

Workplace Investigations

Contributing Editors

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

16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



Australia

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

A trade union does not have any right to be informed of, or involved in, an investigation by an employer. However, an employee may request that their support person is a trade union member or trade union representative. This is appropriate and should be permitted.

Employers should review the terms of an employment contract, policy or industrial instrument as this may contain terms regarding trade union involvement. In particular, heavily-unionised workplaces may contain enterprise agreements which contain relevant clauses.

Last updated on 25/09/2023



Switzerland

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

In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

Last updated on 15/09/2022

23. Should the investigation report be shared in full, or just the findings?

Australia

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

The investigator should prepare a written report setting out whether the allegations are substantiated, unsubstantiated or cannot be determined due to insufficient evidence. This report should be used for internal purposes only. Accordingly, the report should not be shared with the complainant, respondent or witnesses unless required by law, the employer's policies or another industrial instrument. It is particularly important not to share the investigation report should the employer wish to maintain privilege in respect of the report.

Last updated on 15/09/2022

Switzerland

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

In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

Last updated on 15/09/2022

Contributors

Australia

Joydeep Hor
Kirryn West James
Chris Oliver
People + Culture Strategies

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com