

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

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



Brazil

Author: *Patricia Barboza, Maury Lobo*
at CGM

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



Ireland

Author: *Bláthnaid Evans, Mary Gavin*
at Ogier

There is no legislation regarding NDAs, but there is a Bill before the legislature proposing to “restrict the use of non-disclosure agreements as they relate to incidents of workplace sexual harassment and discrimination”. It is currently at the report stage. Whether it passes remains to be seen, but there has in recent times been strong criticism of the use of NDAs to cover up matters that ought to be fully investigated and dealt with in an organisation.

Settlement agreements, however they arise, may include confidentiality clauses which may, depending on the terms of the agreement, extend to the fact and substance of an investigation, but as in the UK an employee's right to make a protected disclosure or report a criminal offence cannot be waived by signing an NDA.

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Switzerland

Author: *Laura Widmer, Sandra Schaffner*

at Bär & Karrer

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.

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Contributors



Brazil

Patricia Barboza
Maury Lobo
CGM



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Bláthnaid Evans
Mary Gavin
Ogier



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

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