

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?



### Spain

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at Uría Menéndez

As in question 10, the identity of the complainant or other employees involved in the investigation may be kept confidential and companies do not have to share their identity with investigated employees. Anonymous complaints are expressly allowed under Spanish law (see question 9).

Companies may have to produce this information and share it with the investigated employees if it is necessary to allow them to defend themselves from disciplinary measures taken against them. Similarly, in the context of litigation, an employee or plaintiff could request a Labour Court to order the company to disclose the details of the investigation.

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### Switzerland

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As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful

assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.<sup>[1]</sup>

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<sup>[1]</sup> Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

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## 16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



### Spain

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As explained in question 15, employees are not entitled to representation during an investigation. However, if a disciplinary procedure starts as a result of the investigation, employee representatives may be entitled to be informed of the disciplinary procedure and its outcome.

The degree and timing of when employee representatives must be involved will depend on several factors such as:

- the employee's affiliation to a union;
- if the employee is an employee representative;
- the seriousness of the potential sanction to be imposed; and
- the information rights that the applicable collective bargaining agreement acknowledges regarding employee representatives.

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### Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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