

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?

China

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at Jingtian & Gongcheng

There is no explicit stipulation in the laws and regulations in the PRC on this issue. In practice, given the confidentiality of any investigation into a violation, the employer usually will not disclose the investigation result or submit the investigation report to the investigated employee, unless it is explicitly provided in its rules and regulations that the employer is obliged to inform the employee of the investigation result. However, according to the Employment Contract Law of the PRC and the opinions of the mainstream arbitration tribunals and courts, if an employer decides to take disciplinary action against an employee (in particular, termination of employment contract) according to the investigation result, it is generally required to inform the employee of the investigation result. In other words, the employer generally needs to inform the employee of the specific facts based on which the disciplinary action is taken. Failure to do so may result in the generalization of serious violation of the employer's rules and regulations and lead the arbitration tribunals and courts to regard the termination as illegal.

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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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