

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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18. What if unrelated matters are revealed as a result of the investigation?

Spain

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The issue with revealing unrelated matters to the investigation is that it may jeopardise the entire enquiry. If the unrelated matters are private or the disclosure is construed as a breach of employees' fundamental rights, then the materials gathered during the investigation could be considered to be unlawfully obtained and would not be admitted as evidence in court.

Moreover, the employee could seek damages and a fine could be imposed on the company for breaching its employee's rights.

Finally, if unrelated matters are revealed, it could be a clear sign that the company has failed to conduct a diligent investigation and use the least intrusive means available to it (see question 1). One of the reasons to minimise the number of employees conducting the investigation (see question 4) is to reduce damages if matters unrelated to the investigation are revealed.

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Switzerland

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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.

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United States

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Where new issues or claims arise during an ongoing workplace investigation, the investigator should discuss with in-house counsel whether the new issues or claims should be separately investigated and if so, by whom, or if instead those new issues or claims are sufficiently related to the current review that they can be investigated in parallel and incorporated into the ongoing fact-gathering process.

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