

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 07. What data protection or other regulations apply when gathering physical evidence?

### 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.

Last updated on 03/04/2023

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

Last updated on 15/09/2022

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



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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

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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

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