would be suspended until the employee returns from sick leave. The investigation will immediately restart upon the return of the employee.

Last updated on 15/09/2022

Switzerland

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The time spent on the internal investigation by the employee should be counted as working time^[1]. The general statutory and internal company principles on sick leave apply. Sick leave for which the respective employee is not responsible must generally be compensated (article 324a paragraph 1 and article 324b, Swiss Code of Obligations). During certain periods of sick leave (blocking period), the employer may not ordinarily terminate the employment contract; however, immediate termination for cause remains possible.

The duration of the blocking period depends on the employee's seniority, amounting to 30 days in the employee's first year of service, 90 days in the employee's second to ninth year of service and 180 days thereafter (article 336c paragraph 1 (lit. c), Swiss Code of Obligations).

^[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

Last updated on 15/09/2022

Vietnam

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Workplace investigations do not require the presence or active cooperation of the employee under investigation. Thus, the investigation may start or continue in the employee's absence due to illness.

If the employee's presence is necessary for the conclusion of the investigation, the employer may invite the employee to provide information either by submitting his or her answers to a written questionnaire or attending a virtual meeting. However, the employee may not accede to the employer's requests and proposals, especially if the employee has an illness. As a result, the employer may not be able to conclude the investigation due to the absence of the involved employee.

Last updated on 25/09/2023

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

Brazil

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The company may be required to share information or documents with authorities such as a judge, the police, or the Public Attorney's office, or be subject to a government authority's dawn raid. Workplace investigations can and in most cases should continue, and in such circumstances client-work privilege will be essential to enable the employer to control information being shared with third parties.

Last updated on 14/09/2023

Nigeria

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Where an employee has committed misconduct at work that is also the subject of a police investigation, the employer can conduct its own investigation and does not have to await the outcome of the criminal proceedings. The Supreme Court, in the case of *Dongtoe v CSC Plateau State* (2001), held that it is preposterous to suggest that the administrative body should stay its disciplinary jurisdiction over a person who had admitted criminal offences.

Further, the police or regulator may compel the employer to share evidence with it in the interests of justice.

Last updated on 15/09/2022

Switzerland

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The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

Last updated on 15/09/2022

Vietnam

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There are no issues with an internal workplace investigation being conducted in parallel to any criminal or regulatory investigation. In such a case, the employer should handle the workplace investigation meticulously, pay attention to all the facts and evidence, inform the authorities of the ongoing internal workplace investigation, and ensure that it complies with all applicable legal requirements or directions made by the relevant authorities concurrently. Also, the employer should not take any steps that interfere with, hinder, or obstruct the parallel investigations.

Last updated on 25/09/2023

22. What must the employee under investigation be

told about the outcome of an investigation?



Brazil

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at CGM

There is no legal obligation to inform them of the outcome. Any obligation would come from the company's policies.

Last updated on 14/09/2023



Nigeria

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The employee under investigation must be informed of the outcome of the investigation as soon as a decision is reached.

Last updated on 15/09/2022



Switzerland

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Workplace investigations often result in an investigation report that is intended to serve as the basis for any measures to be taken by the company's decisionmakers.

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.^[1] In principle, the employee concerned is entitled to receive a written copy of the entire investigation report free of charge (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 et seq, Ordinance to the Federal Act on Data Protection). Redactions may be made where the interests of the company or third parties so require, but they are the exception and must be kept to a minimum.^[2]

^[1] Arbeitsgericht Zürich, Entscheide 2013 No. 16; Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 393 et seq.

^[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 394.

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Vietnam

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It is recommended that the employer informs the employee under investigation of the outcome and provides information on a need-to-know basis. Consequently, the employer has the discretion to proceed with any labour disciplinary procedure or actions against the employee based on the outcome of the investigation.

Last updated on 25/09/2023

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



Brazil

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There is no legal requirement or recommendation for the company to share the full or partial report or findings. It is also not a recommended measure. Therefore, unless the internal rules determine that the company must do it, any answer to queries should be limited to the fact that the investigation was concluded, and the company took the appropriate action.

Last updated on 14/09/2023



Nigeria

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The employer needs to balance the interests of the employee investigated, and the interests of other persons involved in the investigation such as the complainant and witnesses. Thus, the employer may either share the findings of the investigation or the full investigation report, provided that the identities of all other persons involved in the investigation are kept confidential.

Last updated on 15/09/2022



Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

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Vietnam

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There is no obligation to share the investigation report or the findings unless the employer and employee agree to do so.

However, under Decree No. 13/2023/ND-CP on personal data protection, the contents of the investigation report or findings related to the employee are likely to constitute the personal data of the employee under investigation. In that case, the employee may have a right under the said Decree to obtain copies of such documents by making a statutory data access request after the workplace investigation is completed. Where the employer is required to provide such documents to the employee under Decree No. 13/2023/ND-CP but the requested documents also contain the personal data of any other third parties (such as the employee's co-workers who participated in the interview during the investigation), the employer should first redact or erase such data before providing the requested documents, unless the relevant third parties have consented to the disclosure of their personal data.

Last updated on 25/09/2023

24. What next steps are available to the employer?



Brazil

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If investigators conclude that a breach has occurred, the company may determine the appropriate response, which may include verbal or written warnings; the suspension of employment without payment (for up to 29 days) or termination of employment without or with cause; a review of policies or operational protocols; and new training modules or the updating of training modules.

If the investigators conclude that a breach has not occurred but determine that the report was made in good faith, the case must be set aside. If the investigators determine that the report was made in bad faith, the employer must determine how to respond to the bad-faith reporter.

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Nigeria

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Upon the completion and receipt of the findings of the investigation, the employer may affirm the

employee's innocence or take disciplinary action against them.

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Switzerland

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If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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Vietnam

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After the completion of the investigation, the employer may:

- take the appropriate labour disciplinary action against the employee;
- proceed with legal action against the employee (eg, reporting the criminal violations of the employee to the proper authority or filing a civil lawsuit against the employee before the court); or
- adopting preventive or remedial measures on how to avoid these violations and to mitigate the damage to the company (eg, reviewing internal policies and conducting employee training).

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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?

Brazil

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There are no legal requirements for the company to share the investigation findings with any party, including the reporter and the investigated party, so the employer must carefully consider the pros and cons of doing so on a case-by-case basis. Interview records can generally be kept private if interviews were conducted by an attorney.

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Nigeria

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Investigation findings may be disclosed to the employee and every other person having an interest in the investigation. Where it is discovered that a crime has been committed, the investigation findings may be disclosed to the regulators or police.

Typically, interview records are kept private and will not be disclosed unless it is interest of justice.

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Switzerland

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The employer is generally not required to disclose the final report, or the data obtained in connection with the investigation. In particular, the employer is not obliged to file a criminal complaint with the police or the public prosecutor's office.

Exceptions may arise, for example, from data protection law (see question 22) or a duty to release records may arise in a subsequent state proceeding.

Data voluntarily submitted in a proceeding in connection with the internal investigation shall be considered private opinion or party assertion.[\[1\]](#) If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.[\[2\]](#)

[\[1\]](#) Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 123.

[\[2\]](#) Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 102 et seq.

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Generally, the employer does not have to actively disclose the findings of a workplace investigation to any party.

Notwithstanding this, the employer should be aware of certain statutory disclosure requirements that may apply as a result of the matters revealed during the workplace investigation, if the said investigation reveals any knowledge or suspicion of an indictable offence that has been committed.

Interview records should be kept private unless disclosure is required by the authorities.

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



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The existence of the investigation should be kept on file for at least five years from the date of its conclusion. All information related to the investigation should be kept on file for the same period, but not on the employee's record, to avoid the risk of accidental access by unauthorised individuals.

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The law does not provide for the time the outcome of the investigation may remain on the employee's record. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

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Switzerland

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From an employment law point of view, there is no statute of limitations on the employee's violations. Based on the specific circumstances (eg, damage incurred, type of violation, basis of trust or the position of the employee), a decision must be made as to the extent to which the outcome should remain on the record.

From a data protection point of view, only data that is in the interest of the employee (eg, to issue a reference letter) may be retained during the employment relationship. In principle, stored data must be deleted after the termination of the employment relationship. Longer retention may be justified if rights are still to be safeguarded or obligations are to be fulfilled in the future (eg, data needed regarding foreseeable legal proceedings, data required to issue a reference letter or data in relation to a non-competition clause).^[1]

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Vietnamese law does not provide for a period during which the outcome of the investigation should remain on the employee's records and files. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

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



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The employer's legal exposure resulting from errors during the investigation depends on the error and the victim or victims affected. It may range from paying damages to a witness who was harassed because the company did not prevent retaliation from occurring; to the reversal of a termination for cause if a court determines that the evidence collected during the investigation did not meet the legal threshold to uphold it; to indemnification for a violation of privacy; or criminal prosecution because of unauthorised access to private communications.

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- Violation of Fundamental Rights of the Employee
- Breach of Contract of Employment or wrongful termination

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As there are no specific regulations for internal investigations, the usual legal framework within which the employer must act towards the employee derives from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights.

But, for example, unwarranted surveillance could conceivably result in criminal liability (article 179 et seq, Swiss Criminal Code) for violations of the employee's privacy. Furthermore, errors made by the employer could have an impact on any later criminal proceedings (eg, in the form of prohibitions on the use of evidence).[1]

Evidence obtained unlawfully may only be used in civil proceedings if there is an overriding interest in establishing the truth (article 152 paragraph 2, Swiss Civil Procedure Code). Consequently, in each case, a balance must be struck between the individual's interest in not using the evidence and in establishing the truth.[2] The question of the admissibility of evidence based on an unlawful invasion of privacy is a sensitive one – admissibility in this case is likely to be accepted only with restraint.[3] Since the parties in civil proceedings do not have any means of coercion at their disposal, it is not necessary, in contrast to criminal proceedings, to examine whether the evidence could also have been obtained by legal means.[4]

Unlawful action by the employer may also have consequences on future criminal proceedings: The prohibitions on exploitation (article 140 et seq, Swiss Criminal Procedure Code) apply a priori only to evidence obtained directly from public authorities. Evidence obtained unlawfully by private persons (ie, the employer) may also be used if it could have been lawfully obtained by the authority and if the interest in establishing the truth outweighs the interest of the individual in not using the evidence.[5] Art. 140 paragraph 1 Swiss Criminal Procure Code remains reserved: Evidence obtained in violation of Art. 140 paragraph 1 Swiss Criminal Procure Code is subject to an absolute ban on the use of evidence (e.g. evidence obtained under the use of torture[6]).[7]

[1] Cf. ATF 139 II 7.

[2] ATF 140 III 6 E. 3

[3] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), Zivilprozessrecht, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

[4] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), Zivilprozessrecht, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

[5] Decision of the Swiss Federal Court 6B_1241/2016 dated 17. July 2017 consid. 1.2.2; Decision of the Swiss Federal Court 1B_22/2012 dated 11 May 2012 consid. 2.4.4.

[6] Jérôme Benedict/Jean Treccani, CR-CPP Art. 140 N. 5 and Art. 141 N. 3.

[7] Yvan Jeanneret/André Kuhn, Précis de procédure pénale, 2nd Edition, Berne 2018, N 9011.

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The employer may be exposed to legal action for its failure to conduct the investigation properly, such as a lawsuit for labour disputes or sanctions for its failure to protect personal data as required under personal data protection regulations. For instance, if there were errors during the investigation which led to erroneous results for the investigation and consequently, the employee was dismissed, the employee may file a claim for illegal dismissal against the employer.

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