

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?

Germany

Author: *Hendrik Bockenheimer, Susanne Walzer, Musa Müjdecı*
at Hengeler Mueller

There is no general obligation on the part of the employer to disclose to the employee concerned the identity of the complainant, witnesses or other sources of information during the workplace investigation.

However, as described in question 11, the employee must be sufficiently informed of the allegations before a termination based on suspicion of wrongdoing is issued. This may also require disclosing the complainant's or witnesses' identity or other sources of information. In addition, the employer would have the burden of proof in the context of a legal dispute (eg, termination protection proceedings or proceedings about the legality of certain investigation measures) and may have to name witnesses and disclose sources of information.

Last updated on 15/09/2022

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

Contributors



Germany

Hendrik Bockenheimer
Susanne Walzer
Musa Müjdecı
Hengeler Mueller



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com