

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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07. What data protection or other regulations apply when gathering physical evidence?

Netherlands

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Dutch data protection rules are based on the EU Data Protection Directive. The employer has to notify the Dutch Data Protection Authority when processing personal data as part of an internal investigation. Given that the notification can be accessed publicly, it is recommended that the employer give a sufficiently high-level description of the case. In addition, the description should be sufficiently broad to include the entire investigation, and any future expansions of the scope of the investigation. Often companies make filings for all future internal investigations, without referring to specific matters.

The employer has to notify employees whose personal data is being processed about – among other things – the purposes of the investigation and any other relevant information. According to the Dutch Data Protection Act, this information obligation may only be suspended on restricted grounds, i.e. if the purpose of the investigation is the prevention, detection and prosecution of crimes and postponement is necessary for the interests of the investigation (e.g., because there is a risk of losing evidence, or collusion by individuals coordinating responses before being interviewed)). These exceptions on the duty to inform involved persons must be interpreted very restrictively. As soon as the reason for postponement is no longer applicable (e.g., because the evidence has been secured), the individuals need to be informed.

Dutch data protection law does not require the consent of employees. Consent given by employees, however, also cannot compensate for a lack of legitimate purpose or unnecessary or disproportionate data processing, as the consent given by an employee to its employer is not considered to be voluntary given the inequality of power between them.

Furthermore, internal company policies may contain specific data protection rules.

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