

# Workplace Investigations

## Contributing Editors

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## 08. Can the employer search employees' possessions or files as part of an investigation?

### Spain

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Please see question 7.

Last updated on 15/09/2022

### Switzerland

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The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.<sup>[1]</sup> The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.<sup>[2]</sup>

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<sup>[1]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

<sup>[2]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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## 13. Can non-disclosure agreements (NDAs) be used to

# keep the fact and substance of an investigation confidential?



## Spain

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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

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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.

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