

Workplace Investigations

Contributing Editors

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

12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

Netherlands

Author: *Barbara Kloppert, Mirjam Kerkhof, Roel de Jong*
at De Brauw Blackstone Westbroek

Such information can usually be kept confidential in an internal investigation, subject to potential disclosure obligations (see question 25). As indicated in question 10, depending on the nature and subject matter of an investigation, the identity of employees involved and investigative findings shall be shared with an employer on a need-to-know basis only. Specific requirements apply to the protection of the identity of whistleblowers since the Whistleblower Directive was implemented into Dutch law.

Last updated on 27/11/2023

Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person

implicated by the information provided.[\[1\]](#)

[\[1\]](#) Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 390.

Last updated on 15/09/2022

18. What if unrelated matters are revealed as a result of the investigation?



Netherlands

Author: *Barbara Kloppert, Mirjam Kerkhof, Roel de Jong*
at De Brauw Blackstone Westbroek

If the investigation yields unrelated matters, the employer will need to decide whether such matters should be followed up in the same or a separate investigation. If such matters include new allegations against an employee that are already involved in the investigation, the employer should, before interviewing (or at the start of such an interview) inform the implicated employees of the relevant new allegations that are the subject of the investigation.

Last updated on 15/09/2022



Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

Last updated on 15/09/2022

Contributors



Netherlands

Barbara Kloppert
Mirjam Kerkhof
Roel de Jong
De Brauw Blackstone Westbroek



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com