

Workplace Investigations

Contributing Editors

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

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).

24. What next steps are available to the employer?



Australia

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

Employers must take steps to deal with the findings of the investigation and implement any recommendations promptly. This may involve commencing disciplinary action.

The complainant and respondent need to be informed of the outcome of the investigation. All witnesses who participated in the investigation should also be thanked for their contribution and advised that the investigation has been completed. All participants in an investigation should be reminded of their ongoing obligations concerning confidentiality and victimisation.

If an employer decides that it may be appropriate to terminate a respondent's employment, the employee must be provided with the opportunity to respond and to "show cause" as to why their employment should not be terminated.

The investigation report along with any other materials produced during the investigation should be kept in a separate confidential file.

Employers should also consider whether action should be taken at an organisational level to prevent future misconduct. In particular, employers are required to take a proactive approach to addressing systemic workplace cultural issues in relation to sex discrimination, sexual harassment and victimisation.

Last updated on 25/09/2023



Switzerland

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

If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

Contributors



Australia

Joydeep Hor

Kirryn West James

Chris Oliver

People + Culture Strategies



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer

www.internationalemploymentlawyer.com