

Workplace Investigations

Contributing Editors

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

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

China

Author: *Leo Yu, Yvonne Gao, Tracy Liu, Larry Lian*
at Jingtian & Gongcheng

The relevant laws and regulations in the PRC have not clarified the retention period of the investigation findings. According to Article 19 of the Personal Information Protection Law of the PRC, unless otherwise required by laws or administrative regulations, the retention period of personal information shall be the shortest period necessary to achieve the purpose of handling the information. Since the employee's personal information is very likely to be involved in the investigation findings, such report should be retained for the shortest period necessary to achieve the purpose of handling the information. In general, once the investigation is completed, the purpose of the internal investigation has been achieved or it is no longer necessary to achieve the purpose, and the employer may, in accordance with Article 22 of the Administrative Regulations of the PRC on Network Data Security (Draft for Comments), delete or anonymize the personal information within fifteen (15) working days. If it is technically difficult to delete the personal information, or it is difficult to do so within fifteen (15) working days due to business complexity or other reasons, the employer shall not conduct any processing other than storing the personal information and adopting necessary security measures, and shall give reasonable explanations to the employee.

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Switzerland

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

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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Contributors



China

Leo Yu

Yvonne Gao

Tracy Liu

Larry Lian

Jingtian & Gongcheng



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer

www.internationalemploymentlawyer.com