

Workplace Investigations

Contributing Editors

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

21. How do you handle a parallel criminal and/or regulatory investigation?

Netherlands

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In case there is a parallel criminal or regulatory investigation usually consultation between the investigators and the authorities takes place. Agreements are then sometimes made about the investigation conducted by / for the employer. In some cases, the authorities will ask to stay the investigation. There is no policy from the government on this topic.

There are situations where the authorities can compel the employer to share evidence. This depends on the exact circumstances of the case. For instance if the employer is the suspect in a criminal case.

It does occur that the authorities are given evidence upon request without the authorities having to order the extradition of evidence.

Last updated on 15/09/2022

Switzerland

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The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

Last updated on 15/09/2022

26. How long should the outcome of the investigation

remain on the employee's record?



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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.

Last updated on 15/09/2022



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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.

Last updated on 15/09/2022

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