

Workplace Investigations

Contributing Editors

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

Italy

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In principle, no. However, if the employee believes that, during the workplace investigation, there is a breach of his or her rights, he or she could act to protect them before the court (eg, through precautionary urgency proceedings under Article 700 of the Italian Civil Procedure Code).

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Switzerland

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

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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?

Italy

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Generally speaking, even if the investigation leads to evidence of a criminal offence, the employer does not have to inform public authorities (citizens and private entities do not have an obligation to report crimes they discover). The existence of any obligations to report to regulatory authorities (eg, banking and insurance regulatory authorities) should be investigated on a case-by-case basis.

The internal procedures of the company – as adopted by the company in the framework of legislation on the administrative or quasi-criminal vicarious liability of legal entities – may require the findings to be disclosed to certain internal bodies or committees.

As said above, the police or public prosecutors (and possibly other public authorities) may have, within their investigatory powers, and in certain circumstances, the power to access internal investigation outcomes (but a case-by-case analysis would be necessary).

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Switzerland

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

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

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

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

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


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