

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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05. Can the employee under investigation bring legal action to stop the investigation?

Spain

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No, an employee under investigation has no direct legal option to stop an investigation. This is because conducting an enquiry is within the employers' legally acknowledged powers, attached to their capacity to manage their business and enforce employment contracts and internal policies.

Notwithstanding the above, if the investigation breaches an employee's rights (privacy, dignity, remuneration, etc), the individual could:

- file a lawsuit aimed at stopping said breach (and potentially seeking an award for damages); or
- file a claim with the Labour Inspectorate with the same purpose.

The result, in this case, would stop the enquiry.

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Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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22. What must the employee under investigation be

told about the outcome of an investigation?



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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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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]

^[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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