

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 01. What legislation, guidance and/or policies govern a workplace investigation?

### Belgium

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There is no specific legislation regarding a workplace investigation. In general, an employer has the right to investigate incidents at the workplace based on their authority over employees. However, the investigative powers of the employer are among others limited by the general right to privacy, which is also enshrined in Collective Bargaining Agreement No. 81 of 26 April 2002 to protect the privacy of employees concerning the control of electronic online data. If there are official complaints by employees due to sexual harassment, bullying or violence at work, well-being legislation provides a specific procedure. Also, upcoming whistleblower rules include some specifications for an investigation, but at the time of publication these are not yet final (we refer to is in more detail below). The information below is only valid for workplace investigations in the private sector. The public sector has a set of specific rules and principles, which are outside the scope of this chapter.

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### Greece

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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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## Switzerland

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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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## Turkey

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There is no specific legislation governing workplace investigations in Turkish law. However, there are general principles stemming from Labour Law No. 4857 as well as good practice principles. Data protection laws also occasionally intertwine with these. The internal codes and policies of the company should also be followed throughout the process.

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## 02. How is a workplace investigation usually commenced?



## Belgium

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First, the employer should appoint an investigator or investigative team that will be responsible for conducting the investigation. Next, the employer or the investigators might think about communicating with the involved employees. It depends on the situation if this is a good idea or not. In general, it can be recommended that the employer is transparent towards the involved employees and openly communicates about the (start of the) investigation process. This is definitively the case if it is already clear that the involved employees are under scrutiny because of their actions. In this case, the actual investigation can begin with a hearing of the involved employees. However, if there is a risk that employees will hide or destroy evidence or will collude to prevent the employer from finding the truth, the investigation can also start without any communication. In this case, it would be better to start collecting evidence before hearing from the employees involved.

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## Greece

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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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## Switzerland

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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).<sup>[1]</sup> 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.<sup>[2]</sup>

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

<sup>[2]</sup> Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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## Turkey

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The need to initiate an internal investigation may arise from the receipt of information from various sources. Reporting is one of the most common sources and can be in different forms. In Turkey, while conventional methods such as reporting to a direct supervisor, human resources or executives is quite

common, whistleblowers also use reporting mechanisms such as web-based forms, telephone hotlines or e-mail, if such mechanisms exist. It is critical to obtain as much information as possible from the complainants at this initial contact, to make a sound decision on whether or not to commence an investigation. There is no requirement to decide to start an investigation and it can be commenced through a corporate resolution (eg, ethics committee resolution or board resolution) of a decision-making body or a decision of the body or person who has such authority under the company policies. The investigation team who will conduct the process may also be approved by the company's decision-making body. It is also advisable to have a preliminary inquiry for the complaints, before commencing a fully-fledged investigation.

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



#### **Belgium**

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In principle, you cannot unilaterally suspend an employee during a workplace investigation, as there is a risk of constructive dismissal (ie, wrongful termination of the employment contract by the unilateral modification of one of its essential elements). Consequences could include the payment of an indemnity in lieu of notice based on seniority as foreseen by the Employment Contracts Act, plus possible damages (three to 17 weeks remuneration if an unreasonable dismissal, plus alternative or additional damages based on real prejudice suffered). The parties can nevertheless agree on a suspension of the employment contract. In this scenario, the remuneration will still have to be paid. Furthermore, a suspension could be a sanction that follows the outcome of the investigation, but even then it will only be possible for a limited time (and a suspension without pay is usually only allowed by the courts for a maximum of three days). However, if the complaint is about sexual harassment, bullying or violence at work, the prevention advisor (see question 4) can recommend that the employer take certain actions, which in grave circumstances could lead to employee suspension. The suspended employee should continue to receive his pay if this occurs.

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#### **Greece**

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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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## Switzerland

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

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

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## Turkey

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An employee can be suspended during a workplace investigation provided his or her prior written consent is obtained to this effect during or immediately before the investigation. Obtaining a generic written consent from the employee regarding suspension, which is not tied to a specific event, will not be valid. If there is a suspension of employment due to the workplace investigation, the obligations of the parties arising from the employment relationship continue, except for the employer's obligation to pay a salary (and provide benefits, if any) and the employees' duty to perform work.

There is no provision or established court decision setting forth the rules regarding the length of the suspension period; however, as a general rule, this period should be as brief as possible, so as not to cause any impression that the employment relationship has been terminated by the employer. Suspension of an employee on full pay during a workplace investigation, which is also known as garden leave, is a commonly used alternative to a conventional suspension method described above. During the garden leave period, an employee can be banned from entering the workplace and performing any of his or her duties either partially or entirely while continuing to be paid his or her regular salary, along with fringe benefits. Garden leave is not a concept regulated under Turkish employment legislation, but rather developed in practice, mostly by the Turkish subsidiaries of multinational companies. An ideal approach for the implementation of garden leave would be to obtain the written consent of the employees either at the commencement of employment or during the investigation.

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



## Belgium

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In general, there are no legal minimum qualifications, the employer can delegate the investigation task to anyone. Of course, it is strongly recommended to appoint someone who is not involved in the case and who can lead the investigation objectively with the necessary authority to take investigative measures.

However, in the specific case of an official complaint due to sexual harassment, violence or bullying at work, the investigation will be conducted by the prevention advisor for psychosocial aspects. Next, if the investigation is based on an internal whistleblowing report, there will have to be an independent reporting manager responsible for receiving the report, giving feedback to the whistleblower and ensuring a decent follow-up to the report. Logically, the reporting manager will lead the investigation in this case, but he can be assisted by other persons or a team who are bound by a duty of confidentiality.

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## Greece

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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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## Switzerland

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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<sup>[1]</sup>, if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

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

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## Turkey

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There is no compulsory requirement or qualification arising from the law as to the selection of the investigation team. The number and the profile of the investigation team need to be decided according to the characteristics of the case, whereas the head of the investigation team needs to be a competent and experienced investigator. A conflict of interest review is required to be conducted for the whole investigation team to protect the interests of the company. As conflicts of interest can also arise during an investigation process, relying on the support of an outside legal team should be considered, particularly for internal investigations that are likely to expand.

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

### Belgium

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This is only possible if the employee claims that his or her rights (eg, the right to privacy) are violated by the investigation (but this will merely limit the investigation methods) or if he or she finds that the investigation constitutes an abuse of rights. In any case, it will be very hard for an employee to completely halt the investigation.

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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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### Switzerland

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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.

## Turkey

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There is no specific remedy provided under Turkish law to stop the investigation. One may consider requesting an injunction from a court for this purpose, but it is less likely that such a request would be successful. This is because investigations are often conducted for fact-finding purposes and to obtain an injunction the claimant will need to prove that this fact-finding exercise will pose a great risk and cause irreparable harm to the employee.

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

### Belgium

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Employees cannot be forced by their employer to act as a witness. If they decide to nonetheless testify as a witness, they do not, in principle, have particular rights. If the employee puts himself in a difficult or even dangerous position to act as a witness, it is up to the employer to offer the necessary protection or take measures to prevent any harm (eg, by keeping the identity of the witness confidential or by planning the hearing at a place or time when the employees involved are not aware of it).

However, this is not the case for whistleblowing reports, where a witness might be seen as a “facilitator” who can receive protection against any retaliation by the employer.

Also, workers who were direct witnesses to official allegations of sexual harassment, violence or bullying at work are protected against retaliation by the employer. This also applies to witnesses in court.

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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.



## Switzerland

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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.<sup>[1]</sup> 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).<sup>[2]</sup>

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<sup>[1]</sup> Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

<sup>[2]</sup> Same opinion: Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

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## Turkey

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Co-workers cannot be compelled to act as witnesses in a workplace investigation. Employees also have rights arising from the law that must be respected by the employers and investigators, such as the right to privacy or to remain silent, freedom of expression and communication. These rights must be protected during every step of the workplace investigation process.

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

## Belgium

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Here, the investigation “collides” with the right to privacy of the persons involved.

First, the rules and principles of the GDPR will apply if personal data is involved. Therefore, the employer will have to find a data-processing ground, which could be his or her legitimate interest or the fact that the investigation could lead to legal proceedings, etc. The data processing should also be limited to what is proportionate and the data subjects should be informed. Due to this obligation, it is arguable that the GDPR policy already provides the necessary information for the employees not to jeopardise the investigation. In any case, data subjects should not be able to use their right to access data to ascertain the preliminary findings of the investigation (which are confidential) or any confidential identities involved (eg, in the whistleblower procedure, the identity of the report should be protected at all times).

Also, the employer should follow the procedure of Collective Bargaining Agreement No. 81 on searching the e-mails or computer files and internet searches of employees. This CBA limits the purposes for searches and lays down a double-phase procedure that needs to be followed if private data is involved. Next to this, the employer should also take into account the case law of the European Court of Human Rights, which only allows e-mail and computer searches based on the following:

- whether the employee has been notified of the possibility that the employer might take measures to monitor correspondence and the implementation of such measures;
- the extent of the monitoring and the degree of intrusion into the employee’s privacy (including a distinction between the monitoring of the flow or the content of the communications);
- whether the employer has provided legitimate reasons to justify monitoring of the communications and accessing of their actual content; and
- whether it would have been possible to establish a monitoring system based on less intrusive measures, the consequences of the monitoring for the employee who is subject to it, and whether the employee had been provided with adequate safeguards.

Next, if the employer wants to use camera images, the rules of Collective Bargaining Agreement No. 68 should have been followed when installing cameras. If not, the images might have been collected illegally.

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## Greece

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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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## Switzerland

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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.<sup>[1]</sup>

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.

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[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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## Turkey

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The conditions applicable to gathering physical evidence mainly stem from the precedents of the Turkish Constitutional Court about employment disputes and the rules set forth under Turkish Law No. 6698 on the Protection of Personal Data (DPL). It is generally accepted that employers can gather physical evidence for certain legitimate purposes, such as disciplinary investigations, the prevention of bribery and corruption, fraud or theft, money laundering, and employee performance monitoring and compliance. In doing so, employers must, however, comply with the fundamental principles of the Turkish Constitutional Court as briefly described below:

- The grounds for the gathering of evidence must be legitimate. The definition of the legitimate interests of the employer may change depending on the characteristics of the business, workplace and employee job description, as well as the specific circumstances of the case. Therefore, it is advisable to carry out a balancing test between the legitimate interest the employer is seeking to protect and the employee's interest in the protection of their privacy.
- The collection activities must be proportionate, in the sense that the measure implemented by the employer must be appropriate and reasonably necessary to achieve the legitimate purpose, without infringing upon the fundamental rights and freedoms of the employees. For instance, e-mail monitoring to collect evidence may not be proportionate if it is determined that e-mails that are not related to the incident subject to investigation are also accessed. To achieve this, certain keywords or algorithms can be used while monitoring e-mails during a disciplinary investigation.
- The collection process must be necessary to achieve the purpose. In other words, the collection of physical evidence must only be carried out to the extent there are no other measures allowing the employer to achieve its purpose, such as witness testimony, workplace records, or examining the results of projects. If the purpose can be achieved through less invasive means, the collection of physical evidence may not comply with the principles established by the decisions of the Constitutional Court.

Separately, depending on the type of physical evidence collected, the collection process may lead to the processing of the concerned employees' personal data. Under the DPL, personal data collected in Turkey can only be processed if the explicit consent of the data subject is obtained; or the data is processed based on one of the exceptions to consent provided by the law. To the extent the data processing can be deemed

to be based on the pursuit of a legitimate interest of the employer, it should also meet the following conditions:

- it should be the most convenient and efficient method to identify any employee wrongdoing to protect the legitimate interests of the company; and
- the data processing should not harm the fundamental rights and freedoms of the employees.

The employer should in any case comply with the obligation to inform employees before the processing of their data, through a privacy notice containing mandatory information required by the DPL.

In addition, as a general principle, the evidence-gathering process should always be conducted based on the assumption that the internal investigation can lead to litigation. Any evidence that will be used in litigation needs to have been gathered in compliance with the law. In both criminal and civil litigation, the courts will review each piece of evidence to confirm whether it was gathered through lawful methods and disregard any evidence that fails to comply with due process.

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



### Belgium

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The employer is, in principle, not entitled to search the employee's private possessions, except with the explicit consent of the employee. Digital files on the computer or laptop of an employee can be searched under the rules of CBA No. 81 (see question 7) and other privacy rules.

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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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### Switzerland

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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.<sup>[1]</sup> 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.[\[2\]](#)

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[\[1\]](#) 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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## Turkey

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There is no explicit answer to this question. However, it is important to make a distinction between employees' possessions and files that are strictly personal and employees' possessions and files that are found on devices or files provided for company use. For the first category, the employer does not have the right to search employees' possessions and files. For the latter category though, justifications need to be established, by observing the requirements explained in question 7. Furthermore, the employers must also ensure that employees are fully and explicitly informed in advance of the monitoring operations, either through a provision included in the employment agreement, or in a separate notice or employee policy, the receipt of which should be duly acknowledged by the employee.

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



## Belgium

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If the investigation is based on a whistleblower report that falls under the scope of the upcoming rules, the investigators are bound by a strict duty of confidentiality, especially regarding the identity of the report. The rules also provide some procedural deadlines for feeding back to the reporter. Within seven days of receiving the report through an internal reporting channel, the reporting manager needs to send a receipt to the whistleblower. From that moment, the reporting manager has three months to investigate the report and give feedback and an adequate follow-up to the report. Next, the rules offer strong protection against any retaliatory measures the reporter may experience. Regardless, these rules are mostly intended to offer the necessary protection for whistleblowers and to ensure that companies take necessary investigative steps following a report, but they do not include much information about the actual procedure of the investigation besides certain deadlines, nor do they deal with other employees involved (or under investigation).

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## Greece

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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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## Switzerland

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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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Although there is no specific legislation in Turkish law on whistleblowing, necessary mechanisms need to be implemented to ensure that whistleblowers and the whistleblowing process are kept confidential. In addition, whistleblowers must be encouraged and supported to be open about raising their concerns in good faith. A whistleblowing activity, when it amounts to raising a concern in good faith, must not be mistreated by the employer. Employers should also put in place protection mechanisms against the mistreatment of whistleblowers or retaliation towards them by other employees.

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# 10. What confidentiality obligations apply during an investigation?

## Belgium

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A workplace investigation is often a sensitive matter that requires necessary confidentiality to find out the truth discreetly and objectively. Nevertheless, there is often pressure from employees, trade unions or even the media and general public to be transparent and communicate about the case. From a legal perspective, it is not recommended to communicate openly about an ongoing investigation, as this can jeopardise the

investigation or the possibility of taking disciplinary measures.

Whistleblower investigations will be bound by a strict duty of confidentiality regarding anything that could reveal the identity of the reporter.

In complaints due to sexual harassment, violence or bullying at work, the prevention adviser is bound by professional secrecy. Consequently, he or she may not disclose to third parties any information about individuals that have come to his or her knowledge in the performance of his or her duties. However, he or she still has the freedom to inform the people concerned to carry out his or her tasks in the procedure.

Last updated on 15/09/2022



## Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*  
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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].

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[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



## 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.<sup>[3]</sup>

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[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.

Last updated on 15/09/2022



## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

As a general practice, workplace investigations need to be kept confidential for the integrity of the process. In some cases, employees can specifically request their identity or involvement be kept confidential. In such cases, additional measures need to be taken to protect confidentiality. In any case, obligations and rights arising from the DPL and Labour Law must be respected and complied with by the employer and the investigation team.

Last updated on 15/09/2022

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



## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

In general, the employee should be informed that there is an ongoing investigation (unless this could jeopardise the investigation, in which case disclosure could be postponed until this is no longer the situation). Next, before imposing measures or sanctions, the employee should be allowed to be heard or to give his or her version of the facts. Of course, the employee can only do this if he or she is aware of the facts being investigated. It is not necessary to give the employee a full insight into the investigation, only the necessary facts that allow him or her to offer a defence are sufficient.

Last updated on 15/09/2022



## Greece



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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

## Switzerland

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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.<sup>[1]</sup> The employer, on the other hand, is not obliged to provide the employee with existing evidence, documents, etc, before the start of the questioning.<sup>[2]</sup>

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.<sup>[3]</sup>

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)).<sup>[4]</sup> 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 (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 paragraph 4, Ordinance to the Federal Act on Data Protection).

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[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.

Last updated on 15/09/2022



## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

Informing the employee under investigation on the subject, purpose and possible consequences of the investigation need to be evaluated by the investigation team before the interview. As a general principle, the interviewer is expected to share the information he obtained on the case with the employee, and ask for confirmation or clarification on these matters. The employee under investigation may be subject to an interview to gain information or as a confrontation if there is concrete evidence. If the evidence in hand is not based on concrete and material grounds, it would be more appropriate not to lead the interview to a confession, but inform the employee of the possible allegations. However, if the available evidence is based on concrete and material grounds, the interviewer may confront the interviewee by sharing the information that was gathered during the investigation in an attempt to obtain a confession.

Last updated on 15/09/2022

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



## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

If the complainant made use of an internal whistleblowing procedure, confidentiality regarding the identity of a reporter is mandatory. Also, in other cases and for other involved persons (witnesses), it is recommended to keep their identity confidential to prevent the risk of intimidation or other negative consequences.

In complaints due to sexual harassment, violence or bullying at work, if the prevention adviser heard or took written statements from persons that were considered useful for the evaluation, these persons may remain anonymous.

The employee must, nevertheless, receive sufficient information to be able to offer a defence concerning the facts of which he or she is accused.

## 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<sup>[4]</sup> 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<sup>[5]</sup>.

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.

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

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

Last updated on 03/04/2023

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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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.<sup>[1]</sup>

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

Last updated on 15/09/2022

## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

It is possible to keep such information confidential. If this is the case, the investigation team should conduct the interview outside the workplace of the company. This is actually good practice applicable to all internal investigations, unless there is a particular reason that requires the meetings to be held at the company.

Last updated on 15/09/2022

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

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

In principle this is possible. However, these NDAs do have their limits and cannot prevent involved persons from, for example, bringing a legal claim or filing a report if they are legally entitled to do so. Under whistleblower rules, a reporter can even publish his or her complaint under certain circumstances.

Last updated on 15/09/2022

### Greece

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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.

Last updated on 03/04/2023

### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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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.

Last updated on 15/09/2022

## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

It is crucial to keep the events and facts of a workplace investigation confidential for the integrity of the process. It may be necessary to consider appropriate confidentiality measures to protect the complainant, mitigate risks, and preserve evidence. Damage to the confidentiality of the case can prevent the investigation team from bringing the case to a correct and complete conclusion. Although the labour legislation imposes a general confidentiality obligation on employees, NDAs can still be used as supplementary documents that may emphasise the confidentiality obligations of employees in workplace investigations and provide additional contractual protections such as penalties if there is a breach.

Last updated on 15/09/2022

## 14. When does privilege attach to investigation materials?

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

If the investigation is conducted by a prevention advisor, the investigation and the prevention advisor are bound and protected by a professional duty of confidentiality.

Last updated on 15/09/2022

### Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*  
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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<sup>[6]</sup>.

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.

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

Last updated on 03/04/2023

### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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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).<sup>[1]</sup>

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

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

Last updated on 15/09/2022



## Turkey

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Attorney-client privilege is attached at the time the attorney is hired as a legal representative. Attorney-client privilege, which is regulated under the Law of Criminal Procedure No. 5271 and the Attorney's Act No. 1136, covers not only the investigation process, but also the legal advice and counselling received before and after the investigation. The importance of this privilege is especially present in cases where judicial or administrative authorities are involved in the process. Documents and correspondence benefiting from attorney-client privilege can be protected and fall outside the scope of preventive measures such as search and seizures due to the right of defence.

Last updated on 15/09/2022

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



## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

An employee can be assisted by a member of a trade union. They are also free to consult a lawyer.

Last updated on 15/09/2022

## Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*  
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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.

Last updated on 03/04/2023

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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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.<sup>[1]</sup>

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.<sup>[2]</sup> 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.<sup>[3]</sup>

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

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<sup>[1]</sup> Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

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

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

Last updated on 15/09/2022

## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

Yes, the employee under investigation has a right to be accompanied by his or her legal representative during the investigation. It is also essential that the employee under investigation is informed about his or her right to have a legal representative.

Last updated on 15/09/2022

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



### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

At the request of the involved employee, an employee can be assisted by a member of the trade union delegation, for example, during his or her hearing.

The works council should be informed of an investigation if there is a considerable impact on the company; this will only be the case if the investigation concerns a very serious, important or widespread issue. This information should be communicated as soon as possible and before measures are taken as a result of the investigation. This is only a right to information, not consultation. Moreover, members of the works council may be asked to respect their duty of confidentiality. However, as the enforcement of this duty of confidentiality is difficult, the timing of the information should be chosen wisely so it does not jeopardise the investigation.

Last updated on 15/09/2022



### 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<sup>[7]</sup> 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<sup>[8]</sup>.

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

<sup>[8]</sup> Law 4808/2021 art.14

Last updated on 03/04/2023



## Switzerland

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

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

Last updated on 15/09/2022

## Turkey

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at Paksoy

An authorized trade union, if any, may have the right to be informed or involved in the investigation, depending on the terms of the collective bargaining agreement in place. Even in the absence of such a provision in the collective bargaining agreement, it would still be recommended to inform the trade union of the investigation as a courtesy. We do not have works councils under Turkish employment law.

Last updated on 15/09/2022

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

## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

There are no other mandatory support measures. However, an employer is free to offer additional support, for example, by granting leave from work. If tensions at the workplace are high, it may be a good idea to ask the employee under investigation to take some leave. Some companies also provide certain legal, moral or even psychological support. If the complaint concerns sexual harassment, bullying or violence at work, the prevention adviser can also recommend that the employer take additional measures to support certain employees.

Furthermore, under the whistleblower rules, an external reporting authority can grant any support measure (eg, legal advice or financial, technical, psychological or media-related, social support).

For complaints due to sexual harassment, violence or bullying at work, and if the facts are serious, the prevention adviser should, during the examination of the request and before giving his or her opinion to the employer, propose protective measures to the employer. These measures are necessary to avoid serious damage to the complainant's health or a significant deterioration in the situation (for example, causing opposing parties to commit criminal offences). The final decision on taking these measures rests with the employer. This means that the employer does not necessarily have to take the measures proposed by the prevention adviser. They may take other measures that provide an equivalent level of protection for the employee.

Last updated on 15/09/2022

## Greece

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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].

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[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

Last updated on 03/04/2023

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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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]

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[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.

Last updated on 15/09/2022

## Turkey

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at Paksoy

The employees involved in the investigation should be granted their personal needs (such as refreshments or access to the bathroom), as well as translation services or transportation, if needed. A breach of these rights or needs during the process may constitute a violation of the law and adversely affect the validity of the results to be obtained from the investigation.

Last updated on 15/09/2022

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



### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

If the investigation is not protected by confidentiality towards the employer (e.g. the prevention advisor cannot disclose confidential information to the employer), it could result in further measures taken by the employer or lead to a new investigation.

Last updated on 15/09/2022



### Greece

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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.

Last updated on 03/04/2023



### Switzerland

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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.

## Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

If an unrelated matter is revealed during the investigation, an independent assessment needs to be made as to whether this new matter requires to be included in the same internal investigation, or a separate/new one should be commenced.

Last updated on 15/09/2022

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

### Belgium

Author: *Nicolas Simon*  
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This will depend on where the employee raises a grievance and the content of the grievance. If it is against the employer, the investigation can take this into account and continue from there. If the grievance is raised against the authorities, it will depend on the steps taken by the authorities.

Last updated on 15/09/2022

### Greece

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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.

Last updated on 03/04/2023

### Switzerland

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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).

Last updated on 15/09/2022

## Turkey

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If, during the investigation, the employee under investigation raises a grievance, the investigator will be expected to temporarily stop the investigation to assess the situation. The investigation team will evaluate whether the employee is raising a grievance as a defence mechanism or in good faith and with sincere concerns. If the subject of the grievance is related to the pending investigation, the investigation may be extended to cover this new item. Otherwise, a new investigation can be initiated by the investigation team.

Last updated on 15/09/2022

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

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If this occurs, there is a risk that any measure resulting from the investigation (eg, a dismissal) can be (wrongly) interpreted as discrimination based on the illness of the employee. However, if the employer can prove that the measure is not related to the illness but solely related to the investigation (which is also not related to the illness), there may be no discrimination. The sickness of the employee may prevent the continuation of the investigation because, for example, it becomes impossible to hear from the employee. In this instance, the investigation can be suspended, postponed or extended until the employee returns. If it is a long-term absence, this could lead to a disproportionate amount of time to complete the investigation. Therefore, the employer should take any necessary steps to invite the ill employee to a hearing anyway (eg, through digital means). If the employee unreasonably refuses (several) of these invitations, it could be argued that the employee is wilfully boycotting the investigation and therefore forfeits his or her opportunity to be heard.

Last updated on 15/09/2022

### Greece

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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.

Last updated on 03/04/2023

## Switzerland

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The time spent on the internal investigation by the employee should be counted as working time<sup>[1]</sup>. 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).

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

Last updated on 15/09/2022

## Turkey

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The employee's participation in the investigation is vital for a fair assessment and to ensure that the employee has been allowed to defend himself or herself against the allegations. As such, every reasonable effort must be made by the employer to adjust the investigation process so that the employee can take part in the investigation. For example, if the employee goes off sick and thus cannot attend the investigation interviews or disciplinary hearings, the investigation should be carried out as much as possible without resorting to the employee in question, by initially exhausting the other available options (such as conducting interviews or disciplinary hearings with other available witnesses). However, if the employee's absence takes longer than is reasonably expected or the matter at hand must be dealt with urgently, the employer may consider concluding the investigation and determining the next steps based on the information at hand. In such a case, it is recommended to explain in the investigation report the reasons why the employee could not take part in the investigation process (ie, why an interview or disciplinary hearing, etc, could not have been arranged with the employee) along with supporting

documentation evidencing the employer's efforts to involve the employee in the investigation process and the employee's excuse for not participating interviews or disciplinary hearings.

Last updated on 15/09/2022

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



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In legal proceedings, a criminal procedure takes precedence over civil procedures. However, disciplinary internal proceedings (like a workplace investigation) and an investigation by the authorities may run parallel to each other. If the public investigation leads to a court procedure that results in the acquittal of the employee under investigation, it could lead to legal problems if the employer has already imposed sanctions based on the same employee. Therefore, the employer could make the internal investigation dependent on the public investigation, and could take preventive measures while awaiting the outcome.

The public authorities normally have the legal competence to request information that can help them in their investigation. Therefore, they could rightfully ask the employer to share evidence or findings from the internal investigation.

Last updated on 15/09/2022



### Greece

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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<sup>[13]</sup> 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.

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<sup>[13]</sup> Law 4808/2018 art.10



## Switzerland

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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).

Last updated on 15/09/2022



## Turkey

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If the issues being examined during an investigation are also subject to parallel criminal or regulatory investigation, the workplace investigation will probably be stayed. This is primarily because parallel criminal or regulatory investigations would necessitate a more comprehensive examination and public bodies overseeing such investigations have a broader legal prerogative to gather evidence. It is, therefore, advisable to stay the internal investigation to not interfere with the criminal or regulatory authorities. If a prosecutor or a court requires the employer to give evidence or share certain documents, the police can compel the employer to share evidence. Regulatory bodies may also ask the employer to share evidence and the powers conferred on such regulatory bodies will be a determining factor in whether they can compel the employer.

Last updated on 15/09/2022

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



## Belgium

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It is highly recommended to inform the employee under investigation of the outcome. If disciplinary measures are imposed upon him or her, the legal procedure must be followed and the sanction must be imposed or communicated the day after the employer or his delegate has established the wrongdoing of the employee.

Last updated on 15/09/2022



## Greece



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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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## Switzerland

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

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.<sup>[1]</sup> 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.<sup>[2]</sup>

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

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

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## Turkey

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In general, the employee under investigation should be adequately informed about the allegations and findings to be able to defend him or herself. If no legal action will be taken against the employee under investigation as a result of the investigation, the employee may be notified regarding the findings and the outcome of the investigation. If the employee will be subject to a legal or administrative action (ie, warning, reprimand, or termination of employment), the formal requirements stemming from the Labour Law will need to be followed.

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

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It is recommended to limit the communication to the findings and details of the report that are necessary for the employee to fully understand the outcome. This is especially true if the investigation is bound by a duty of confidentiality (eg, under the whistleblowing rules), as the employee should not be allowed access to the full report.

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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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## Switzerland

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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).<sup>[1]</sup> 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.<sup>[2]</sup>

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

Last updated on 15/09/2022

## Turkey

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There is no legal requirement for the disclosure of the investigation report in full. If the investigation report needs to be submitted to the court, public institutions or other third parties, measures may need to be taken to protect confidentiality or to comply with the confidentiality requests of the persons participating in the investigation.

Last updated on 15/09/2022

## 24. What next steps are available to the employer?

### Belgium

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If the investigation leads to the establishment of grave errors by the employee, this can lead to sanctions. The employer must follow the procedure laid down in the internal work rules of the company and can only impose sanctions that are included in the internal work rules. In general, these are: a verbal warning; a written warning; a suspension (remunerated or not); a fine (capped to one-fifth of daily remuneration); and dismissal. If there are very serious errors leading to an immediate inability to continue the employment relationship with the employee, the employer can dismiss the employee with urgent cause without any notice period or indemnity in lieu of notice (following the specific procedure for these types of dismissals). In less serious cases, the employer could still dismiss the employee with a notice period or indemnity in lieu of notice. In principle, the employer has a right to dismiss the employee, even if this sanction is not included in the internal work rules.

As said previously, disciplinary sanctions (included in the internal work rules) must be communicated to the sanctioned employee the day after the employer or his delegate has established fault. The sanction must be registered in a sanction register, with the name of the employee, the date, the reason and the nature of the sanction. If there is a fine, the amount of the fine should be mentioned. The proceeds of the fines must be used for the benefit of employees. Where a works council exists, the use of the proceeds of the fines must be determined after consultation with it.

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### Greece

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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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## Switzerland

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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.<sup>[1]</sup>

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

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

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## Turkey

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The employer may take various legal remedies against the employee whose infringement is discovered as a result of the internal investigation. Depending on the outcome of the investigation, the employer:

- may provide the employee with a written warning requesting him or her not to repeat the same conduct;
- terminate the employment relationship based on either just cause, without paying any compensation immediately, or valid reason by observing statutory notice periods or making payment in lieu of notice and paying severance compensation if applicable; or
- not take any action if the investigation concludes that no fault is attributable to the employee.

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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?**

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If the investigated acts constitute a crime, the authorities or the police should be informed. In certain cases, not doing so could lead to the company being accused of concealing a crime or becoming jointly responsible for it. However, if the company is the only victim of the crime and it is minor, the company may choose not to inform the authorities. For example, there is an enormous difference between a bank employee stealing large amounts of money from clients and an employee who is stealing toilet paper from the company. As stated above, the interview records could be at risk of disclosure if the authorities or police seize them for their investigation.

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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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## Switzerland

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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.<sup>[1]</sup> If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.<sup>[2]</sup>

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

<sup>[2]</sup> Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani

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Investigation reports may be disclosed in potential lawsuits or judicial proceedings. Therefore, the investigation report must demonstrate that a detailed and objective investigation has been carried out. Courts may also request that the interview records be disclosed to them, failing which, the courts may resort to an adverse inference in civil proceedings. Criminal courts can also ask the interview records to be disclosed if this would be necessary for reaching the truth. Failure to disclose may entail criminal responsibility under certain conditions.

Last updated on 15/09/2022

## 26. How long should the outcome of the investigation remain on the employee's record?

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According to the GDPR, personal data should only be stored for a proportionate amount of time. Usually, this means that it can be stored as long as it is relevant for the employment contract, and even afterwards, if there is a risk of legal proceedings (ie, regarding the dismissal of the employee).

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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.

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

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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).<sup>[1]</sup>

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<sup>[1]</sup> Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

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There is no provision in the legislation setting forth a specific duration for keeping the outcome of the investigation findings in personnel files. However, based on general principles, the outcome of the investigation can remain on the employee's personnel files as long as the employer has a lawful interest in such processing without unnecessarily harming the privacy rights of the employee.

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

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In general, abusive investigations could lead to a legal claim regarding the abuse of rights. During an investigation, an employer should be guided by principles of due diligence and not take disproportionate action. If the investigation causes unnecessary damage, involved employees could file for compensation (eg, before the labour court). Next, the employer is also responsible for following the mandatory procedure for official complaints regarding sexual harassment, bullying and violence at work and investigations of whistleblower reports. In the first case, an employer who does not follow the procedure or obstructs the procedure can be liable for penal or administrative fines (maximum 8,000 euro) or, if the employer has not taken necessary measures to mitigate the risks for the employee and the employee suffers damage to their

health, they may be liable for a fine of a maximum of 48,000 euro and imprisonment for between six months and three years. In the second case (whistleblower procedure), if an employer did not follow or has obstructed the procedure, they can be fined up to 5% of the annual revenue of the preceding year.

If the complaints involve allegations of sexual harassment, violence or bullying at work, the employer might risk an investigation of the inspection on supervision and well-being at work. If the prevention advisor finds out, before giving his advice, that the employer did not take any suitable protective measures after they were recommended, the prevention advisor is obliged to call an inspection on supervision and well-being at work.

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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<sup>[15]</sup>.

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.

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<sup>[15]</sup> L.4990/2022 art.23 par.1

Last updated on 03/04/2023



## Switzerland

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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]

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[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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## Turkey

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The nature of legal exposure is very much dependent on the legal action the employer has taken after the investigation. The employer may be subject to a wrongful termination lawsuit to be filed by the employee, which may result in the payment of compensation to the employee of between eight and 12 months' salary, if the court concludes that the termination is wrongful. This may also include monetary and moral damages claims. If no termination has taken place, the employee may terminate his or her employment with just cause if the employer has erred in its neutral fact-finding mission and this affects the employee. The employee may also file a criminal complaint to the extent that the investigation findings incriminate the employee in error.

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