

Workplace Investigations

Contributing Editors

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

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.

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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.

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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.

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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.

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Contributors

Brazil

Patricia Barboza
Maury Lobo
CGM



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com