

Workplace Investigations

Contributing Editors

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



South Korea

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Some companies require an employee subject to investigation to sign an NDA or other similar documents (eg, a pledge of confidentiality) agreeing not to disclose information relating to the investigation to outside parties.

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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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