

Workplace Investigations

Contributing Editors

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14. When does privilege attach to investigation materials?

Greece

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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^[6].

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

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

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Japan

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There are no specific laws or rules for the provision of confidentiality privileges other than that provided by the Fair Trade Commission Rules, which allow companies that are the subject of investigations into cartels, bid rigging, etc, to treat communications with their lawyers as confidential. However, when a motion for an order to produce documents is filed in a court proceeding, if the requested documents are "documents exclusively for the use of the possessor of the documents", the obligation to produce the documents is not recognised. If the investigation materials fall under this category, it is possible to exclude them from the scope of the court order to produce documents.

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Switzerland

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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).^[1]

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

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

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