

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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05. Can the employee under investigation bring legal action to stop the investigation?

Greece

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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.

Last updated on 03/04/2023

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.

Last updated on 15/09/2022

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

Greece

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

L.4808/2021 does not indicate when such disclosures are permitted; however, it is obvious that this is a matter of cost-benefit analysis where the public interest and the fundamental rights of the involved persons should be considered in a balanced way to ensure the best results. From a data protection perspective, it could be argued that the person under investigation’s right to know the identity of the complainant, witnesses or sources of information should be limited to protect the rights of these persons.

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

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

Last updated on 03/04/2023

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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.^[1]

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

Last updated on 15/09/2022



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