

Workplace Investigations

Contributing Editors

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

10. What confidentiality obligations apply during an investigation?

Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since the right to investigate ultimately belongs to the employer, it may impose strict confidentiality obligations upon the individuals involved, not only to ensure unhampered investigation proceedings but also and more importantly for the protection of the company and employees involved.

Last updated on 26/01/2023

Spain

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

Companies and employees are not bound by any statutory confidentiality obligation in the context of workplace investigations. However, if a company's enquiry has the potential to examine employees' private affairs, then the company must ensure the confidentiality of the investigation.

This confidentiality obligation would not arise from the investigation itself, but from the company's obligation to safeguard its employees' rights.

Last updated on 15/09/2022

Switzerland

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

Besides the employee's duty of performance (article 319, Swiss Code of Obligations), the employment relationship is defined by the employer's duty of care (article 328, Swiss Code of Obligations) and the employee's duty of loyalty (article 321a, Swiss Code of Obligations). Ancillary duties can be derived from

the two duties, which are of importance for the confidentiality of an internal investigation.^[1]

In principle, the employer must respect and protect the personality (including confidentiality and privacy) and integrity of the employee (article 328 paragraph 1, Swiss Code of Obligations) and take appropriate measures to protect the employee. Because of the danger of pre-judgment or damage to reputation as well as other adverse consequences, the employer must conduct an internal investigation discreetly and objectively. The limits of the duty of care are found in the legitimate self-interest of the employer.^[2]

In return for the employer's duty of care, employees must comply with their duty of loyalty and safeguard the employer's legitimate interests. In connection with an internal investigation, employees must therefore keep the conduct of an investigation confidential. Additionally, employees must keep confidential and not disclose to any third party any facts that they have acquired in the course of the employment relationship, and which are neither obvious nor publicly accessible.^[3]

^[1] Wolfgang Portmann/Roger Rudolph, BSK OR, Art. 328 N 1 et seq.

^[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 202.

^[3] David Rosenthal et al., Praxishandbuch für interne Untersuchungen und eDiscovery, Release 1.01, Zürich/Bern 2021, p. 133.

Last updated on 15/09/2022

Contributors



Philippines

Rashel Ann C. Pomoy
Villaraza & Angangco



Spain

Sergio Ponce
Daniel Cerrutti
Uría Menéndez



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer