

Workplace Investigations

Contributing Editors

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

22. What must the employee under investigation be told about the outcome of an investigation?

Spain

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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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Switzerland

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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.

23. Should the investigation report be shared in full, or just the findings?



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Since workplace investigations are not regulated in Spain, there are no clear rules as to the amount of information on the investigation that would need to be shared with an employee if the company was compelled to disclose the enquiry (see questions 11 and 22). A good rule of thumb is that an employee should have access to all the information that is relevant to be in a position to oppose the alleged breaches.

Moreover, if the disciplinary measures taken were challenged before a Labour Court – employees in Spain tend to challenge these types of measures – the plaintiff could request the Labour Court to order the company to produce all of the investigation details, including the findings and the full investigation report.

Finally, companies will normally have an interest in producing a report that clearly states the moment in which the fact-finding exercise was concluded and the company had a full picture of the facts. This is because the statute of limitations to sanction employment breaches, which ranges from 10 to 60 days depending on the seriousness of the misconduct, starts to count when the company has a comprehensive view of the events (which would coincide with the date the investigation report was issued).

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Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

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