

Workplace Investigations

Contributing Editors

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

22. What must the employee under investigation be told about the outcome of an investigation?

Australia

Author: *Joydeep Hor, Kirryn West James, Chris Oliver*
at People + Culture Strategies

Managing the outcome of the investigation is an important part of the process. The respondent must be informed of the outcome of the investigation as soon as possible after the investigation is completed and the decision-maker has decided how to proceed.

The investigator must decide whether the claims have been substantiated on the balance of probabilities and the decision-maker must decide what disciplinary action, if any, will be taken. Any disciplinary action should be proportionate to the seriousness of the misconduct. Disciplinary action could include a warning, counselling, monitoring of behaviour or termination of employment.

Ideally, the outcome of the investigation should be communicated to the respondent and complainant in writing, setting out the allegations that have been substantiated, unsubstantiated or whether there is insufficient evidence to make a finding.

Last updated on 15/09/2022

Ireland

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The employee whose actions are the subject of the investigation must be advised of the outcome of the investigation. They are usually provided with a copy of the investigator's report.

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Switzerland

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Workplace investigations often result in an investigation report that is intended to serve as the basis for any measures to be taken by the company's decisionmakers.

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.^[1] In principle, the employee concerned is entitled to receive a written copy of the entire investigation report free of charge (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 et seq, Ordinance to the Federal Act on Data Protection). Redactions may be made where the interests of the company or third parties so require, but they are the exception and must be kept to a minimum.^[2]

^[1] Arbeitsgericht Zürich, Entscheide 2013 No. 16; Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 393 et seq.

^[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 394.

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