

Workplace Investigations

Contributing Editors

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

01. What legislation, guidance and/or policies govern a workplace investigation?

China

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

Currently there are no unified laws, administrative regulations or policies in the field of labor laws in People's Republic of China (referred to as "PRC") regarding investigations on workplaces of ordinary employers. The laws and regulations of employers in certain specific industries (such as banking, securities, insurance, medical institutions, etc.) and the laws and regulations governing certain personnel (such as officers of state-owned enterprises and members of the Communist Party of China) contain provisions relating to investigations on employees' conduct, but such provisions are only applicable to the aforementioned specific industries or personnel.

Employers generally will specify their investigation rights and rules and procedures of internal investigations in their internal rules and regulations (such as the employee handbook) or the employment contracts entered into with their employees. However, it should be noted that workplace investigations are still subject to laws and regulations in relation to personal information, privacy and data protection.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

In Greece, workplace investigations are not heavily regulated.

However, internal disciplinary procedures are governed by certain general principles, while there is also legislation regulating certain aspects of investigations opened in the context of whistleblowing procedures or concerning complaints for workplace violence or harassment. These include Law 4990/2022, which transposed EU Directive 2019/1937 into Greek Law; and Law 4808/2021, which ratified the ILO's Violence and Harassment Convention, 2019 (No190) and introduced relevant provisions.

As far as disciplinary procedures in private-sector companies are concerned, employers that must have internal labour regulations in place (ie, those with more than 70 employees) or opt to adopt them

voluntarily, can regulate the procedures themselves.

In the public sector, internal investigations are governed by disciplinary provisions included in the civil servant code.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

There are essentially two phases in a workplace investigation: the fact-finding phase and the administrative proceeding.

The fact-finding phase of workplace investigations is usually governed by the internal policies of the employer, save for investigations relating to gender-based sexual harassment in the workplace. Republic Act No. 11313, otherwise known as the Safe Spaces Act, sets the parameters for these kinds of investigations.

Philippine case law recognises the right of an employer to conduct investigations for other acts of misconduct in the workplace in the exercise of its management prerogative. The Supreme Court has held that it is an employer's right to investigate acts of wrongdoing by employees, and employees involved in such investigations cannot simply claim that employers are out to get them.

After the fact-finding aspect of the investigation, if the employer decides it has sufficient grounds to proceed to full-blown administrative proceedings, it needs to comply with the due process requirements outlined under the Philippine Labor Code. These requirements are:

- a first notice, or notice to explain, informing the employee of the charges against him or her;
- an opportunity for the employee to be heard; and
- a final notice on the outcome of the administrative action.

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Switzerland

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

There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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02. How is a workplace investigation usually commenced?



China

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

The employer will generally obtain clues of employees' misconduct, actively or passively, through such means as internal audit, employee whistleblowing, whistleblowing from suppliers or partners, regular or irregular compliance management assessment of the employer and management concerns, and carry out investigation based on such clues. Meanwhile, the employer will further investigate whether the employees involved have committed other acts of misconduct.

The investigation is usually carried out from outside to inside and from the macro level to the specific level. That is to first interview the provider of the clues and other insiders for verification and obtaining further information. Then to conduct internal and external system and written documents review based on the investigation clues. Preliminary evidence will be formed after the basic verification of facts. Finally, the employer will interview the employees involved and listen to their explanations, and finally determine the subsequent handling method.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Internal investigations can be initiated either upon a complaint or report by an employee, (or other persons providing services or seeking employment, etc) in the workplace or by the employer as part of their managerial right.

If from an employee, the complaint or report may fall within the scope of an internal disciplinary procedure, if any, or may concern an alleged workplace violence or harassment incident, or fall within the scope of L.4990/2022 on the protection of persons who report breaches of Union law.

Reports by whistleblowers are submitted to the manager with responsibility for receiving and monitoring reports, a person appointed for that purpose under L.4990/2022. Complaints for incidents and harassment in the workplace can also be submitted, according to L.4808/2022, to the person or internal body specifically assigned to receive such complaints. Both laws require the employer to define the persons competent for receiving and monitoring complaints or reports and notifying the employees *stricto sensu* and any other persons falling within the scope of the respective provisions.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Workplace investigations are normally commenced either through a complaint filed by other employees in the workplace or by HR or other representatives of management.

Under the Safe Spaces Act, employers are required to commence an investigation and decide on complaints regarding gender-based sexual harassment, within ten days of the complaint being brought to their attention. For other workplace misconduct, management is given wide discretion regarding the means and method by which the workplace investigation may be carried out.

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

Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

^[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

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

When an employer is found to have engaged in misconduct of an employee, whether it has the right to suspend the employee from his/her duties and subject him/her to investigation, there are no explicit provisions in the existing labor law. Generally speaking, suspension of investigation arranged internally by an employer is within the scope of autonomous management of the employer. However, such suspension of investigation is subject to certain restrictions, and the basic rights and interests of the employee must be guaranteed. For example, the employer should continue to pay social insurance fund for the employee.

Suspension investigation shall generally be specified in advance in the labor contract or rules and regulations, and the duration of suspension investigation should be within the necessary and reasonable period. Indefinite suspension or the suspension of obviously long time will not be supported by arbitral tribunals and courts.

Generally annual leave may be taken preferentially by the employees during suspension period. The annual leave period shall be deemed as normal attendance, and the salary shall remain unchanged. Under the circumstance that the annual leave has been used up, in judicial practice, there are few cases supporting the claim that the employer can fully deduct the employee's salary during the suspension period. It is generally believed that the employer shall at least guarantee the basic living needs of the employee during the suspension period (i.e. the salary shall not be lower than the local minimum salary standard) or pay the employee as per the original salary standard. However, in judicial practice, some arbitrators and judges hold the view that an employer may use its discretion to reduce employees' salary if

all of the following conditions are met:

- it is stipulated in its rules and regulations or a contract that it is entitled to suspend employees from their duties and reduce salaries if their fraudulent behaviour harms the employer's interests;
- the rules and regulations are stipulated in its rules and regulations, and are publicly announced and accepted by the employees; and
- there is evidence showing the corresponding fraudulent behaviour of the employees.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Internal labour regulations may allow for the suspension of an employee when there is reasonable suspicion that a disciplinary offence has been committed. Given that under Greek law employees have the right to receive wages and to be employed, suspension without a specific provision in the internal labour regulation may only be imposed in an extreme case where the offence and the risk of keeping the employee employed during an investigation is obvious.

Payment of remuneration during suspension should not be withheld, otherwise, the suspension could be considered a disciplinary penalty not provided in law and imposed without completion of the disciplinary procedure, thus illegally harming the employee.

In any case, suspension is one of the ultimate measures that may be taken, in contrast to, for example, a change of work position.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

A preventive suspension pending investigation is allowed under the law, provided that the continued employment of the subject of the investigation poses a serious and imminent threat to the life or property of the employer or other employees. Additionally, the period of preventive suspension pending investigation should not last longer than 30 days. However, should the employer wish to extend this period, the employer must pay the employee's wages and other benefits. The employee is under no obligation to reimburse the amount paid to them during the extension if the employer should, later on, decide to dismiss the employee after the completion of the process.

In practice, the notice of preventive suspension is issued simultaneously with the first notice or the notice to explain after the employer has conducted its fact-finding investigation and has reason to believe that the employee must be held accountable for his or her actions.

Since placing an employee under preventive suspension requires the existence of a serious and imminent threat to the life or property of the employer or other employees, some employers opt to place the employee or employees involved on agreed paid leave. This will allow the employer to conduct an unhampered workplace investigation while the investigated employee is still able to receive his or her full salary during this period. The exact period of paid leave may be agreed upon by the employer and the employee, but ideally it should not last for more than thirty days.

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Switzerland

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

It is possible to suspend an employee during a workplace investigation.^[1] While there are no limits on duration, the employee will remain entitled to full pay during this time.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 181.

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04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?

China

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

In some laws and regulations for specific industries, enterprises or personnel, there are certain requirements for the qualifications of investigators. For example, according to the Interim Measures for Investigating and Dealing with Disciplinary Violations of Professional Personnel by Medical Institutions, the personnel conducting an investigation and evidence collection shall not be less than two. If the investigator is a close relative of the investigated person, or a tip-off person or a key witness of the issue to be investigated, the investigator shall withdraw from the investigation.

However, at present, there are no unified and detailed national rules and regulations on the qualification of the investigators and organizations. In practice, the selection of the personnel and organizations responsible for internal investigation is usually based on the relevant provisions in the internal rules and regulations of the employer. The personnel conducting internal investigation are usually internal functional departments of the employer and are independent to some extent, including the personnel department, legal department, compliance department or risk control department. For significant or complex issues or senior management investigations, in order to ensure professionalism, accuracy and compliance, external law firms, consultants and accounting firms are also frequently hired to conduct investigations.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

As far as the persons in charge of an internal investigation are concerned, L. 4990/2022 on the protection of persons who report breaches of Union law provides for certain conditions that should be met when exercising their duties (ie, being impartial and abstaining when there is a conflict of interest), which also apply as general principles in all disciplinary procedures. Whistleblowing legislation stipulates that persons

appointed to receive and investigate a whistleblowing procedure should meet certain conditions, including no penal proceedings against them, no disciplinary proceedings or convictions for specific offences, and no workplace suspensions.

Official disciplinary procedures are conducted by the competent bodies as described in the respective internal labour regulations.

Although not specifically regulated, support from external advisors (eg, lawyers) is allowed.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Under the Safe Spaces Act, an employer should create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment, which should:

- adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
- designate a woman as its head and no less than half of its members should be women;
- be composed of members who are impartial and not connected or related to the alleged perpetrator;
- investigate and decide on the complaints within 10 days or less upon receipt thereof;
- observe due process;
- protect the complainant from retaliation; and
- guarantee confidentiality to the greatest extent possible.

For other types of offences, it is the prerogative of management as to who will conduct the investigation and how it will be conducted, provided the proceedings remain impartial.

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Switzerland

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

The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level^[1], if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 18.

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05. Can the employee under investigation bring legal action to stop the investigation?

China

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

There is no provision in the law which provides the employee the right to suspend or interrupt an investigation by initiating a lawsuit. However, the employee who is suspended for investigation may request to terminate the employment contract unilaterally and demand the employer to pay economic compensation on the ground that the employer has not paid enough remuneration, and may initiate labor arbitration and litigation accordingly, but such arbitration and litigation will not have the effect of suspending or interrupting the investigation.

In addition, if the employee's privacy or personal information is improperly disposed of during the investigation, the relevant evidence obtained during the suspension investigation may be deemed as illegal evidence by arbitral tribunals and courts, and the employer may also be exposed to relevant legal liabilities for the infringement of privacy, etc.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Although there is no specific legal provision, access to legal action and judicial proceedings cannot be obstructed under any circumstances as this is a fundamental right under the Greek constitution. Thus, if an employee manages to bring legal action to stop the investigation (eg, a prolonged investigation for a frivolous complaint harms them), then the investigation may have to be temporarily paused or permanently terminated depending on the court decision.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

There is generally no legal remedy for an employee to stop a workplace investigation as it is the prerogative of management to conduct it. Nevertheless, if the employee alleges violation of any specific law or contractual provision in the conduct of the investigation, the employee may be able to seek judicial relief for violation of the law or contract, and ask for interim relief.

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Switzerland

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

The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

06. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?



China

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

Article 75 of the Civil Procedure Law of the PRC (Amended in 2021) provides, "All entities and individuals that are aware of the circumstances of a case shall have the obligation to testify in court. The persons-in-charge of relevant entities shall support the witnesses to testify in court. "Article 193 of the Criminal Procedure Law of the PRC (Amended in 2018) provides, "Where, after the notification of a people's court, a witness refuses to testify in court without justified reasons, the people's court may compel the witness to appear in court, unless the witness is the spouse, a parent or a child of the defendant."

According to relevant provisions of the Civil Procedure Law of the PRC, only a court has the power to compel a witness to appear in court. Neither the employer nor any other individual may compel any colleague to act as a witness and testify in court. However, the employer may set forth in the employment contract or its internal rules and regulations that the employee shall cooperate with its internal investigation.

As for the legal system for witness protection, PRC's criminal procedure laws stipulate a relatively detailed legal system for witness protection, such as establishing a crime of retaliating against a witness; making public a witness's personal information such as name, address, employer and contact information for the purpose of protecting the personal safety of the witness; using assumed names in the indictments; and so on. However, there are relatively few legal provisions regarding the legal protection of witness in civil procedure, and provisions only regulate the expenses that may be incurred by the witness for testifying in court. For instance, Article 77 of the Civil Procedure Law of the PRC (Amended in 2021) provides, "The necessary expenses incurred by a witness in fulfilling his obligation to testify in court, including transportation, accommodation and meals, as well as the loss of salaries, shall be borne by the losing party. If a party applies for a witness to testify, the costs and expenses shall be advanced by the party; if the people's court notifies a witness to testify without the application by a party, the costs and expenses shall be advanced by the people's court. "

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Indirectly involved employees may be interviewed as witnesses in the context of the investigation, as the employee has a duty of loyalty towards the employer originating from the employment relationship. However, they cannot be forced to do so (in contrast with criminal procedures). Any harmful act that could be considered retaliation against witnesses in the context of violence or harassment or whistleblowing investigation is prohibited. In addition, the identity of any employees as witnesses is also covered by the principle of confidentiality.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Neither the employer nor the employee subject of the investigation can compel co-workers to act as a witness. There is no specific law for whistleblowers or employees who act as witnesses during an investigation. Nevertheless, the employer can have its own whistleblower policy.

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Switzerland

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

Due to the employee's duty of loyalty towards the employer and the employer's right to give instructions to its employees, employees generally must take part in an ongoing investigation and comply with any summons for questioning if the employer demands this (article 321d, Swiss Code of Obligations). If the employees refuse to participate, they generally are in breach of their statutory duties, which may lead to measures such as a termination of employment.

The question of whether employees may refuse to testify if they would have to incriminate themselves is disputed in legal doctrine.^[1] However, according to legal doctrine, a right to refuse to testify exists if criminal conduct regarding the questioned employee or a relative (article 168 et seq, Swiss Criminal Procedure Code) is involved, and it cannot be ruled out that the investigation documentation may later end up with the prosecuting authorities (ie, where employees have a right to refuse to testify in criminal proceedings, they cannot be forced to incriminate themselves by answering questions in an internal investigation).^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on hrtoday.ch, last visited on 17 June 2022.

^[2] Same opinion: Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on hrtoday.ch, last visited on 17 June 2022.

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07. What data protection or other regulations apply when gathering physical evidence?

China

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

The Civil Code of the PRC, the Personal Information Protection Law of the PRC and other laws provide for the protection of employees' personal information and privacy. Employers are often involved in checking the information and materials stored in the computers, hard disks and other electronic office equipment provided to employees in internal investigation and are likely to access the employees' personal

information including personal privacy information, such as the communication records stored in instant communication software such as WeChat, QQ or other instant communication software or to and from private email boxes. According to the Personal Information Protection Law of the PRC, employers are required to perform the obligation of informing and obtain the individuals' consent prior to the processing of personal information, i.e. the principle of informing + consent. Moreover, the Civil Code of the PRC stipulates that no organization or individual may process any person's private information, except as otherwise provided by law or with the explicit consent of the right holder.

Therefore, the legitimacy of obtaining data evidence can be enhanced and guaranteed only if it is explicitly stated in the relevant rules and regulations that the employer shall have the right to the work equipment provided to the employees or obtains the employees' personal consent.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

GDPR and the provisions of L. 4624/2019 regulate the gathering of physical evidence from a data protection perspective, providing, among other things, that personal data should be processed with transparency and to the extent necessary for the investigation.

L.4990/2022 on the protection of persons who report breaches of Union law regulates data protection issues in the context of whistleblowing investigations, mainly to safeguard confidentiality throughout the investigations.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The procedure for gathering physical evidence is governed primarily by company policy. Nevertheless, the Data Privacy Act of the Philippines protects all data subjects from unlawful processing of their personal information without consent.

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Switzerland

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

The Swiss Federal Act on Data Protection applies to the gathering of evidence, in particular such collection must be lawful, transparent, reasonable and in good faith, and data security must be preserved.^[1]

It can be derived from the duty to [disclose and hand over benefits received and work produced](#) (article 321b, Swiss Code of Obligations) as they belong to the employer.^[2] The employer is, therefore, generally entitled to collect and process data connected with the end product of any work completely by an employee and associated with their business. However, it is prohibited by the Swiss Criminal Code to open a sealed document or consignment to gain knowledge of its contents without being authorised to do so (article 179 et seq, Swiss Criminal Code). Anyone who disseminates or makes use of information of which

he or she has obtained knowledge by opening a sealed document or mailing not intended for him or her may become criminally liable (article 179 paragraph 1, Swiss Criminal Code).

It is advisable to state in internal regulations that the workplace might be searched as part of an internal investigation and in compliance with all applicable data protection rules if this is necessary as part of the investigation.

[1] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 52.

[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 148.

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08. Can the employer search employees' possessions or files as part of an investigation?



China

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

Article 13 of the Constitution of the PRC provides that the lawful private property of the citizens shall not be violated. Therefore, during the process of investigation, without the employees' consent, the employer has no right to search the employees' personal possessions or files. If it is necessary to search the employees' personal possessions or files, the employer may require the employees to sign a Letter of Informed Consent before searching; or the employer may call the police and the search will be conducted under the escort of the public security authorities or directly by the public security authorities.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

As a first step, the employer should ask for the employee's permission to access their possessions and files. Employment contracts and internal labour regulations may include provisions regarding an employer's access to employees' documents created and kept for business purposes or related to business activity.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Subject to the employees' reasonable expectation of privacy, gathering physical evidence within the premises of the workplace and through company-issued property has been upheld to be legally permissible

in pursuit of the employer's right to conduct work-related investigations. The search, however, should be limited to the alleged acts complained of and must not be used as a fishing expedition to find incriminating information about the erring employee.

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Switzerland

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

The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.^[1] The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

^[2] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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09. What additional considerations apply when the investigation involves whistleblowing?

China

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

In practice, the following factors to be considered will be: (1) verification of the informant's identity; (2) whether the informant has any conflict of interest with the reported employee or whether it will affect the objectivity of their reporting; (3) how to persuade the informant to provide more information or evidence, or to cooperate in court as a witness; (4) how to increase the admissibility of evidence when the informant refuses to cooperate in court as a witness or fails to provide original evidence; (5) how to improve the evidence chain and protect the informant from being attacked or retaliated by the informant, etc.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

L. 4990/2022 includes specific requirements regarding, among other things, the procedure of receiving and investigating respective reports, confidentiality issues (especially regarding the identity of the

whistleblower), data protection issues (including restrictions to the right of access) and the employer's right to keep a record of the relevant complaint and investigation. Such provisions are expected to be further detailed by Ministerial Decisions in future.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since there is no specific law that governs whistleblowing, matters that involve whistleblowing will be governed by company policy.

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Switzerland

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

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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10. What confidentiality obligations apply during an investigation?



China

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

Although there are no specific laws or regulations regulating the extent of confidentiality obligation employers or the investigators shall comply with, in practice, the confidentiality obligation of both parties usually originates from the confidentiality agreement between the employee and the employer, as well as general provisions on protection of personal information and right of privacy, etc.

In this regard, it is advisable to require the relevant personnel responsible for handling the suspension for investigation to sign a confidentiality agreement or a letter of commitment, and require them to pay attention to the protection of the personal information and privacy of the complainant and other relevant personnel, for the purpose of avoiding extra losses caused by the occurrence of disputes relating to right of reputation, right of privacy and personal information leakage during the investigation.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Confidentiality applies as a general principle in disciplinary investigations.

Moreover, L. 4990/2022, which transposed EU Directive 2019/1937 into Greek Law, regulates the issue of confidentiality during investigations that start based on an internal report. The managers conducting the investigation must respect and abide by the rules of confidentiality regarding the information they have become aware of when exercising their duties^[1]. They must also protect the complainant's and any third party's (referred to in the report) confidentiality by preventing unauthorised persons from accessing the report^[2].

Finally, L. 4808/2021 provides that employers must create a procedure that should be communicated to employees regarding all the necessary steps of an investigation following a complaint. Throughout the whole process, the employer, managers and the employer's representatives responsible for the investigation must respect and abide by the rules of confidentiality in a manner that safeguards the dignity and personal data of the complainant and the person under investigation^[3].

^[1] Law 4990/2022, art. 9 par.8(b)

^[2] Law 4990/2022, art. 10 par. 2(e)

^[3] Law 4808/2021 art. 5 par.1(a) and 10 par.2(b)

Last updated on 03/04/2023



Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since the right to investigate ultimately belongs to the employer, it may impose strict confidentiality obligations upon the individuals involved, not only to ensure unhampered investigation proceedings but also and more importantly for the protection of the company and employees involved.

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Switzerland

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

Besides the employee's duty of performance (article 319, Swiss Code of Obligations), the employment relationship is defined by the employer's duty of care (article 328, Swiss Code of Obligations) and the employee's duty of loyalty (article 321a, Swiss Code of Obligations). Ancillary duties can be derived from the two duties, which are of importance for the confidentiality of an internal investigation.^[1]

In principle, the employer must respect and protect the personality (including confidentiality and privacy) and integrity of the employee (article 328 paragraph 1, Swiss Code of Obligations) and take appropriate measures to protect the employee. Because of the danger of pre-judgment or damage to reputation as well as other adverse consequences, the employer must conduct an internal investigation discreetly and objectively. The limits of the duty of care are found in the legitimate self-interest of the employer.^[2]

In return for the employer's duty of care, employees must comply with their duty of loyalty and safeguard

the employer's legitimate interests. In connection with an internal investigation, employees must therefore keep the conduct of an investigation confidential. Additionally, employees must keep confidential and not disclose to any third party any facts that they have acquired in the course of the employment relationship, and which are neither obvious nor publicly accessible.^[3]

[1] Wolfgang Portmann/Roger Rudolph, BSK OR, Art. 328 N 1 et seq.

[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 202.

[3] David Rosenthal et al., Praxishandbuch für interne Untersuchungen und eDiscovery, Release 1.01, Zürich/Bern 2021, p. 133.

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11. What information must the employee under investigation be given about the allegations against them?



China

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

Although there are no explicit provisions of law or policy requiring employers to provide specific information of allegations to investigated employees, in practice, at the early stage of investigation, in order to avoid alerting the investigated employee and reduce the possibility that the investigated employee may destroy the relevant evidence, the employer usually will not disclose the information of allegations to the investigated employee at the beginning of investigation. At the later stage of an investigation, when the employer has already obtained main evidence, the employer usually will properly disclose to the investigated employee the allegations that are clearly known by the employer and have sufficient evidence, and listen to the counterparty's opinions or argument, for the purpose of obtaining more information or getting the employee's confession.

Last updated on 29/11/2023



Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

As a matter of general principle, employees under investigation must have access to the necessary information to be able to defend themselves, in the context of their fundamental right to a fair trial and hearing.

Moreover, from a data protection perspective, they may be entitled to access their personal data in the respective files.

The above rights must be balanced with confidentiality and the need to safeguard the completion of the investigation and to protect the complainant from retaliation.

According to L.4990/2022, all data and information as well as the identity of the complainant are

confidential, and any disclosure is only permitted where required by the EU or national legislation or during court proceedings, and only if it is necessary for the protection of the defence rights of the employee under investigation. The section of L.4808/2021 for the elimination of workplace violence and harassment does not regulate this specifically but provides a general obligation for confidentiality.

Last updated on 03/04/2023



Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

During the fact-finding stage of the investigation, the employees under investigation are not generally entitled to information concerning the conduct of the investigation. It is the prerogative of management to involve the employee under investigation during the fact-finding stage. When, however, the employer determines that an administrative disciplinary process must proceed, the employee's right to due process attaches. As such, due process includes the right to be informed of the grounds relied upon by the employer and the opportunity to be heard. The first notice or notice to explain should specifically inform the employee of the charge against him or her.

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Switzerland

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

As a result of the employer's duty of care (article 328, Swiss Code of Obligations), employees under investigation have certain procedural rights. These include, in principle, the right of the accused to be heard. In this context, the accused has the right to be informed at the beginning of the questioning about the subject of the investigation and at least the main allegations and they must be allowed to share their view and provide exculpatory evidence.^[1] The employer, on the other hand, is not obliged to provide the employee with existing evidence, documents, etc, before the start of the questioning.^[2]

Covert investigations in which employees are involved in informal or even private conversations to induce them to provide statements are not compatible with the data-processing principles of good faith and the requirement of recognisability, according to article 4 of the Swiss Federal Act on Data Protection.^[3]

Also, rights to information arise from the Swiss Federal Act on Data Protection. In principle, the right to information (article 8, Swiss Federal Act on Data Protection) is linked to a corresponding request for information by the concerned person and the existence of data collection within the meaning of article 3 (lit. g), Swiss Federal Act on Data Protection. Insofar as the documents from the internal investigation recognisably relate to a specific person, there is in principle a right to information concerning these documents. Subject to certain conditions, the right to information may be denied, restricted or postponed by law (article 9 paragraph 1, Swiss Federal Act on Data Protection). For example, such documents and reports may also affect the confidentiality and protection interests of third parties, such as other employees. Based on the employer's duty of care (article 328, Swiss Code of Obligations), the employer is required to protect them by taking appropriate measures (eg, by making appropriate redactions before handing out copies of the respective documents (article 9 paragraph 1 (lit. b), Swiss Federal Act on Data Protection)).^[4] Furthermore, the employer may refuse, restrict or defer the provision of information where the company's interests override the employee's, and not disclose personal data to third parties (article 9 paragraph 4, Swiss Federal Act on Data Protection). The right to information is also not subject to the statute of limitations, and individuals may waive their right to information in advance (article 8 paragraph 6, Swiss Federal Act on Data Protection). If there are corresponding requests, the employer must generally grant access, or provide a substantiated decision on the restriction of the right of access, within 30 days

[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

[2] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

[3] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

[4] Claudia Götz Staehelin, *Unternehmensinterne Untersuchungen*, 2019, p. 37.

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12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?



China

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

At the level of criminal procedure in PRC, only the Criminal Procedure Law of PRC provides that pseudonyms may be used in the indictment as a substitute for the disclosure of a witness's personal information, such as name, address, employer and contact information, to protect the personal safety of the witness. However, there are no relevant provisions on whether the identity of the complainant, the witness in civil litigation and the provider of information shall be kept confidential during an investigation.

During the course of an investigation, in order to protect the privacy of relevant personnel and avoid the risk of infringement, the employer usually keeps the identity of the complainant or the provider of investigation information confidential. However, at the civil litigation stage, the witness is unavoidably required to testify in court, and must truthfully identify himself/herself to the court.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

According to express provisions of L.4990/2020, in principle personal data and any other information that may lead directly or indirectly to the identification of the complainant must not be disclosed to anyone other than the investigating individuals unless the complainant gives consent[4] and that is why pseudonyms should be used. The witnesses and third persons that aid the complainant are deemed as “mediators” by the Law and their contribution to the procedure should be confidential[5].

L.4808/2021 does not indicate when such disclosures are permitted; however, it is obvious that this is a matter of cost-benefit analysis where the public interest and the fundamental rights of the involved persons should be considered in a balanced way to ensure the best results. From a data protection perspective, it

could be argued that the person under investigation's right to know the identity of the complainant, witnesses or sources of information should be limited to protect the rights of these persons.

[4] Law 4990/2022 art.14 par.1

[5] Law 4990/2022, art.3 par. 7 and art.10 par.2(e)

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The identity of the complainant, witnesses and sources of information may be kept confidential under the employer's policies.

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Switzerland

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

As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.^[1]

[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

China

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

Yes. In practice, before conducting a compliance investigation, we recommend that the employer and the investigator enter into a confidentiality agreement to require the investigator to keep confidential the facts and the substance of the investigation. This will not only better protect the personal information of the complainant, the witness and the investigated employee, but also help the investigation to proceed smoothly.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

NDAs are an option, especially to outline in detail the obligations of the persons conducting the investigation, which is also provided for in law. On the other hand, NDAs will not prevent persons involved from providing information to the competent authorities in the context of criminal or other similar procedures, where they must do so by law. Moreover, they may not protect confidentiality if persons who report breaches of Union law decide to make an external or public report, according to the provisions of L. 4990/2022.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The practice of stipulating matters to ensure adherence to confidentiality is not uncommon. As such, NDAs are executed as a means of added protection for both the company and the employees involved.

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Switzerland

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

In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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14. When does privilege attach to investigation materials?



China

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

The employer has the property right over all its properties. When discovering employee's misconduct, the employer is entitled to conduct an investigation within a certain scope according to the relevant laws and regulations, as well as the management system of the employer. Generally speaking, the employer is not required to obtain consent of the employee when conducting an investigation of the space and objects owned by it. The employer has no right to directly conduct an investigation of the employee's private space, objects, bank accounts and stock trading accounts. The public security organ or other public authorities should be involved in the investigation. In principle, if the employee's private space or objects are mixed with the employer's private space or objects, the employer should obtain consent of the employee for an investigation. Meanwhile, the employer's investigation should be controlled within the reasonable and necessary limit, and the employer is not allowed to illegally use or disclose the investigation results, otherwise it may constitute infringement. In addition, we also recommend that the employer stipulate explicitly in the employment contract and the internal management system that the employer has the right to detain and inspect the articles or equipment distributed by the employer, so as to reduce the compliance risk of internal investigation.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Regarding L.4990/2022 for whistleblowers' procedures, many categories of privilege may occur during an investigation, such as: attorney-client privilege; doctor-patient privilege; and court or other proceedings' privilege deemed as classified. L.4990/2022 provides that its provisions do not affect any of these privileges and these privileges supersede^[6].

Privilege may also be attached to investigation materials in investigations relating to workplace harassment and violence incidents; however, since L.4808/2021 does not offer a specific provision and criminal proceedings may also commence, the matter of privilege must be examined ad hoc.

^[6] Law 4990/2022 art.5 par.2(b) and par.2(c)

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The employer's internal policy can indicate that investigation materials must be kept confidential.

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Switzerland

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

As outlined above, all employees generally have the right to know whether and what personal data is being or has been processed about them (article 8 paragraph 1, Swiss Federal Act on Data Protection; article 328b, Swiss Code of Obligations).

The employer may refuse, restrict or postpone the disclosure or inspection of internal investigation documents if a legal statute so provides, if such action is necessary because of overriding third-party interests (article 9 paragraph 1, Swiss Federal Act on Data Protection) or if the request for information is manifestly unfounded or malicious. Furthermore, a restriction is possible if overriding the self-interests of the responsible company requires such a measure and it also does not disclose the personal data to third parties. The employer or responsible party must justify its decision (article 9 paragraph 5, Swiss Federal Act on Data Protection).^[1]

The scope of the disclosure of information must, therefore, be determined by carefully weighing the interests of all parties involved in the internal investigation.

^[1] Claudia M. Fritsche, *Interne Untersuchungen in der Schweiz*, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 284 et seq.

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15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?



China

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

The relevant laws and regulations in the PRC have not made explicit provision regarding rights to representation. In practice, some arbitral tribunals and courts hold the view that it is reasonable for the employee to refuse to cooperate with the investigation if he/she is not accompanied or has no legal representatives. Therefore, the employer usually cannot impose disciplinary punishment by warning or even termination of employment contract on the basis of such refusal. Therefore, we tend to believe that, where the employee under investigation requests to be accompanied or have legal representation, the employer should fully consider and communicate with the employee about the request, and prudently impose disciplinary punishment on the employee for failing to cooperate with the investigation.

Of course, considering that satisfying such request will increase the difficulties and obstacles for the employer to carry out the investigation to a certain extent, we still suggest that the employer include in its rules and regulations such provisions as "the employee being investigated shall actively and unconditionally cooperate with the employer's investigation", etc., in order to provide institutional support for the follow-up requirement or even disciplinary punishment by the employer on employee and to encourage the employee to cooperate in the investigation.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Greek law does not specifically regulate the right to be accompanied or have legal representation during internal investigations for private-sector employees.

However, the right to legal representation established in article 6 of the European Convention on Human Rights could be interpreted to cover cases such as internal investigations in the workplace. In addition, according to article 136 of Civil Servant Code, the employee under investigation has the right to be represented by an attorney at law. There is an additional argument regarding private-sector employees and their right to legal representation, by applying this provision by analogy.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since the fact-finding phase of the investigation is considered to be a preliminary step before the commencement of the administrative disciplinary process, an employee's right to representation does not attach.

However, when the administrative disciplinary process commences, the employee has the right to have legal representation during the investigation. While no law requires the employee to have counsel present during the investigation, the employee has the right, if he or she chooses, to be advised by counsel or have legal representation.

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Switzerland

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

In the case of an employee involved in an internal investigation, a distinction must be made as to whether the employee is acting purely as an informant or whether there are conflicting interests between the company and the employee involved. If the employee is acting purely as an informant, the employee has, in principle, no right to be accompanied by their own legal representative.[\[1\]](#)

However, if there are conflicting interests between the company and the employee involved, when the employee is accused of any misconduct, the employee must be able to be accompanied by their own legal representative. For example, if the employee's conduct might potentially constitute a criminal offence, the involvement of a legal representative must be permitted.[\[2\]](#) Failure to allow an accused person to be accompanied by a legal representative during an internal investigation, even though the facts in question are relevant to criminal law, raises the question of the admissibility of statements made in a subsequent criminal proceeding. The principles of the Swiss Criminal Procedure Code cannot be undermined by alternatively collecting evidence in civil proceedings and thus circumventing the stricter rules applicable in criminal proceedings.[\[3\]](#)

In general, it is advisable to allow the involvement of a legal representative to increase the willingness of the employee involved to cooperate.

[1] Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

[2] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 59.

[3] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 392; Niklaus Ruckstuhl, BSK-StPO, Art. 158 StPO N 36.

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



China

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

The relevant laws and regulations in the PRC have not expressly provided the employer's obligation to inform the trade union of the internal investigation or the right of the trade union to participate in the employer's internal investigation. In practice, given the confidential nature of internal investigation, the employer usually does not voluntarily inform the trade union of such information. However, in accordance with Article 25 of the Measures for the Supervision of Labor Law by Trade Unions of the PRC, the trade union shall have the right to conduct an investigation if the employer has violated the labor laws and regulations or infringed the legitimate rights and interests of the employee. Therefore, it is still possible that the employer, in the course of the internal investigation, may be investigated by the trade union if it has violated the labor laws and regulations or infringed the legitimate rights and interests of the employee (e.g. being suspected of infringing personal information or privacy).

In addition, if the employer determines that the employee has committed a serious disciplinary offence based on the result of the internal investigation and thus decides to terminate the employment contract unilaterally, it shall notify the trade union of the reasons for termination in advance. If the employer has violated the laws, administrative regulations or the provisions of the employment contract, the trade union is entitled to request the employer to make corrections.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

L.4990/2022 explicitly states that the exercise of employee rights that refer to consulting from representatives or trade unions and protection against any detrimental measure that results from those consultations does not affect the implementation of any legal provisions. The autonomy of social partners and their right to enter into collective agreements regardless of the level of protection provided by L.4990/2022[7] is also unaffected.

Under L.4808/2021, legal persons and associations of persons, including trade unions, that have a legitimate interest in doing so may, with the consent of the complainant, bring an action in the complainant's name before the competent administrative or judicial authorities. They may also intervene in their defence[8].

[7] Law 4990/2022 art.5 par.2 (e)

[8] Law 4808/2021 art.14

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Except if provided expressly under a collective bargaining agreement, the union does not have the right to be involved in the investigation. Given that the investigation is between the employee and the company, it follows that the union does not have any right to participate in the investigation proceedings.

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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.

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17. What other support can employees involved in the investigation be given?



China

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

The relevant laws and regulations in the PRC have not made explicit requirements regarding the supports received by the employee involved in the investigation. In practice, the employer will usually prepare an internal time schedule before carrying out the investigation. Although the detailed time schedule will not be disclosed to the employee, the employer will usually inform the employee of each investigation in advance. In order to improve the transparency of the investigation, we recommend that employer should make positive and proper responses to employee who enquires about the progress of the investigation, so as to avoid employee's suspicion.

In addition, the Personal Information Protection Law of the PRC stipulates the rights of individuals in the process of personal information processing. In the scenario of internal investigation of an employer, the investigated party may, in accordance with such provisions, ask the employer for the right to review and even copy the personal information collected. Where the employee finds that the personal information

collected by internal investigation is inaccurate or incomplete, he/she is entitled to request for correction or supplementation.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

According to L.4990/2022, any form of retaliation against complainants is prohibited, including threats of retaliation[9]. The complainants have the right to cost-free legal advice about possible acts of retaliation as well as cost-free provision of psychological support (to be defined by Ministerial Decisions)[10]. In terms of other types of support, the complainants are not in principle liable for the acquisition of information or releasing the information they reported under specific conditions (eg, the acquisition or access does not independently constitute a criminal offence, if they had reasonable grounds for believing that a report was necessary to reveal the violation)[11].

L. 4808/2021 states that the dismissal or termination of the legal relationship of employment and any other discrimination that constitutes an act of revenge or retaliation is prohibited and invalid[12].

[9] Law 4990/2022 art.17

[10] Law 4990/2022 art.19

[11] Law 4990/2022 art.18 par.1(a)

[12] Law 4808/2021 art.13

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

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Switzerland

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

The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a

trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

^[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

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18. What if unrelated matters are revealed as a result of the investigation?



China

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

If any matter unrelated to this investigation is revealed during the investigation and the matter is suspected of violating regulations, the employer may comprehensively consider whether it is necessary to investigate the new matter. If the employer assesses that a combined investigation will seriously affect and hinder the progress of the investigation or complicate the investigation, the employer can handle the unrelated matters through separate investigations.

In addition, Article 6 of the Personal Information Protection Law of the PRC requires that the processing of personal information shall be for a specific and reasonable purpose and shall be directly related to the purpose of the processing and shall adopt the method with minimum impact on individuals' rights and interests. If the result of the investigation reveals unrelated personal information, it means that the collection and storage of such personal information are unrelated to the purpose of the processing. According to paragraph 1 of Article 47 of the Personal Information Protection Law of the PRC, the employer as the personal information processor shall take the initiative to delete personal information. If the employer fails to delete such information, the employee is entitled to request for deletion.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

If any unrelated matters are revealed as a result of an investigation and are of legal importance, the applicable legal provisions must be implemented and any relevant policies or agreements between the involved parties should be taken into account. For example, if the reporting procedure sheds light on other criminal acts, criminal law procedure may be followed if the matter is reported to the competent authorities.

If these unrelated matters fall under the ambit of another company's policies, the relevant procedures may also be followed separately. However, the employee under investigation must be allowed to defend him or herself, otherwise he or she may raise complaints relating to the procedural guarantees of the investigation.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

If unrelated matters are revealed because of a workplace investigation, the employer may look into the new matter and then determine whether there are sufficient grounds to proceed with an administrative disciplinary process for the new matter.

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Switzerland

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

There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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19. What if the employee under investigation raises a grievance during the investigation?



China

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

There is no specific provision on this in relevant laws and regulations in the PRC. In practice, the employer will usually stipulate the relevant grievance procedure and process in its internal rules and regulations, and provide the employee with the relevant grievance rights in accordance with the grievance regulations. Alternatively, even if there is no provision on grievance procedure and process in their internal rules and regulations, from the perspective of fairness and rationality, we recommend that the employer should review and evaluate the grievance raised by the employee. If it is confirmed that irregularities exist in the investigation, which may directly affect the conclusions of the investigation (e.g. a past conflict between the employee and the investigator or the employee was unfairly treated in the investigation), the employer shall suspend the investigation and resume the investigation after timely resolution of such complaint. If the grievance does not affect the normal conduct of the investigation, the employer can still proceed with the investigation.

Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Employees under investigation frequently raise grievances during investigation procedures that are dealt with on a case-by-case basis. The grievances raised by the employee under investigation are examined by the employees responsible for the investigation. They may either pause the relevant proceedings and review the grievance, especially if the claims of the employee under investigation are linked to a breach of his or her data or hearing rights, or they may continue the investigation.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

If an employee under investigation raises a grievance during an ongoing investigation, the employer must ensure that the employee under investigation is treated reasonably and fairly. Thus, the employer must also give attention to the complaint made by the employee and determine if there are reasonable grounds for the concern of the employee. If the employer determines the validity of the grievance raised, the employer may conduct a separate investigation for it.

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Switzerland

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

In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

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20. What if the employee under investigation goes off sick during the investigation?

China

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

During the investigation, the employer should fully respect the basic labor rights of the employee. According to the relevant provisions of Labor Contract Law of the PRC, if an employee is sick during the investigation, the employer should permit him/her to take sick leave provided that he/she provides the medical certificate issued by the medical institution and performs the medical leave application procedure as required by the employer. Therefore, the employer usually needs to request the employee to cooperate with the investigation after the sick leave, and cannot force the investigation by means of coercion or violence.

However, for the contents that can be investigated by the employer alone, such as the information publicized by the employee on social media and the employee's relevant information publicized on official website, since the investigation of such information is not affected by the employee's physical condition, the employer may adjust the investigation plan and conduct such part of the investigation first.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

In principle, the health of an ordinary employee would not prevent the investigation procedure from taking place (eg, interviews with witnesses or the collection of evidence would not be postponed or suspended). However, if the employee under investigation is unwell and they can't participate in the procedure, the investigation may be suspended or postponed until the employee can take part. Bearing in mind the majority of company internal policies and regulations governing workplace investigations provide for a specific framework and timetable for the whole procedure to be completed, the long-term sickness of an employee under investigation may impede the completion of the procedure in the prescribed time. As a result, the person conducting the investigation may seek alternative measures to facilitate participation (eg, teleconferencing).

On a related note, if sickness occurs after the investigation is completed and the employer decides upon the imposition of disciplinary measures against the said employee and the initiation of a relevant procedure, the decision should be duly and timely communicated to the employee, irrespective of whether his or her presence in the workplace is not possible because of the illness.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

Since neither consent nor the presence of the employee is material to the conduct of the investigation, his or her absence would not, in practice, imperil the conduct of the investigation.

As previously discussed, because the employer exercises a wide latitude of discretion in conducting workplace investigations, the employer may choose to proceed with the investigation despite the absence of the employee being investigated. Since the proceeding is only in the investigation phase, the statutory right of the employee to be heard is not violated, even if the investigation takes place without his or her participation.

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Switzerland

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

The time spent on the internal investigation by the employee should be counted as working time^[1]. The general statutory and internal company principles on sick leave apply. Sick leave for which the respective employee is not responsible must generally be compensated (article 324a paragraph 1 and article 324b, Swiss Code of Obligations). During certain periods of sick leave (blocking period), the employer may not ordinarily terminate the employment contract; however, immediate termination for cause remains possible.

The duration of the blocking period depends on the employee's seniority, amounting to 30 days in the employee's first year of service, 90 days in the employee's second to ninth year of service and 180 days thereafter (article 336c paragraph 1 (lit. c), Swiss Code of Obligations).

^[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

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21. How do you handle a parallel criminal and/or regulatory investigation?

China

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

The PRC law is silent on how to deal with the conflict between internal investigation and criminal or regulatory investigation. In general, the employer should cooperate with the criminal or regulatory investigation being conducted by the investigating authority to avoid hindering official business.

According to the Civil Procedure Law of the PRC, the Administrative Procedure Law of the PRC, and the Criminal Procedure Law of the PRC, the investigating authorities (including the public security authority, the people's procuratorate, the people's court, and the supervision authority) have the power to investigate and verify evidence from the witness or the individuals or entities that have access to the evidentiary materials. Therefore, the investigating authorities have the power to compel the employer to share or provide evidentiary materials relating to the case, and the employer shall cooperate and provide such materials. If the employer refuses to cooperate, it may face administrative liability (such as warning, fine and detention of the directly responsible person), judicial liability (fine shall be imposed on the main person in charge or the directly responsible person, and detention may be granted to those who refuse to cooperate) and even criminal liability (those who conceal criminal evidence may be guilty of perjury).

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Incidents of violence and harassment may be dealt with by certain independent authorities, such as the Labour Inspectorate Body and the Greek Ombudsman. The former is competent to impose sanctions on the employer if there is a breach of the general prohibition of violence and harassment at the workplace and the obligation of employers regarding the prevention of such incidents and the obligation to adopt policies within the business. The Greek Ombudsman is competent to deal with disputes when there is violence or harassment in the workplace coupled with discrimination due to, for example, gender, age, disability, sexual orientation, religious beliefs, or gender identity. Moreover, the applicable legal framework^[13] stipulates that victims of violence and harassment are entitled to lodge a report before the Labour Inspectorate Body and the Greek Ombudsman. This is in addition to the judicial protection he or she may seek and the internal investigation procedure to which he or she may have recourse, without specifying whether internal proceedings may be suspended before the regulatory bodies decide on the matter.

On the other hand, the National Transparency Authority and in certain cases the Hellenic Competition Commission are external reporting channels for employees reporting breaches of Union law. In such cases, L.4990/2022 (article 11 paragraph 5) stipulates that the investigation before the National Transparency Authority is not suspended if reporting procedures before other regulatory authorities have been initiated.

Moreover, criminal investigations can run in parallel with internal probes.

^[13] Law 4808/2018 art.10

Last updated on 03/04/2023



Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

It is within the employer's discretion to pursue the investigation even if a parallel criminal or regulatory investigation is taking place. As such, different investigations may proceed independently of each other. However, if the workplace investigation would interfere with or hinder the criminal or regulatory investigation, the workplace investigation should defer to the investigation being conducted by the people in authority. Since the nature of a workplace investigation is highly confidential, the police or regulations cannot compel any evidence from the employer without a court order.

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Switzerland

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

The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

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22. What must the employee under investigation be

told about the outcome of an investigation?



China

Author: *Leo Yu, Yvonne Gao, Tracy Liu, Larry Lian*
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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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

The employer has an obligation, towards the alleged victim but also the alleged perpetrator, to carefully investigate the report and any existing evidence before making decisions. The employee under investigation must be informed about the outcome of the procedure and any measures adopted in this regard. The respective decision must have due justification.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The employee under investigation should be informed of the results of the investigation and the basis of the conclusion. It should be included in the first notice or the notice to explain.

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Switzerland

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

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



China

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

For the employee: As mentioned in our response to question 22, the relevant laws and regulations in the PRC do not impose any obligation on an employer to share investigation report (including the findings) with its employee, unless otherwise expressly provided in its internal rules and regulations that the employer may share with its employee any investigation report or findings that do not involve trade secrets or another person's privacy or personal information. Therefore, the employer has the discretion to decide whether and to what extent to share the investigation report based on its business management needs.

For the police/regulatory authorities: In general, an employer shall provide a complete report according to the law as required by the authority handling the case. It is recommended that the employer should conduct a detailed review of the investigation authority and the information contained in the evidence collection documents issued by the authority, and communicate with the authority to specify the scope of assistance and evidentiary materials to be provided. Although the employer cannot refuse to provide relevant evidentiary materials to the investigation authority on the grounds that such evidentiary materials involve trade secret or personal privacy, it still needs to carefully assess the relevance of the evidentiary materials to the facts of the case and timely communicate with the authority to confirm and narrow the scope of providing evidence as much as possible. If necessary, the employer can consult professional lawyers to provide professional opinions. In addition, we suggest that the employer may also try to require the investigation officer to sign a confidentiality letter, and file the investigation materials involving trade secret or personal privacy, the reasons thereof, etc., for the purpose of reducing legal risks faced by the employer.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

There is no explicit legal provision stating the whole report must be communicated with the employee

under investigation. The legal framework (L.4990/2022 and L.4808/2021) is governed by strict confidentiality obligations and obligations to protect the complainant's data. From a data protection regulation perspective, it could be argued that the right of the person under investigation to know the identity of the complainant, witnesses or sources of information should be limited to protect the rights of such persons.

However, if the outcome of the investigation leads to the imposition of disciplinary measures, the right of the employee under investigation to request the whole investigation report, to aid in their defence is enhanced. Moreover, if a complaint is made in bad faith or is unfounded, it may be supported that the employee under investigation is entitled to receive full documentation so he or she can seek adequate legal protection or file an action before the courts.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The employer is not compelled to share its investigation report with the employee. However, it would be ideal for the company to keep in its records a comprehensive report that details the findings of the investigation. This would be useful during the administrative disciplinary process when the employee requests to be informed of the substantive grounds for his or her eventual termination.

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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).

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24. What next steps are available to the employer?

China

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

The employer may take disciplinary actions against the employee based on the investigation result and pursue their civil, administrative and even criminal liabilities. To be specific: 1) the employer may criticize and educate the employee, or take disciplinary actions such as warning, demotion and removal according to the internal rules and regulations of the employer. If the misconduct of the employee constitutes one of the circumstances stipulated in Article 39 of the Employment Contract Law of the PRC, the employer is entitled to take the most severe disciplinary action, namely termination of employment contract; 2) if the employee has caused economic loss to the employer, the employer may lawfully initiate a civil litigation recourse procedure; 3) if the employee violates the Law on Administrative Penalties for Public Security Administration of the PRC, the employer may deliver the case to the administrative department for corresponding administrative penalties; 4) if the employee is suspected of a crime, the employer should deliver the case to the public security authority and pursue his/her corresponding criminal liabilities according to the law.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

For workplace violence and harassment investigations, depending on the outcome of the internal investigation, the employer may adopt certain measures including, for example, recommendations to the employee under investigation, changes to the employee's working hours and transfer to another department.

If the employer decides to terminate the employment relationship, without having previously followed existing corporate policies regarding reporting procedures or without having provided the alleged perpetrator with the right to be heard, the dismissal could be deemed invalid. In any case, the measures adopted should be appropriate and proportional to the act committed.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

After the investigation has been concluded, the next steps of the employer will depend on the result of the investigation. If there are reasonable grounds to hold the employee for an administrative hearing, the employer may issue a Notice To Explain containing the charges against him or her and allowing the employee to explain his or her side. Otherwise, the employer may terminate the investigation immediately.

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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.

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25. Who can (or must) the investigation findings be disclosed to? Does that include regulators/police? Can the interview records be kept private, or are they at risk of disclosure?



China

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

If the relevant investigation authorities or regulatory authorities require the employer to provide the investigation findings and the interview records of its employee's illegal activities, the employer is usually obliged to cooperate with the authorities and make disclosures according to the requirements of the law. Meanwhile, according to Article 110 of the Criminal Procedure Law of the PRC, any entity or individual who has found out facts of a crime or a criminal suspect has both the right and the duty to report the case or provide information to the public security authority, the people's procuratorate or the people's court. Therefore, if the investigation findings show that the employee is suspected of a crime, the employer should disclose the information to the relevant investigation authorities including the public security authority. For some special industries, for example, the investigation findings against the banking industry usually also need to be reported to the higher-level banking supervisory authorities. Although the relevant investigation staff and supervisory staff are usually required to comply with the confidentiality obligations according to the laws or regulations, the risk of leakage of the reported information due to the expansion of the scope of persons who are aware of the investigation findings cannot be completely excluded.

In addition, an employer may decide whether to disclose the results of an investigation (mainly including the violation of disciplines and the disciplinary punishment) to other employees at its own discretion, but has to disclose the relevant information among employees to the extent that it is "minimum and necessary", so as to avoid infringing on the employee's personal information or privacy or even right of reputation.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

In principle, there is no specific obligation for investigating persons to disclose their findings. For proceedings before a court that have been initiated or investigated by the police or competent regulatory bodies, the relevant findings may be communicated under strict conditions and provided that the personal data of the parties involved are not publicly disclosed.

More specifically, under L. 4490/2022, in the context of whistleblowing procedures, personal data and any information that leads, directly or indirectly, to the identification of the complainant are not disclosed to anyone other than employees involved in the investigation, unless the complainant consents. The identity of the complainant and any other information may only be disclosed in the context of investigations by competent authorities or judicial proceedings, to the extent necessary for the protection of the employee under investigation's rights of defence. Confidentiality obligations govern the procedure for revealing trade secrets to police and regulatory bodies, especially in the framework of L.4990/2022.

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The result of the workplace investigation must be kept private by the employer. These are confidential matters that should not be disclosed to people or entities who did not take part in the investigation. However, if the investigation findings show that a possibly unlawful or criminal activity has taken place, or is about to take place, the employer should share such findings with the authorities.

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Switzerland

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

The employer is generally not required to disclose the final report, or the data obtained in connection with the investigation. In particular, the employer is not obliged to file a criminal complaint with the police or the public prosecutor's office.

Exceptions may arise, for example, from data protection law (see question 22) or a duty to release records may arise in a subsequent state proceeding.

Data voluntarily submitted in a proceeding in connection with the internal investigation shall be considered private opinion or party assertion.^[1] If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.^[2]

[1] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), *Interne und regulatorische Untersuchungen*, Zürich/Basel/Genf 2016, p. 123.

[2] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), *Interne und regulatorische Untersuchungen*, Zürich/Basel/Genf 2016, p. 102 et seq.

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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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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

Under the General Data Protection Regulation, employees' personal details and information must be kept in the business records for as long as is necessary for the purposes of the employment relationship. Otherwise, stored data must be deleted. However, under L.4990/2022^[14], reports remain in the relevant record for a reasonable and necessary time, and in any case until the completion of investigations or proceedings before the courts that have been initiated as a consequence of a complaint against the employee under investigation, the complainant or any third parties.

^[14] L.4990/2022 art.16 par.1

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

The outcome of the investigation should only remain on the employee's record for as long as is necessary, but shall not be less than three years as this is the record-keeping requirement under the Philippine Labor Code. If circumstances deem that such a report ceases to have any purpose whatsoever, it should be struck out of the employee's record.

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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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27. What legal exposure could the employer face for errors during the investigation?

China

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

It is inevitable that the investigation involves the employee's personal information, and once the investigation is mishandled, the employer may face the following legal risks:

Civil liability: Both the Civil Code of the PRC and the Personal Information Protection Law of the PRC, clearly provide the civil liability for infringement of privacy and illegal processing of personal information. Therefore, the investigated employee or relevant organizations such as the people's procuratorate have the right to claim or file a public interest lawsuit on the employer's improper collection of evidence, requiring the employer to bear the liability for infringement. In addition, the evidence obtained by an employer through infringing the employee's privacy and personal information rights and interests, in violation of the law, cannot be used as the valid evidence for the employer's unilateral termination of the employment contract or requiring the employee to compensate for losses.

Administrative liability: Article 66 of the Personal Information Protection Law of the PRC provides that, where personal information is processed in violation of regulations, administrative penalties imposed by the department performing duties of personal information protection may be up to revoking the business license, and the person directly in charge and other directly liable persons may be fined up to one million yuan and prohibited from practicing within a time limit. Meanwhile, Article 67 of the Personal Information Protection Law of the PRC provides that relevant illegal acts shall be recorded in the employer's credit files and disclosed to the public.

Criminal liability: if an employer illegally sells or provides to others the personal information obtained during the internal investigation, and the circumstance is serious enough, the judicial authority has the

right to hold the employer, the managers directly in charge and other directly liable persons criminally liable in accordance with the crime of "infringement of citizens' personal information" under Article 253A of the Criminal Law of the PRC.

It should be noted that a compliance investigation may also involve the employer's communication and investigation reporting with overseas authorities, or overseas institutions' direct access to information from the employer's domestic systems. If the employer conducts cross-border transmission of such personal information, it shall also meet one of the conditions set out in Article 38 of the Personal Information Protection Law of the PRC (i.e. passing the security assessment organized by the national cyberspace administration authority, obtaining certification from a professional institution concerning the protection of personal information or entering into a standard contract with an overseas recipient). Violations of the above provisions may result in civil, administrative and even criminal liability.

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Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

The employee can contest the decisions of disciplinary councils before the courts and request their annulment.

Moreover, in the framework of L.4990/2022, a monetary penalty and prison sentence (to be defined by an implementing Ministerial Decision) may be imposed on any person violating confidentiality obligations concerning the identity and personal data of employees or third parties included in the investigation procedure, while monetary penalties are also provided for legal entities^[15].

Moreover, administrative fines may also be imposed if the employer does not comply with the legal requirements concerning the prevention of violence and harassment in the workplace.

Furthermore, the employee under investigation may initiate proceedings before the courts under tort law, by claiming compensation for moral damages suffered if the company did not comply with its confidentiality obligations after the incident (eg, due to the spread of rumours in the workplace). This may also be linked with criminal law proceedings against the persons responsible for dealing with the investigation (and not against the legal person, since under Greek law there is no criminal liability for legal persons).

On the other hand, the employer may also be exposed to liability vis-à-vis the complainant, witnesses or facilitators, for breach of confidentiality or other obligations prescribed in the respective legal provisions, or if there are retaliation measures.

^[15] L.4990/2022 art.23 par.1

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Philippines

Author: *Rashel Ann C. Pomoy*
at Villaraza & Angangco

An employer may be liable for illegal termination if a dismissal is made based on wrong information collected during the investigation. Thus, the data and information gathered during the investigation stage must be correct and accurate. Further, investigations should be conducted in a manner that is fair and

reasonable to the employee under investigation. Otherwise, the employee may treat the investigation as harassment on the part of the employer, which may subject the employer to a potential lawsuit.

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Switzerland

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

As there are no specific regulations for internal investigations, the usual legal framework within which the employer must act towards the employee derives from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights.

But, for example, unwarranted surveillance could conceivably result in criminal liability (article 179 et seq, Swiss Criminal Code) for violations of the employee's privacy. Furthermore, errors made by the employer could have an impact on any later criminal proceedings (eg, in the form of prohibitions on the use of evidence).^[1]

Evidence obtained unlawfully may only be used in civil proceedings if there is an overriding interest in establishing the truth (article 152 paragraph 2, Swiss Civil Procedure Code). Consequently, in each case, a balance must be struck between the individual's interest in not using the evidence and in establishing the truth.^[2] The question of the admissibility of evidence based on an unlawful invasion of privacy is a sensitive one – admissibility in this case is likely to be accepted only with restraint.^[3] Since the parties in civil proceedings do not have any means of coercion at their disposal, it is not necessary, in contrast to criminal proceedings, to examine whether the evidence could also have been obtained by legal means.^[4]

Unlawful action by the employer may also have consequences on future criminal proceedings: The prohibitions on exploitation (article 140 et seq, Swiss Criminal Procedure Code) apply a priori only to evidence obtained directly from public authorities. Evidence obtained unlawfully by private persons (ie, the employer) may also be used if it could have been lawfully obtained by the authority and if the interest in establishing the truth outweighs the interest of the individual in not using the evidence.^[5] Art. 140 paragraph 1 Swiss Criminal Procure Code remains reserved: Evidence obtained in violation of Art. 140 paragraph 1 Swiss Criminal Procure Code is subject to an absolute ban on the use of evidence (e.g. evidence obtained under the use of torture^[6]).^[7]

^[1] Cf. ATF 139 II 7.

^[2] ATF 140 III 6 E. 3

^[3] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), *Zivilprozessrecht*, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

^[4] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), *Zivilprozessrecht*, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

^[5] Decision of the Swiss Federal Court 6B_1241/2016 dated 17. July 2017 consid. 1.2.2; Decision of the Swiss Federal Court 1B_22/2012 dated 11 May 2012 consid. 2.4.4.

^[6] Jérôme Benedict/Jean Treccani, CR-CPP Art. 140 N. 5 and Art. 141 N. 3.

^[7] Yvan Jeanneret/André Kuhn, *Précis de procédure pénale*, 2nd Edition, Berne 2018, N 9011.

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Contributors



China

Leo Yu

Yvonne Gao

Tracy Liu

Larry Lian

Jingtian & Gongcheng



Greece

Angeliki Tsatsi

Anna Pechlivanidi

Pinelopi Anyfanti

Katerina Basta

Karatzas & Partners



Philippines

Rashel Ann C. Pomoy

Villaraza & Angangco



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer