Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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22. What must the employee under investigation be told about the outcome of an investigation?

Spain

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Employees under investigation are not entitled to be informed about the investigation or its outcome. As set out above (see question 11), an employee would have a right to be informed about the outcome of an investigation if the employer takes any disciplinary actions as a consequence of the enquiry.

The reason to disclose the details of the investigation is to allow the employee to adequately defend him or herself from the alleged breaches.

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Switzerland

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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.[1] 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]

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[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.

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United States

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In general, it is often helpful to provide the complainant and subject of the complaint with a short written communication or verbal communication at the end of an investigation to advise that the investigation has concluded. Where the allegations are unsubstantiated, the communication should convey that no evidence of misconduct or unlawful conduct was found. Where the allegations are substantiated, the results and proposed communication should be reviewed with the legal function, together with potential disciplinary and remedial action, before it is communicated to the complainant and the subject of the complaint.

Where the misconduct alleged poses a high risk to the company from a reputational, operational or legal perspective, and especially where an investigation is conducted by outside counsel, outside counsel should determine, in consultation with the relevant individuals at the company, for example the general counsel, how and with whom to share investigation results and if and how to communicate the outcome to the complainant and the subject of the complaint. This is the case regardless of whether the allegations are found to be substantiated or unsubstantiated.

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