

Workplace Investigations

Contributing Editors

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

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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24. What next steps are available to the employer?



Spain

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After the conclusion of the enquiry, a company may choose to:

- close the investigation without taking any additional action; or
- adopt disciplinary measures against the employee.

These could range from a verbal or written warning to the suspension of work and pay for a set period. Disciplinary dismissals are also possible, but they are reserved for very serious offences.

Note that any disciplinary measure will have to follow the procedures that might be established in the applicable collective bargaining agreement, such as informing employee representatives or following a grievance procedure before adopting the measure.

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If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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