

# Workplace Investigations

## Contributing Editors

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

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

No specific rules directly govern a workplace investigation in the event of employee misconduct. However, several rules, both legal and administrative, affect the conduct of such an investigation. In addition, codes of conduct, internal regulations or guidelines may also exist within companies.

A new law (No. 2022-401) came into effect on 1 September 2022 and constitutes one of the cornerstones for future regulation of workplace investigations. This law transposes into French law the European directive relating to whistleblower protection. It does not, however, constitute a revolution, as a previous French law dated 9 December 2016 (the so-called Sapin 2 Law) already provided the whistleblower with a specific status and protection. These laws are fundamental when considering an internal investigation as

the rules protecting the whistleblower and requiring the establishment of an internal whistleblowing channel (eg, a dedicated email or hotline) affect the degree of flexibility available to companies in conducting the investigation.

A new decree has been adopted (No. 2022-1284), dated 3 October 2022, for application of these new provisions. This decree sets out several obligations relating to the internal whistleblowing reporting process. The reporting channel will necessarily contribute to shape the internal investigation triggered by situations which have been reported by that channel. Companies subject to this decree may define the reporting procedure using the supporting tool of their choice (company collective agreement, internal memorandum, etc.), as long as the employee representative bodies are duly consulted on the matter. The decree also specifies that an acknowledgement of receipt of the alert must be provided to the author of the alert in writing within seven days from the company receiving the alert. The author of the alert must also be informed in writing, within a reasonable period not exceeding three months from acknowledgement of receipt of the alert, of the measures envisaged or taken to assess the accuracy of the allegations and, where appropriate, to remedy the situation which had been reported, as well as the reasons for these measures and, finally, the closure of the case.

More generally, not only do all the “pure” labour law rules relating to the protection of the human rights of employees need to be complied with (right to privacy, data protection under the GDPR, etc), but also the disciplinary rules and regulations that protect employees from unfounded sanctions imposed by their employer. For example, an employer can only sanction an employee's misconduct if the disciplinary procedure begins within two months of when the misconduct was committed or when the employer becomes aware of it. In this respect, an internal investigation can be necessary for the employer to obtain full knowledge of the facts alleged to have been committed by the employee. It is nonetheless recommended that the internal investigation be completed within these two months to avoid the risk of the disciplinary action being time-barred.

Administrative rules produced by the French anti-corruption agency should also be taken into consideration (good practice, guidelines and recommendations relating to senior management's commitment to implement anti-corruption measures, corruption risk mapping, corruption risk management measures and procedures), as well as the guidelines produced by the French Ministry of Employment relating to the prevention of sexual harassment and gender-based violence or the recommendations of the Human Rights Defender, which is a French special institution aimed at protecting fundamental rights.

When the investigation in question concerns moral or sexual harassment or violence in the workplace, the national interprofessional agreement of 26 March 2010 should be referred to. This text stipulates that in the event of an investigation procedure, it should be based on, but not limited to, the following guiding principles:

- it is in everyone's interest to act with the discretion necessary to protect everyone's dignity and privacy;
- no information, unless it is anonymized, should be divulged to parties not involved in the case in question;
- complaints must be investigated and dealt with without delay;
- all parties involved must be listened to impartially and treated fairly;
- complaints must be supported by detailed information;
- deliberate false accusations must not be tolerated, and may result in disciplinary action;
- external assistance may be useful, notably from occupational health services.

Many are calling for the adoption of legislative rules governing such investigations, and their coordination with general whistleblower protection measures.

Finally, a company must take its own rules and regulations into account. Every company with at least 50 employees has the legal obligation to draw up internal rules and regulations, which notably set out the disciplinary sanctions applicable to employees, as well as a reminder of certain employees' rights.

Last updated on 27/11/2023

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

There are essentially two phases in a workplace investigation: the fact-finding phase and the administrative proceeding.

The fact-finding phase of workplace investigations is usually governed by the internal policies of the employer, save for investigations relating to gender-based sexual harassment in the workplace. Republic Act No. 11313, otherwise known as the Safe Spaces Act, sets the parameters for these kinds of investigations.

Philippine case law recognises the right of an employer to conduct investigations for other acts of misconduct in the workplace in the exercise of its management prerogative. The Supreme Court has held that it is an employer's right to investigate acts of wrongdoing by employees, and employees involved in such investigations cannot simply claim that employers are out to get them.

After the fact-finding aspect of the investigation, if the employer decides it has sufficient grounds to proceed to full-blown administrative proceedings, it needs to comply with the due process requirements outlined under the Philippine Labor Code. These requirements are:

- a first notice, or notice to explain, informing the employee of the charges against him or her;
- an opportunity for the employee to be heard; and
- a final notice on the outcome of the administrative action.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Workplace investigations in Sweden are governed by several rules and regulations. Listed below are the central legislation and regulations that govern a workplace investigation related to alleged employee misconduct.

- The Swedish Discrimination Act (2008:567).
- The Swedish Work Environment Act (1977:1160), which is complemented by the Swedish Work Environment Authority's other statutes.[\[1\]](#)
- The Swedish Whistleblowing Act (2021:890).

If a workplace investigation has been initiated after the receipt of a report filed through a reporting channel established under the Swedish Whistleblowing Act, that law applies provided that the report has been filed by a person who may report under the Act and provided that the subject of the report falls under the material scope of the Act. The Swedish Whistleblowing Act implements Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law and has been given a wide material scope in Sweden. The Swedish Whistleblowing Act may apply if the reported irregularity concerns breaches of certain EU laws or if the reported irregularity is of public interest.

In addition to the regulations mentioned above, certain data protection legislation may affect workplace investigations by restricting what personal data may be processed. Such data protection legislation includes the following:

- Regulation (EU) 2016/679 on the protection of natural persons concerning the processing of personal data and the free movement of such data (the GDPR);
- the Swedish Supplementary Data Protection Act (2018:218);
- the Swedish Supplementary Data Protection Regulation (2018:219);

- Regulation DIFS:2018:2 on the processing of personal data relating to criminal convictions or offences. This regulation governs the processing of personal data relating to criminal convictions or suspected criminal offences in internal workplace investigations that are not governed by the Swedish Whistleblowing Act.<sup>[2]</sup>

The above-mentioned legislation and regulations may overlap in many aspects and it is therefore important before starting an investigation, as well as during an investigation, to assess which rules and regulations apply to the situation at hand. Another aspect of this is that many issues that can arise during an investigation are not regulated by law or other legislation. If the investigation is a non-whistleblowing investigation there are limited rules on exactly how and by whom the investigation should be carried out.

A Swedish law firm that undertakes a workplace investigation also has to adhere to the Swedish Bar Association's Code of Conduct. The Code of Conduct includes additional considerations, mainly ethical, which will not be addressed in this submission. Furthermore, this submission will not focus on investigations following an employee's possible misappropriation of proprietary information or breach of the Swedish Trade Secrets Act (2018:558). Investigations into such irregularities are often conducted to gather evidence and these investigations include the same or similar investigative measures used in other investigations, such as interviews with employees and IT-forensic searches, but also infringement investigations carried out by the authorities or other measures by the police.

---

<sup>[1]</sup> Mainly Systematic Work Environment Management (AFS 2001:1), Organisational and Social Work Environment (AFS 2015:4) and Violence and Menaces in the Working Environment (AFS 1993:2)

<sup>[2]</sup> Under Section 2 item 4 of DIFS 2018:2, personal data relating to criminal convictions or suspected criminal offences may only be processed if the personal data concerns serious misconduct, such as bribery, corruption, financial fraud or serious threats to the environment, health and safety, by an individual who is in a leading position or who is considered key personnel within the company. The processing of personal data received in a report or collected during an investigation governed by the Swedish Whistleblowing Act is instead governed by the Swedish Whistleblowing Act, which complements the GDPR and the supplementing Swedish act and regulation stated in item (ii) and (iii) above.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

## 02. How is a workplace investigation usually commenced?

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023

## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

When a report of wrongdoing is brought to the employer's attention, whether through a whistleblower or another channel, and an internal investigation is expected, it may be either mandatory or optional, depending on the facts of the alleged wrongdoing.

The investigation will be mandatory when the alleged wrongdoing relates to an ethical issue according to anti-corruption regulations, the employer's duty of due diligence regarding, for example, human rights or environmental matters, or where the works council has issued an alert relating to a "serious and imminent danger" (or to "fundamental human rights"), but also whenever it relates to the employer's obligation to ensure employee safety (eg, moral or sexual harassment).

If the investigation is not mandatory, it is up to the employer to decide whether or not to carry out the investigation. Several key questions can help the employer determine whether or not it is appropriate to carry out an investigation, such as:

- What are the benefits of doing nothing? The company will have to draw up a list of the pros and cons of an investigation, bearing in mind that in some cases a poorly conducted investigation could make the situation worse;
- What is the priority (eg, obtaining or securing evidence, or correcting the irregularity)?
- What rules or codes of ethics must the company comply with?
- Should external legal counsel only advise the company or should they play a major role in the investigation process by becoming an investigator?

Last updated on 27/11/2023

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Workplace investigations are normally commenced either through a complaint filed by other employees in the workplace or by HR or other representatives of management.

Under the Safe Spaces Act, employers are required to commence an investigation and decide on complaints regarding gender-based sexual harassment, within ten days of the complaint being brought to their attention. For other workplace misconduct, management is given wide discretion regarding the means and method by which the workplace investigation may be carried out.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

An investigation can be initiated in several ways. It is usually as a result of whistleblowing or a report on work environment deficiencies, or through other channels (eg, HR, the police, media coverage).

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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).<sup>[1]</sup> 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.<sup>[2]</sup>

---

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

<sup>[2]</sup> Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

Last updated on 15/09/2022

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



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

An employee may be suspended or relocated during a workplace investigation by:

- suspending the employee as a precautionary measure (eg, pending a confirmation of dismissal);
- temporarily assigning the employee to another site; or
- exempting the employee from having to work while continuing to pay them their salary.

The employee can be suspended as a precautionary measure, pending confirmation of dismissal, but this implies that disciplinary proceedings have already begun and that the investigation is therefore at a relatively advanced stage and that there is sufficient evidence to suggest the need for disciplinary action. It should be made clear to the employee that the suspension is a provisional measure (in the absence of specifying this, the suspension could be interpreted as a disciplinary layoff constituting a sanction and, in some jurisdictions, as depriving the employer of the possibility of dismissing the employee for the same facts).

Temporary reassignment can also be considered. However, this contractual change must not apply for long and the measure taken must be temporary. The employer must act promptly – the measure is only valid for as long as the investigation continues. Failing this, and because of the absence of concurrent disciplinary proceedings, there is considerable risk that the temporary reassignment may be reclassified by a judge as an illegal modification of the employment contract or as a disciplinary sanction preventing the employee from subsequently being dismissed.



Finally, paid exemption from work is also possible and consists of temporarily suspending, by mutual agreement, the obligation of the employer to provide work for the employee and the employee's obligation to work, without affecting their remuneration. Such a measure must generally be taken with the consent of the employee, because it implies a suspension (and therefore a modification) of the employment contract. This measure may be useful in temporarily removing an employee with whom the employer maintains a good relationship. This may be an employee who is or feels they are a victim of harassment, especially when the employee is not on sick leave.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

A preventive suspension pending investigation is allowed under the law, provided that the continued employment of the subject of the investigation poses a serious and imminent threat to the life or property of the employer or other employees. Additionally, the period of preventive suspension pending investigation should not last longer than 30 days. However, should the employer wish to extend this period, the employer must pay the employee's wages and other benefits. The employee is under no obligation to reimburse the amount paid to them during the extension if the employer should, later on, decide to dismiss the employee after the completion of the process.

In practice, the notice of preventive suspension is issued simultaneously with the first notice or the notice to explain after the employer has conducted its fact-finding investigation and has reason to believe that the employee must be held accountable for his or her actions.

Since placing an employee under preventive suspension requires the existence of a serious and imminent threat to the life or property of the employer or other employees, some employers opt to place the employee or employees involved on agreed paid leave. This will allow the employer to conduct an unhampered workplace investigation while the investigated employee is still able to receive his or her full salary during this period. The exact period of paid leave may be agreed upon by the employer and the employee, but ideally it should not last for more than thirty days.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

In general, an employee in the private sector may be temporarily suspended for a short period with pay and other benefits during a workplace investigation. The room for suspension without pay is, by contrast, very limited. An applicable collective bargaining agreement may impose additional restrictions on the right to temporarily suspend an employee. The suspension should be limited in time and only be in force during the investigation, but can be repeated for (multiple) additional short periods if necessary to conclude the investigation. An assessment needs to be made on a case-by-case basis as suspension in some cases may be considered unlawful. If not executed with sufficient consideration of the employee's interests, it may be considered a constructive dismissal or a breach of the employer's work environment obligations. If the employee is unionised, trade unions sometimes request that the employer initiates consultations as part of a decision to suspend an employee.

In the public sector, the right to suspension is limited. There are also special regulations regarding the suspension of certain employees, for example, employees who are employed as permanent judges.





## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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

---

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

Last updated on 15/09/2022

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



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

In determining who is to conduct a workplace investigation, the main objective is to ensure that the team is independent or at least that it is perceived as being independent. The key people in the investigation team can be identified in a pre-established procedure. It is good practice to give decision-makers the possibility to set up, on a case-by-case basis, the team most appropriate to the situation.

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Under the Safe Spaces Act, an employer should create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment, which should:

- adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
- designate a woman as its head and no less than half of its members should be women;
- be composed of members who are impartial and not connected or related to the alleged perpetrator;
- investigate and decide on the complaints within 10 days or less upon receipt thereof;
- observe due process;
- protect the complainant from retaliation; and
- guarantee confidentiality to the greatest extent possible.

For other types of offences, it is the prerogative of management as to who will conduct the investigation and how it will be conducted, provided the proceedings remain impartial.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

If the workplace investigation falls under the Swedish Whistleblowing Act, the investigation has to be conducted by independent and autonomous persons or entities designated under the Swedish Whistleblowing Act as competent to investigate reports.

If the workplace investigation is not governed by the Swedish Whistleblowing Act, there are no minimum qualification requirements. When appointing an investigator, one should consider who would be most suitable in the given situation. For example, it may in some situations be more suitable to have an external investigator to ensure impartiality.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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<sup>[1]</sup>, if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

---

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

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

An internal investigation is not a police enquiry or a judicial instruction; there is no legal provision enabling an employee to stop the investigation. At the same time, there is no legal provision enabling the employer to force an employee to be interviewed. Interviewing an employee within the context of an internal investigation is also not a disciplinary matter. Therefore, the employee has no right to be assisted by another employee or an employee representative. The employee could, however, lawfully request the presence of their lawyer, especially if the company's lawyer is part of the investigation team.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

There is generally no legal remedy for an employee to stop a workplace investigation as it is the prerogative of management to conduct it. Nevertheless, if the employee alleges violation of any specific law or contractual provision in the conduct of the investigation, the employee may be able to seek judicial relief for violation of the law or contract, and ask for interim relief.

Last updated on 26/01/2023



### Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

No. It should, however, be noted that the employee under investigation may claim a right to rectification under article 16 of the GDPR and its right to object to processing under article 21 of the GDPR. This may

give the employee under investigation an undesirable opportunity to withhold evidence and obstruct or impede the investigation. The risk of these rights being exercised is, however, considered to be low.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

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

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023

### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Co-workers can spontaneously act as witnesses and provide statements to superiors before, during or after the interviews. Co-workers can also be interviewed as witnesses at the investigator's request, although they are not under any obligation to answer the questions and they cannot be compelled to do so. The investigators have an absolute obligation of discretion during the investigation and cannot reveal any details of the information gathered.

Certain employees may benefit from whistleblower status, which implies that they may be exempt from potential criminal and civil liability relating to their report or testimony and they are protected from any retaliatory measures from the employer. "Facilitators" who helped the whistleblower and the individuals

connected with the whistleblower and risk retaliatory measures by testifying as a witness may also benefit from this status, as of 1 September 2022.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Neither the employer nor the employee subject of the investigation can compel co-workers to act as a witness. There is no specific law for whistleblowers or employees who act as witnesses during an investigation. Nevertheless, the employer can have its own whistleblower policy.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

In general, yes, employees in Sweden have a far-reaching duty of loyalty toward their employers. This includes, among other things, a duty to truthfully answer an employer's questions and to inform the employer of events that may be of interest to the employer. An employee's obligation to assist is, however, more limited when assistance would entail self-incrimination.

A person acting as a witness under an investigation governed by the Swedish Whistleblowing Act will be protected by confidentiality. Personal data and details that could reveal the identity of a witness may not be disclosed without authorisation.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> 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).<sup>[2]</sup>

---

[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.

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

GDPR principles fully apply to data gathering, as well as case law protecting the right to respect one's private life and the secret of correspondence.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The procedure for gathering physical evidence is governed primarily by company policy. Nevertheless, the Data Privacy Act of the Philippines protects all data subjects from unlawful processing of their personal information without consent.

Last updated on 26/01/2023



### Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

To the extent the gathering of physical evidence includes the processing of personal data, please see question 1.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup>

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.<sup>[2]</sup> 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.

---

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

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

Last updated on 15/09/2022

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



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

In internal investigations, the fundamental rights and freedoms of employees are at stake, including the right to privacy, respect for the privacy of home life and correspondence, freedom of expression, and the obligation of loyalty in searching for evidence.

In principle, work emails and files can be reviewed, even without the employee's consent, prior knowledge or warning. This includes: work email accounts; files stored on a work computer or a USB key connected to a work computer; and SMS messages and files stored on a work mobile phone and documents stored in the workplace unless they are labelled as “personal”. On the other hand, it is not permissible for an employer (or an investigator) to review “personal” emails and files, such as documents or emails identified as “personal” by the employee, or personal email accounts (Gmail, Yahoo, etc), even if accessed from a work computer.

There are certain exceptions to the above principle. An employer is allowed to check “personal” emails or data in any of the following cases:

- if the employee is present during the review;
- if the employee is absent, but was duly notified and invited to be present;
- if there is a particularly serious “specific risk or event”;
- if the review is authorised by a judge (this means having to prove a legitimate reason justifying not informing the employee).

When documents or emails are not marked as “personal” but contain information of a personal nature, the employer may open and review the data but may not use such documents or emails to justify applying disciplinary measures to the employee or use such documents or emails as evidence in court if they indeed relate to the employee’s private life.

Special attention must be given to employee representatives who must be entirely free to carry out their duties.

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Subject to the employees’ reasonable expectation of privacy, gathering physical evidence within the premises of the workplace and through company-issued property has been upheld to be legally permissible in pursuit of the employer’s right to conduct work-related investigations. The search, however, should be limited to the alleged acts complained of and must not be used as a fishing expedition to find incriminating information about the erring employee.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*

at Mannheimer Swartling

An employer can search an employee's personal possessions (eg, handbag, pockets and locker) if the employer has a legitimate interest in a search. This could, for example, include a reasonable suspicion of theft of employer property. Furthermore, an employer may search, but not continually monitor, an employee's computer and email provided that it is in accordance with GDPR requirements. For the processing to be lawful under the GDPR, the employer has to establish a purpose and a legal basis for the processing of personal data. Furthermore, data subjects must have received information on the legal basis for and purpose of the processing of personal data beforehand. If the data subjects have not received such information, the employer's right to process their data is limited. However, if the employer has reasonable grounds to believe that trade secrets or similar has been copied and stolen, no such requirements would typically apply.

Investigations into an employee's possessions may, under certain circumstances, also be carried out by the Swedish authorities.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> 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.<sup>[2]</sup>

---

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

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

Last updated on 15/09/2022

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

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023

## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Evidence obtained in the context of an investigation must specify who provided it and the date it was provided. No retaliatory measures may be taken against the whistleblower for the act of whistleblowing.

In certain cases, the whistleblower report must be forwarded to the judicial authorities (eg, when there is an obligation to assist persons in imminent danger, for serious offences or a disclosure that a vulnerable person is in danger (ie, minors under 15 or a person who is unable to protect themselves)).

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since there is no specific law that governs whistleblowing, matters that involve whistleblowing will be governed by company policy.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

If the Swedish Whistleblowing Act governs the investigation, additional considerations apply relating to who may investigate a reported irregularity (see question 4) and the duty of confidentiality and restrictions on access to and disclosure of personal data in investigations (see questions 6, 10 and 11), as well as the rights and protections of whistleblowers.

As regards the rights and protections of whistleblowers, the following can be noted. A person reporting in a reporting channel governed by the Swedish Whistleblowing Act is protected against retaliation and restrictive measures. Thus, companies are prohibited from preventing or trying to prevent a person from reporting, and retaliating against a person who reports. Furthermore, a reporting person will not be held liable for breach of confidentiality for collecting the reported information if the person had reasonable grounds to believe that it was necessary to submit the report to expose irregularities. Under the Swedish Whistleblowing Act, any person reporting irregularities in a reporting channel established under the Swedish Whistleblowing Act may also report irregularities to designated Swedish authorities.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

## 10. What confidentiality obligations apply during an investigation?



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Interviewers, investigators, interviewees or any others involved in the investigation are often bound by a reinforced confidentiality obligation, particularly when the internal investigation is triggered by a whistleblower alert. In addition, every person that comes to know of the investigation, facts or people involved is bound by an obligation of discretion. Furthermore, investigators should specifically be trained for interviews and be reminded of their obligations relating to the investigation.

The investigators will need to determine the order of the tasks to be carried out in the investigation, as this will have a significant impact on confidentiality management. Should they start with the hearings or a review of documents? The answer may depend on the subject matter of the investigation. It is advisable to first review the documentation before organising interviews, particularly to avoid the destruction of certain documents by employees acting in bad faith or by those wishing to erase the traces of alleged wrongdoing. Sometimes, however, it is possible to start with the interviews, especially in the case of harassment, as there may be no documents to review. If the decision is taken to conduct the documentation review after the interviews, it could be useful to ask the employees involved to sign a document stating that they must preserve and retain documents, meaning that if they delete or destroy documents, they would be acting against the company and in breach of the law.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since the right to investigate ultimately belongs to the employer, it may impose strict confidentiality obligations upon the individuals involved, not only to ensure unhampered investigation proceedings but also and more importantly for the protection of the company and employees involved.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

If the Swedish Whistleblowing Act applies, the persons or entities handling the investigation have a duty of confidentiality and may not, without permission, disclose any information that could reveal the identity of the reporting person, any person subject to the report or any other person mentioned in the report or during the investigation of the report. Access to personal data is limited to designated competent entities or persons. Investigative material including personal data may not be shared with other persons or entities during the investigation. Once the investigation has reached actionable conclusions, investigative material may be shared with other persons or entities, such as HR or the police, provided that such sharing is necessary to take action on the outcome of the investigation. Investigative material may also be shared if it is necessary for the use of reports as evidence in legal proceedings or under the law or other regulations.

If the Swedish Whistleblowing Act does not apply, there are no particular confidentiality obligations for employers. Yet, an employer needs to consider what information is suitable to share during an investigation, how this is done and to whom it is shared. An employer must also respect employees' privacy in line with what is generally considered good practice in the labour market. This means that an employer should be careful as to what sensitive and personal information is shared during an investigation. Furthermore, the spreading of damaging information (even if true) about an employee to a wider group may be a criminal offence under the Swedish Criminal Code.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

According to the French data protection authority, the employee under investigation must be informed of the name of the person in charge of the investigation, the alleged facts that have led to the whistleblowing alert and their rights to access and rectify data collected about them. This information must be given as soon as the data collection starts, before the interviews, as per GDPR principles.

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

During the fact-finding stage of the investigation, the employees under investigation are not generally entitled to information concerning the conduct of the investigation. It is the prerogative of management to involve the employee under investigation during the fact-finding stage. When, however, the employer determines that an administrative disciplinary process must proceed, the employee's right to due process attaches. As such, due process includes the right to be informed of the grounds relied upon by the employer and the opportunity to be heard. The first notice or notice to explain should specifically inform the employee of the charge against him or her.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

According to article 14 of the GDPR, no information must be provided. The exemption in article 14.5(b) applies to the extent the obligation to provide such information is likely to render impossible or seriously impair the objectives of the processing of the personal data of the employee under investigation (ie, to diligently investigate the suspected irregularity).

If the Swedish Whistleblowing Act applies, information about where the personal data processed originates from may not be provided under article 14 of the GDPR, as the personal data must remain confidential subject to obligations under the Swedish Whistleblowing Act.

In addition to the above, an investigation should, to the extent possible and suitable, be characterised by the principles in ECHR (particularly articles 6 and 8). The employee under investigation should, among other things, be presented with sufficient information to safeguard his or her interests and be allowed to respond to the allegations. The investigation must also be compliant with the work environment responsibilities that the employer has concerning the involved parties (see questions 17 and 20).

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> The employer, on the other hand, is not obliged to provide the employee with existing evidence, documents, etc, before the start of the questioning.<sup>[2]</sup>

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.<sup>[3]</sup>

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)).<sup>[4]</sup> 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

## 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



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The identity of the complainant must be kept confidential and cannot be disclosed. There are two exceptions: if the complainant consents to the disclosure; or if the employer is asked for this information by the judicial authorities.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The identity of the complainant, witnesses and sources of information may be kept confidential under the employer's policies.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

If the Swedish Whistleblowing Act applies, their identity must be kept confidential under the duty of confidentiality. If the Swedish Whistleblowing Act does not apply, their identity can to a large extent be kept confidential.

It can also be noted that a workplace investigation carried out in the public sector will often (eventually) become an official document, which means that the document can be requested by the public. There are, however, provisions on secrecy that may restrict the right to gain access to official documents. These provisions are found in the Public Access to Information and Secrecy Act (2009:400).

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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' 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

## 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



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Most of the time, the legal protection afforded by the legally prescribed confidentiality obligation that applies to whistleblowing is sufficient. This is all the more so given every person involved is bound by an obligation of discretion. However, there is no legal obstacle to the creation of an NDA between the employer and the people involved.

NDAs setting out a strict and reinforced obligation of confidentiality and discretion during the investigation should be signed by any external parties involved (eg, translation agency, IT expert) or when the internal investigation is outside the scope of whistleblowing regulations.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The practice of stipulating matters to ensure adherence to confidentiality is not uncommon. As such, NDAs are executed as a means of added protection for both the company and the employees involved.

Last updated on 26/01/2023



### Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

NDA's can be used for some investigations carried out in the private sector. However, under the Swedish Whistleblowing Act, a contract is void to the extent it retracts or restricts a person's rights under the Swedish Whistleblowing Act. An NDA that restricts the right to report irregularities to authorities or the media would, therefore, typically be void.

Last updated on 15/09/2022



## 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.

Last updated on 15/09/2022

# 14. When does privilege attach to investigation materials?



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Privilege does not generally apply to internal investigation materials as the investigation does not constitute a relationship between a lawyer and their client, and even less so a judicial investigation. However, if a lawyer is appointed as an investigator, privilege may apply to materials exchanged between the lawyer and that client.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The employer's internal policy can indicate that investigation materials must be kept confidential.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Attorney-client privilege will apply to all communication and investigative material between a client and its law firm. Attorney-client privilege is, however, not without limitations. Regarding investigations into alleged employee misconduct, a law firm may have to report suspected money laundering to the authorities and under certain circumstances disclose information to the financial police.

Written material covered by attorney-client privilege generally may not be seized.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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).<sup>[1]</sup>

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

---

<sup>[1]</sup> Claudia M. Fritsche, *Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit*

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The employee under investigation has the right to be assisted by a lawyer during the interviews and, if the employee chooses to be so, the lawyer must also always be present. The employee may not, however, be accompanied by anyone other than a legal representative (ie, another employee cannot attend the interview).

Last updated on 27/11/2023



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since the fact-finding phase of the investigation is considered to be a preliminary step before the commencement of the administrative disciplinary process, an employee's right to representation does not attach.

However, when the administrative disciplinary process commences, the employee has the right to have legal representation during the investigation. While no law requires the employee to have counsel present during the investigation, the employee has the right, if he or she chooses, to be advised by counsel or have legal representation.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

The employee has no right to bring legal representation. However, the outcome of an investigation may lead to employment-related consequences, so it may be appropriate (depending on the situation) to offer the employee the opportunity to bring a union representative (if the employee is unionised) or a legal representative.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup>

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.<sup>[2]</sup> 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.<sup>[3]</sup>

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

---

<sup>[1]</sup> Claudia Götz Staehelin, *Unternehmensinterne Untersuchungen*, 2019, p. 37.

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

<sup>[3]</sup> 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

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

## Brazil



Author: *Patricia Barboza, Maury Lobo*  
at CGM

No, there is no such right.

Last updated on 14/09/2023



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Neither the works council nor the trade unions have any right to be informed or involved in the investigation. It is the employer who is responsible for carrying out the investigation. However, when the investigation is triggered due to a works council issuing an alert relating in particular to a “serious and imminent danger”, one member of the works council must be involved in the investigation process.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Except if provided expressly under a collective bargaining agreement, the union does not have the right to be involved in the investigation. Given that the investigation is between the employee and the company, it follows that the union does not have any right to participate in the investigation proceedings.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

No, but if the employee under investigation is unionised it is appropriate to inform the union about the investigation. If the employer chooses to take action against the employee during, or after, the investigation, the trade union generally needs to be consulted before any final decisions are made.

If the Swedish Whistleblowing Act applies, the employer is not authorised to inform a works council or trade union about the investigation, as it may be in violation of the duty of confidentiality (see question 10).

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Apart from being informed of any facts and data concerning them being collected during the investigation, employees involved in the investigation do not have any specific rights. Some companies choose to use external firms specializing in psychosocial risk management, not only to conduct internal investigations, but also to provide additional psychological support for their employees, as part of the employer's safety obligation.

Last updated on 27/11/2023



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

The employer is responsible for the work environment and must ensure that employees are not at risk of mental (or physical) illness due to an investigation. If an employee, in connection with an investigation, requires support or if risk of ill health is otherwise anticipated, the employer is obliged to assess the situation and provide said employee with sufficient support (eg, counselling or work adjustments).

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> 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.<sup>[2]</sup>

---

[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

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

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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

## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Unrelated matters revealed during the investigation do not necessarily mean that another investigation will be opened. Nevertheless, if reprehensible acts unrelated to the current investigation are revealed, the employer will need to take action and sanction the perpetrator (after checking the facts). Sometimes the only way to check the facts is to carry out another investigation on a separate matter. However, the investigation team may also consider if there is enough connection between the matters to widen the scope of the current internal investigation.

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

If unrelated matters are revealed because of a workplace investigation, the employer may look into the new matter and then determine whether there are sufficient grounds to proceed with an administrative disciplinary process for the new matter.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

According to the GDPR, personal data can only be processed for specified, explicit and legitimate purposes and may not be further processed in a manner that is incompatible with those purposes. This imposes restrictions on the use of material from previous investigations in new investigations when the material was collected for other purposes. It is, therefore, necessary to ensure whether the new matter relates to the investigation and falls within the purpose of the investigation. If the new matter is unrelated to the investigation and does not fall within the purpose of the investigation, the identified information may not be processed under the GDPR.

Except for what is stated above, no regulation limits how the employer can use information regarding unrelated matters. Unrelated matters may be a myriad of different things, and could in some instances just be discarded, while in other situations the information may invoke a responsibility to act for the employer (eg, if the unrelated matters concern work environment issues or other severe misconduct by an employee who is not the target of the investigation). Furthermore, the employer may always use any revealed information (unrelated or not) as evidence in a court of law, since the principle of free examination of evidence applies.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The grievance may also have to be investigated (eg, moral/sexual harassment reported by an employee under investigation).

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

If an employee under investigation raises a grievance during an ongoing investigation, the employer must ensure that the employee under investigation is treated reasonably and fairly. Thus, the employer must also give attention to the complaint made by the employee and determine if there are reasonable grounds for the concern of the employee. If the employer determines the validity of the grievance raised, the employer may conduct a separate investigation for it.

Last updated on 26/01/2023



### Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

There are no formal rules or processes for handling grievances in Sweden. Depending on the nature of the grievance, such a complaint may also have to be investigated (unless the grievance is deemed to be trivial). This could, for example, be the case if the grievance concerns new or other work environment issues that the employer is obliged to investigate.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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

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



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The investigation will likely be able to continue with the other employees and, as soon as the employee under investigation returns from sick leave, they will be able to be interviewed.

However, as disciplinary sanctions are time-barred after two months from the moment the misconduct was committed or from when the employer becomes aware of it, if the sick leave lasts for the whole of that period, the investigation must be conducted anyway. In this instance, the investigator can ask the employee to attend the interview despite being on sick leave or arrange for the interview to take place using other means (eg, conference call). As a last resort, a questionnaire can be sent to the employee, but the pros and cons must be assessed as this is a way of information gathering that carries a certain amount of risk, could be less reliable and is of less probative value.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since neither consent nor the presence of the employee is material to the conduct of the investigation, his or her absence would not, in practice, imperil the conduct of the investigation.

As previously discussed, because the employer exercises a wide latitude of discretion in conducting workplace investigations, the employer may choose to proceed with the investigation despite the absence of the employee being investigated. Since the proceeding is only in the investigation phase, the statutory right of the employee to be heard is not violated, even if the investigation takes place without his or her participation.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

The employer is responsible for the employee's work environment during the investigation. The employer must assess the situation and the impact on the employee's health and may, depending on the situation, have to postpone certain investigative measures, such as interviewing the employee in question. The investigation may even have to be completed without the employee participating.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

The time spent on the internal investigation by the employee should be counted as working time<sup>[1]</sup>. 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).



Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

A criminal investigation always takes precedence over other investigations. However, this does not mean that the internal investigation has to stop. It can and should continue, and the report drawn up upon completion of the investigation could be used by the authorities in the criminal investigation. In some cases, especially when privilege does not apply, police or regulatory authorities may request that the employer share such evidence. However, even when privilege does apply, there is no certainty that the evidence would not have to be communicated to certain authorities.

Some administrative authorities often challenge the application of legal privilege or try to reduce its scope. For example, the French financial markets authority (AMF) regularly puts forward its view of legal privilege, according to which an email where a lawyer is only copied (and is not one of the main recipients) in from one of their clients is not confidential and can therefore be disclosed in proceedings. However, if the AMF investigators impose disclosure of privileged documents, this should result in the annulment of the investigation procedure. By way of exception, legal privilege cannot be invoked against certain other authorities, such as the URSSAF (authority in charge of collecting social security contributions) or the DGCCRF (directorate-general for competition, consumer protection and anti-fraud investigations). Where legal privilege is enforceable, the judge must first determine whether the documents constitute correspondence relating to defence rights and, second, must cancel the seizure of documents that they find to be covered by legal privilege due to the principle of professional secrecy of relations between a lawyer and their client and the rights of defence.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

It is within the employer's discretion to pursue the investigation even if a parallel criminal or regulatory investigation is taking place. As such, different investigations may proceed independently of each other. However, if the workplace investigation would interfere with or hinder the criminal or regulatory investigation, the workplace investigation should defer to the investigation being conducted by the people in authority. Since the nature of a workplace investigation is highly confidential, the police or regulations cannot compel any evidence from the employer without a court order.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Handling a parallel investigation will have to be assessed on a case-by-case basis depending on the applicable rules. For instance, an investigation under the Swedish Discrimination Act is subject to certain timing requirements with which the employer must comply. In other cases, it may be more appropriate to hold off the workplace investigation while awaiting the outcome of the parallel investigation.

The police or regulator can, depending on the matter at hand, request an employer to share evidence. The police or the regulator may also, under certain circumstances, retain evidence in a search.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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

## 22. What must the employee under investigation be told about the outcome of an investigation?



## Brazil

Author: *Patricia Barboza, Maury Lobo*  
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

## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The employee under investigation, like the other employees interviewed and the whistleblower, must be informed that the investigation has been completed. However, there is no obligation to provide them with the report and, for reasons of confidentiality, it is very often best not to do so.

Last updated on 15/09/2022

## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The employee under investigation should be informed of the results of the investigation and the basis of the conclusion. It should be included in the first notice or the notice to explain.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

This depends on the outcome of the investigation and the applicable rules.

If the outcome of the investigation leads to termination, the employer will have to disclose some information regarding the reason for termination. If the employee questions the termination, the employer may have to disclose more information in a subsequent dispute. If the outcome of the investigation leads to less invasive measures, such as a warning, there are less extensive requirements to provide information.

If the Swedish Whistleblowing Act applies, the duty of confidentiality and the restrictions on access to and disclosure of personal data must be considered (see question 10). If the investigation is based on the rules in the Swedish Discrimination Act, there are also feedback requirements concerning the involved parties.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> 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.

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

There is no obligation to share the investigation report. The findings, or a summary of them without revealing any confidential information, may be disclosed, but it is the employer's responsibility to keep the identity of every person interviewed confidential.

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The employer is not compelled to share its investigation report with the employee. However, it would be ideal for the company to keep in its records a comprehensive report that details the findings of the investigation. This would be useful during the administrative disciplinary process when the employee requests to be informed of the substantive grounds for his or her eventual termination.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

There is no obligation to share the investigation report, neither in full nor key findings, with the involved parties. An assessment needs to be made in each case of what is appropriate to share and with whom.

When sharing an investigation report, certain data protection considerations must be made. A purpose and legal basis for the sharing must be established and, in principle, documented.

If the Swedish Whistleblowing Act applies, the duty of confidentiality and the restrictions on access to and disclosure of personal data must be considered (see question 10).

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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).<sup>[1]</sup> 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.<sup>[2]</sup>

---

<sup>[1]</sup> 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).

Last updated on 15/09/2022

## 24. What next steps are available to the employer?

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The employer can decide to sanction the person who was under investigation or to close the case. The employer may also need to protect any victims, witnesses and whistleblowers. If, during the investigation, it is discovered that a supplier or other commercial partner is implicated, the relevant contract may be terminated. The employer can take legal action, file a complaint (if the company is a direct victim of a criminal offence) or report the offence to the public prosecutor's office. The employer must archive the file or ensure its lawful preservation after a certain period.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

After the investigation has been concluded, the next steps of the employer will depend on the result of the investigation. If there are reasonable grounds to hold the employee for an administrative hearing, the employer may issue a Notice To Explain containing the charges against him or her and allowing the employee to explain his or her side. Otherwise, the employer may terminate the investigation immediately.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

An investigation may result in employment law measures (eg, support, training, relocation, warning, termination or dismissal). An investigation may also be inconclusive and not result in any action.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup>

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.

Last updated on 15/09/2022

## **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**

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### **France**

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The findings must be submitted to the employer or management, but there is no obligation to disclose them to anybody else. The only exception is if a judicial investigation has been opened. In this case, the entire report must be provided to the authorities if the judge requests this. Normally the investigators only take written notes and there is no audio or video recording, unless the employee consents. Whether or not to make a voluntary disclosure of wrongdoing is a tactical decision for companies. Disclosure may mitigate fines and penalties or even help the employer avoid liability entirely. However, the downsides of disclosure include increased costs, the possibility of a follow-on government investigation and exposure to penalties. Thus, most companies assess their options on a case-by-case basis to determine what steps would be in the best interests of the company.

Last updated on 15/09/2022



### **Philippines**

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The result of the workplace investigation must be kept private by the employer. These are confidential

matters that should not be disclosed to people or entities who did not take part in the investigation. However, if the investigation findings show that a possibly unlawful or criminal activity has taken place, or is about to take place, the employer should share such findings with the authorities.

Last updated on 26/01/2023

## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Findings may have to be handed over to the police or the regulator – there is no separate legal protection for material in employer investigations related to authorities. If the investigation has been carried out by a law firm, see question 14 on attorney-client privilege.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.<sup>[2]</sup>

---

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

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

Last updated on 15/09/2022

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

### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM



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.

Last updated on 14/09/2023



## France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

If the outcome of the internal investigation has led to the sanctioning of an employee, this sanction may no longer be invoked to support a new sanction after three years. Moreover, under the GDPR principles, the duration of retention must be proportional to the use of the data. Therefore, the data must be retained only for a period that is "strictly necessary and proportionate". If the employer wants to keep information about the investigation in the longer term, it is possible to archive the employee's record even though the employer will no longer be able to use it against the employee after three years.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The outcome of the investigation should only remain on the employee's record for as long as is necessary, but shall not be less than three years as this is the record-keeping requirement under the Philippine Labor Code. If circumstances deem that such a report ceases to have any purpose whatsoever, it should be struck out of the employee's record.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Under the GDPR personal data may not, according to the general principle on storage limitation, be retained for longer than is necessary for the purposes for which the personal data are processed. The GDPR does not stipulate a generally applicable storage limitation period. Such a regulation is, on the other hand, included in the Swedish Whistleblowing Act. If the Swedish Whistleblowing Act applies, the outcome of the investigation and all personal data should be retained for as long as necessary, but not for longer than two years after the investigation has been closed.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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).<sup>[1]</sup>

---

[1] Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

Last updated on 15/09/2022

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



### Brazil

Author: *Patricia Barboza, Maury Lobo*  
at CGM

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.

Last updated on 14/09/2023



### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

Within the context of an investigation following a whistleblower alert, any violation of the confidentiality obligation is punishable by two years' imprisonment and a €30,000 fine.

If the employer fails to comply with its obligation to protect its employees' safety, the employer will be liable for damages resulting from any failings during the investigation (eg, if sexual harassment is reported and no action is taken by the employer)

Last updated on 15/09/2022



### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

An employer may be liable for illegal termination if a dismissal is made based on wrong information collected during the investigation. Thus, the data and information gathered during the investigation stage must be correct and accurate. Further, investigations should be conducted in a manner that is fair and reasonable to the employee under investigation. Otherwise, the employee may treat the investigation as harassment on the part of the employer, which may subject the employer to a potential lawsuit.

Last updated on 26/01/2023



## Sweden

Author: *Henric Diefke, Tobias Normann, Alexandra Baron*  
at Mannheimer Swartling

Errors resulting in terminations can be unlawful and, if they lead to employees terminating their employment as a result of the employer's missteps, could be seen as constructive dismissal. Constructive dismissal is generally equivalent to an unlawful dismissal. Unlawful terminations generally result in an obligation to pay financial and general damages to the affected employees.

Failure to fulfil the obligations under the Swedish Discrimination Act may lead to an obligation to pay financial and general damages.

If an employer does not fulfil its obligations according to work environment legislation, there is a risk that the Swedish Work Environment Authority will issue injunctions or prohibitions against the employer. If an employer omits to meet its work environment related obligations, and that in turn results in a work related accident, e.g. self-harm in connection with an internal investigation, it may also, in a worst case scenario, lead to criminal liability.

The Swedish Work Environment Authority is also responsible for monitoring compliance with the provisions of the Swedish Whistleblowing Act. The Swedish Work Environment Authority may, if necessary to ensure compliance with the Swedish Whistleblowing Act, order an operator to comply with the obligations and requirements of the Swedish Whistleblowing Act. Employers violating the Swedish Whistleblowing Act may also be liable to pay damages to the affected employees.

If personal data is processed in a way that violates the GDPR, the authorised supervisory authority may issue warnings or reprimands to the data controller, order the controller to comply with the GDPR, impose a ban on processing, or impose an administrative fine on the controller. Companies violating the GDPR may also be liable to pay damages to data subjects.

Last updated on 15/09/2022



## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

Last updated on 15/09/2022

## Contributors



### Brazil

Patricia Barboza  
Maury Lobo  
*CGM*



### France

Pascale Lagesse  
Valentino Armillei  
*Bredin Prat*



## Philippines

Rashel Ann C. Pomoy  
*Villaraza & Angangco*



## Sweden

Henric Diefke  
Tobias Normann  
Alexandra Baron  
*Mannheimer Swartling*



## Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)