

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

Netherlands

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at De Brauw Blackstone Westbroek

Yes, NDAs can be used for this purpose. However, employers in the Netherlands often rely on general confidentiality obligations that the relevant employee already has to adhere to vis-à-vis their employer, for example in the employment agreement or collective labour agreement, if applicable. It is good practice to reiterate the confidential nature of any interview and its contents, and the existence of the investigation as such, to avoid any alleged confusion as to the confidential nature of investigative procedures later on.

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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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United States

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This is a fact-specific inquiry that depends on the specific circumstances and laws of the relevant state. In general, NDAs are frowned upon but can be used to an extent to keep certain facts and the substance of an

investigation confidential. NDAs can never prevent employees from assisting in official agency investigations, however. NDAs also cannot lawfully prohibit employees from officially reporting illegal conduct by their employer.

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