

# Workplace Investigations

## Contributing Editors

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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.

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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.<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.

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



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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.

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### 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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[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7.

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