

Workplace Investigations

Contributing Editors

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

Greece

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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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Hong Kong

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As part of an investigation, an employer may search objects or files that are the company's property (eg, electronic devices given by the employer for business purposes and emails or messages stored on the company's server) without prior notice and the employee's consent is not needed. The employer, however, has no right to search an employee's possessions (eg, a private smartphone) without the employee's consent.

To avoid arguments as to who a particular object belongs to, employers may specify in internal policies what is to be regarded as a corporate asset and could be subject to a search in a workplace investigation.

Concerning an employee's possessions, even if he or she consents to a search, it is good practice for the employer to conduct the search in the presence of the employee or an independent third party who can act as a witness to the search. If the employer suspects that a criminal offence has been committed and that a search of the employee's possessions would reveal evidence, the employer should consider reporting its suspicion to the police, as they have wider legal powers to search.^[1]

^[1] Usually upon execution of a warrant.

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.^[1] The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.^[2]

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

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

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