

Workplace Investigations

Contributing Editors

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

13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

Netherlands

Author: *Barbara Kloppert, Mirjam Kerkhof, Roel de Jong*
at De Brauw Blackstone Westbroek

Yes, NDAs can be used for this purpose. However, employers in the Netherlands often rely on general confidentiality obligations that the relevant employee already has to adhere to vis-à-vis their employer, for example in the employment agreement or collective labour agreement, if applicable. It is good practice to reiterate the confidential nature of any interview and its contents, and the existence of the investigation as such, to avoid any alleged confusion as to the confidential nature of investigative procedures later on.

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Spain

Author: *Sergio Ponce, Daniel Cerrutti*
at Uría Menéndez

Yes. NDAs are the preferred instrument to ensure that employees conducting the investigation, as well as those who participate as witnesses or collaborators, will keep the enquiry and its existence confidential.

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Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

Contributors



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Barbara Kloppert

Mirjam Kerkhof

Roel de Jong

De Brauw Blackstone Westbroek



Spain

Sergio Ponce

Daniel Cerrutti

Uría Menéndez



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer