

Workplace Investigations

Contributing Editors

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

05. Can the employee under investigation bring legal action to stop the investigation?

Netherlands

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Usually there is some kind of regulation in place as a result of which the employee is obliged to cooperate with the investigation. Nonetheless, there are examples whereby the employee refuses to cooperate. Especially in workplace investigations it will be hard to be able to conduct an investigation in such a situation.

There are, however, no possibilities for an employee to bring legal action in order or with the result to stop the investigation.

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Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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26. How long should the outcome of the investigation remain on the employee's record?

Netherlands

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The outcomes are usually kept in the records until termination of the employment agreement and only deleted when personal records are deleted.

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From an employment law point of view, there is no statute of limitations on the employee's violations. Based on the specific circumstances (eg, damage incurred, type of violation, basis of trust or the position of the employee), a decision must be made as to the extent to which the outcome should remain on the record.

From a data protection point of view, only data that is in the interest of the employee (eg, to issue a reference letter) may be retained during the employment relationship. In principle, stored data must be deleted after the termination of the employment relationship. Longer retention may be justified if rights are still to be safeguarded or obligations are to be fulfilled in the future (eg, data needed regarding foreseeable legal proceedings, data required to issue a reference letter or data in relation to a non-competition clause).^[1]

^[1] Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

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