

Workplace Investigations

Contributing Editors

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

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



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.^[1]

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

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

investigation.

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

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

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.

Last updated on 14/09/2023



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.[1] The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.[2]

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

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

Last updated on 15/09/2022

Contributors



Brazil

Patricia Barboza

Maury Lobo

CGM



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer

www.internationalemploymentlawyer.com