

# Workplace Investigations

## Contributing Editors

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## 18. What if unrelated matters are revealed as a result of the investigation?

### Ireland

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If an investigator finds other issues that are outside the scope of the terms of reference, these should not be ignored but equally should not be included as part of the investigation, as they are beyond the remit of the investigation that was established at the beginning. An investigator should identify the other matters that may require further action and report these to the employer separately so as not to conflate issues.

Last updated on 11/10/2023

### 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.

Last updated on 15/09/2022

### 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.

Last updated on 15/09/2022

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