

# Workplace Investigations

## Contributing Editors

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

## 23. Should the investigation report be shared in full, or just the findings?

### Netherlands

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at De Brauw Blackstone Westbroek

Employers are typically not required to share the investigation report with implicated persons or other employees involved in an investigation. Depending on the nature and subject of the investigation, the principle of due care may require an employer to share (draft) investigative findings before concluding on such findings.

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### Spain

Author: *Sergio Ponce, Daniel Cerrutti*  
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Since workplace investigations are not regulated in Spain, there are no clear rules as to the amount of information on the investigation that would need to be shared with an employee if the company was compelled to disclose the enquiry (see questions 11 and 22). A good rule of thumb is that an employee should have access to all the information that is relevant to be in a position to oppose the alleged breaches.

Moreover, if the disciplinary measures taken were challenged before a Labour Court – employees in Spain tend to challenge these types of measures – the plaintiff could request the Labour Court to order the company to produce all of the investigation details, including the findings and the full investigation report.

Finally, companies will normally have an interest in producing a report that clearly states the moment in which the fact-finding exercise was concluded and the company had a full picture of the facts. This is because the statute of limitations to sanction employment breaches, which ranges from 10 to 60 days depending on the seriousness of the misconduct, starts to count when the company has a comprehensive view of the events (which would coincide with the date the investigation report was issued).

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## Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).<sup>[1]</sup> Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.<sup>[2]</sup>

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<sup>[1]</sup> Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

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