

Workplace Investigations

Contributing Editors

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01. What legislation, guidance and/or policies govern a workplace investigation?

Finland

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Mainly, the Occupational Safety and Health Act (738/2002). In addition, the following also have relevance in connection to a workplace investigation: the Employment Contracts Act (55/2001), the Criminal Code (39/1889), the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006), the Act on Equality between Women and Men (609/1986) and the Non-discrimination Act (1325/2014). In addition, the employer's own policies must be taken into consideration while conducting a workplace investigation.

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Singapore

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A workplace investigation is usually governed by the employer's internal grievance policy or contractual guidelines found in the employment contract or employee handbook. In the absence of the same, the default governing regime is as set out by the Ministry of Manpower (MOM) and the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) in its guidelines and advisories, which include:

- the Tripartite Advisory on Managing Workplace Harassment;
- the TAFEP Grievance Handling Handbook; and
- the Tripartite Guidelines on Fair Employment Practices.

In addition, section 14(1) of the Employment Act 1968 provides that an employer is required to conduct "due inquiry" before dismissing an employee covered under the Employment Act 1968 without notice for misconduct. The Singapore Courts take the view that "due inquiry" suggests some sort of process in which the employee concerned is informed about the allegations and the evidence against him or her so that he or she has an opportunity to defend him or herself with or without evidence during the investigation process.

Further, there are numerous cases where the Singapore High Court has alluded to or implicitly accepted the application of the implied term of mutual trust and confidence in employment contracts that would oblige the employer to act reasonably and fairly during the investigation, even though it is worth noting that the Singapore Court of Appeal has stated that the status of the implied term of mutual trust and confidence has not been settled in Singapore and that the Appellate Division of the Singapore High Court has stated that “[i]t remains an open question for the Court of Appeal to resolve in a more appropriate case, ideally with facts capable of bearing out a claim based directly on the existence of the implied term” (see [81]-[82] of *Dong Wei v Shell Eastern Trading (Pte) Ltd* and another [2022] SGHC(A) 8).

Hence, any references to the application of the implied term of mutual trust and confidence in Singapore in this article must be read in light of the above.

The current position is expected to change in the second half of 2024, with the passing of Singapore’s first workplace fairness law, the Workplace Fairness Legislation. On 4 August 2023, the Singapore government announced that it has accepted the final set of recommendations by the Tripartite Committee on Workplace Fairness in respect of the upcoming Workplace Fairness Legislation. The Tripartite Committee on Workplace Fairness recommended, among other things, that employers are required to put grievance-handling processes in place. It is therefore expected that the Workplace Fairness Legislation may contain requirements on how and when a workplace investigation should be conducted.

This article sets out the current position, before the Workplace Fairness Legislation was enacted, and will be updated when appropriate.

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Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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02. How is a workplace investigation usually commenced?

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When the employer becomes aware of possible misconduct, the employer must commence an investigation immediately, in practice within about two weeks. The information may come to the employer's knowledge via, for example, the employer's own observations, from the complainant or their colleagues or an employee representative.

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Singapore

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A workplace investigation usually commences with the receipt of feedback, a complaint or a grievance, by named or anonymous persons, in respect of a work-related matter or event, or the conduct of an employee.

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Switzerland

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Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).^[1] If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.^[2]

[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

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There is no legislation on temporary suspension in the event of a workplace investigation or similar. In some situations, the employer may relieve the employee from their working obligation with pay for a short period.

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Yes. Section 14(1) read with 14(8) of the Employment Act 1968 provides that an employee can be suspended during a workplace investigation

However, pursuant to section 14(8) of the Employment Act 1968, the employer:

- may suspend the employee from work for:
 - a period not exceeding one week; or
 - such longer period as the Commissioner for Labour may determine on an application by the employer; but
- must pay the employee at least half the employee's salary during the period the employee is suspended from work.

Section 14(9) of the Employment Act 1968 further states that if the inquiry does not disclose any misconduct on the employee's part, the employer must immediately restore to the employee the full amount of the withheld salary.

In addition to the above legislative requirements, the company is required to also comply with its policies relating to such suspensions.

In terms of the threshold to be crossed before a suspension can take place, the Singapore Courts have highlighted that suspending an employee quickly as part of a "knee-jerk" reaction to an unclear or unspecific allegation with dubious credibility is arguably a breach of the implied term of mutual trust and confidence that exists in all employment relationships ([56] of *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2021] SGHC 123). The employer would need to have proper and reasonable cause to suspend an employee for disciplinary purposes ([56(d)] of *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577; [2013] SGHC 32), for example, where multiple credible sources claimed that they had been sexually harassed by an employee, and the employer had strong grounds to believe that if the employee was not suspended, the safety and wellbeing of the other employees in the organisation would be threatened.

In contrast, an employer is not entitled to suspend an employee during a workplace investigation where the employer has only received one complaint that has not been properly described or substantiated with sufficient details from an unverified or unreliable source against an employee who has a good track record with the organisation. This is especially so if the complaint is so unclear that further inquiries should be made before the allegation can be properly ascertained and characterised (see also [51] of *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2021] SGHC 123).

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It is possible to suspend an employee during a workplace investigation.^[1] While there are no limits on duration, the employee will remain entitled to full pay during this time.

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 181.

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04. Who should conduct a workplace investigation, are there minimum qualifications or criteria that need to be met?

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The employer must conduct the investigation, but the actual work can be done either by the employer's personnel or by an external investigator, for example, a law firm. Either way, there are no formal criteria for the persons executing the investigation; however, impartiality is required from the person conducting the investigation

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While there are no prescribed minimum qualifications or criteria that need to be met for any person conducting a workplace investigation, the person handling employee grievances should be someone who:

- has been authorised and empowered to do so by the employer;
- is not in a position of actual or potential conflict; and
- is independent and impartial.

The grievance handler should be familiar with the organisation's investigative procedure, have attended the relevant training to ensure full compliance with the same; and have a good understanding of the expectations and norms set out by the Tripartite Guidelines on Fair Employment Practices.

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The examinations can be carried out internally by designated internal employees, by external specialists, or by a combination thereof. The addition of external advisors is particularly recommended if the allegations are against an employee of a high hierarchical level^[1], if the allegations concerned are quite substantive and, in any case, where an increased degree of independence is sought.

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 18.

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05. Can the employee under investigation bring legal action to stop the investigation?

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The employee does not have a legal right to stop the investigation. The employer must fulfil its obligation to investigate the alleged misconduct.

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The employee under investigation is entitled to apply to the Court to stop the investigation. However, the employee bears the legal burden of showing that the employer has, for instance:

1. failed to comply with the organisation's grievance policy;
2. committed a serious breach of natural justice; and/or
3. breached the implied term of mutual trust and confidence when investigating the matter, and that such a breach will, unless remedied, cause such prejudice to the employee that it would be more just for the investigation to be stopped than to be allowed to continue.

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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.

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06. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?

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There is no legislation on a witness's role in investigations. However, the legislation on occupational safety requires that employees must report any irregularities they observe. Depending on the situation, participating in the investigation may also be part of the person's work duties, role or position, in which case the employer may require the employee to contribute to clarifying the situation. However, there is no formal obligation to act as a witness, and there is no legislation regarding the protection of witnesses. If a witness wishes, they may have, for example, an employee representative as a support person during the hearing.

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Singapore law does not impose any statutory or legal obligation on an employee to act as a witness in the investigation. Accordingly, an employer does not have the power to compel its employees to act as witnesses in an investigation.

Notwithstanding this, an employer may require an employee to assist in investigations pursuant to specific contractual obligations in the employee's terms of employment (as may be contained in the employment contract, employee handbook or the employer's internal policies and procedures in dealing with the investigations, etc). Further, a request for an employee to provide evidence of an event that he or she knows of may reasonably be deemed to be a lawful and reasonable directive from an employer.

Consequently, an employee's refusal to act as a witness may amount to an act of insubordination that may attract disciplinary action by the employer.

Employers requiring employees to act as witnesses in an investigation must ensure that they comply with the expectations and norms set out by the Tripartite Guidelines on Fair Employment Practices and the TAFEP Grievance Handling Handbook.

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Due to the employee's duty of loyalty towards the employer and the employer's right to give instructions to its employees, employees generally must take part in an ongoing investigation and comply with any summons for questioning if the employer demands this (article 321d, Swiss Code of Obligations). If the employees refuse to participate, they generally are in breach of their statutory duties, which may lead to measures such as a termination of employment.

The question of whether employees may refuse to testify if they would have to incriminate themselves is disputed in legal doctrine.^[1] However, according to legal doctrine, a right to refuse to testify exists if criminal conduct regarding the questioned employee or a relative (article 168 et seq, Swiss Criminal Procedure Code) is involved, and it cannot be ruled out that the investigation documentation may later end up with the prosecuting authorities (ie, where employees have a right to refuse to testify in criminal proceedings, they cannot be forced to incriminate themselves by answering questions in an internal

investigation).[2]

[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

[2] Same opinion: Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

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07. What data protection or other regulations apply when gathering physical evidence?

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Generally, the basic principles set out by the GDPR and the Finnish Data Protection Act apply to data processing in connection with investigations, including evidence gathering: there must be a legal basis for processing, personal data may only be processed and stored when and for as long as necessary considering the purposes of processing, etc.

Additionally, if physical evidence concerns the electronic communications (such as emails and online chats) of an employee, gathering evidence is subject to certain restrictions based on Finnish ePrivacy and employee privacy laws. As a general rule, an employee's electronic communications accounts, including those provided by the employer for work purposes, may not be accessed and electronic communications may not be searched or reviewed by the employer. In practice, the employer may access such electronic correspondence only in limited situations stipulated in the Act on Protection of Privacy in Working Life (759/2004), or by obtaining case-specific consent from the employee, which is typically not possible in internal investigations, particularly concerning the employee suspected of wrongdoing.

However, monitoring data flow strictly between the employee and the employer's information systems (eg, the employee saving data to USB sticks, using printers) is allowed under Finnish legislation, provided that employee emails, chats, etc, are not accessed and monitored. If documentation is unrelated to electronic communications, it also may be reviewed by the employer. Laptops, paper archives and other similar company documentation considered "physical evidence" may be investigated while gathering evidence on the condition that any private documentation, communications, pictures or other content of an employee are not accessed.

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The employer may collect the personal data of an individual without the individual's consent or from a source other than the individual, where it is necessary for any investigation according to section 17(1) read with paragraph 4 of Part 3 of the Third Schedule of the Personal Data Protection Act 2012 (PDPA). Under section 2(1) of the PDPA, "investigation" means an investigation relating to:

- a breach of an agreement;
- a contravention of any written law, or any rule of professional conduct or other requirement imposed by any regulatory authority in the exercise of its powers under any written law; or
- a circumstance or conduct that may result in a remedy or relief being available under any law.

Under the Banking Act 1970, a bank and its officers cannot disclose customer information to third parties, subject to certain exceptions. An employer carrying out a workplace investigation does not fall within any of the exceptions.

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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.^[1]

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.^[2] 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.

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

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Only the police can search employees' possessions (assuming that the prerequisites outlined in the legislation are met).

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The employer is not allowed to search employees' personal possessions or files as part of an investigation without the employee's consent. However, such consent may be explicitly provided for in the terms of employment (as may be contained in the employment contract, employee handbook or the employer's internal policies and procedures in dealing with the investigations, etc). The employer may, however, search the employees' company email accounts and files if these are stored on the company's internal systems or devices.

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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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09. What additional considerations apply when the investigation involves whistleblowing?



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In respect of data protection, the processing of personal data in whistleblowing systems is considered by the Finnish Data Protection Ombudsman (DPO) as requiring a data protection impact assessment (DPIA).

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Under the Prevention of Corruption Act 1960 and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSCA), in any civil or criminal proceeding, no witness is obliged to disclose the name or address of any informer, or disclose any information that might lead to his or her discovery concerning offences such as corruption, drug trafficking, and money laundering, save where:

- in any proceeding for the offence, the Court, after a full inquiry into the case, is of the opinion that the informer wilfully made, in his complaint, a material statement that he knew or believed to be false or did not believe to be true; or
- in any other proceeding, the court is of the opinion that justice cannot be fully done between the parties without the discovery of the informer.

In line with the above, employers should therefore keep the informer's identity confidential upon receiving a complaint relating to corruption, drug trafficking, money laundering, and other serious offences prescribed in the second schedule of the CDSCA.

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If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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10. What confidentiality obligations apply during an investigation?

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Concerning a workplace investigation, there is no specific legislation in force at the moment regarding confidentiality obligations. All normal legal confidentiality obligations (eg, obligations outlined in the Trade Secrets Act (595/2018)), and if using an external investigator, the confidentiality obligations outlined in the agreement between the employer and the external investigator, apply. Attorneys-at-law always have strict confidentiality obligations as per the Advocates Act (496/1958).

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11. What information must the employee under investigation be given about the allegations against them?

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The process must be transparent and impartial, and therefore all the information that may influence the conclusions made during the investigation should be shared with the employee.

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There is no specific list of information about the allegations against the employee under investigation that must be provided to the employee under investigation. However, the information provided to the employee must be sufficiently clear and specific so that the employee understands the case being made against him or her and can respond to it. The employee should also be made aware of the evidence against him or her and be given a reasonable opportunity to respond.

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As a result of the employer's duty of care (article 328, Swiss Code of Obligations), employees under investigation have certain procedural rights. These include, in principle, the right of the accused to be heard. In this context, the accused has the right to be informed at the beginning of the questioning about the subject of the investigation and at least the main allegations and they must be allowed to share their view and provide exculpatory evidence.^[1] The employer, on the other hand, is not obliged to provide the employee with existing evidence, documents, etc, before the start of the questioning.^[2]

Covert investigations in which employees are involved in informal or even private conversations to induce them to provide statements are not compatible with the data-processing principles of good faith and the requirement of recognisability, according to article 4 of the Swiss Federal Act on Data Protection.^[3]

Also, rights to information arise from the Swiss Federal Act on Data Protection. In principle, the right to information (article 8, Swiss Federal Act on Data Protection) is linked to a corresponding request for information by the concerned person and the existence of data collection within the meaning of article 3 (lit. g), Swiss Federal Act on Data Protection. Insofar as the documents from the internal investigation recognisably relate to a specific person, there is in principle a right to information concerning these documents. Subject to certain conditions, the right to information may be denied, restricted or postponed by law (article 9 paragraph 1, Swiss Federal Act on Data Protection). For example, such documents and reports may also affect the confidentiality and protection interests of third parties, such as other employees. Based on the employer's duty of care (article 328, Swiss Code of Obligations), the employer is required to protect them by taking appropriate measures (eg, by making appropriate redactions before

handing out copies of the respective documents (article 9 paragraph 1 (lit. b), Swiss Federal Act on Data Protection)).^[4] Furthermore, the employer may refuse, restrict or defer the provision of information where the company's interests override the employee's, and not disclose personal data to third parties (article 9 paragraph 4, Swiss Federal Act on Data Protection). The right to information is also not subject to the statute of limitations, and individuals may waive their right to information in advance (article 8 paragraph 6, Swiss Federal Act on Data Protection). If there are corresponding requests, the employer must generally grant access, or provide a substantiated decision on the restriction of the right of access, within 30 days (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 paragraph 4, Ordinance to the Federal Act on Data Protection).

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

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

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

[4] Claudia Götz Staehelin, *Unternehmensinterne Untersuchungen*, 2019, p. 37.

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

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See question 11, there is no protection of anonymity as the process must be transparent to the parties involved.

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Such information can be kept confidential, subject to questions 10 and 11. However, disclosure may nevertheless be compelled in court or arbitration proceedings as well as by disclosure requests or directions by the police or statutory authorities, including the MOM.

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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.

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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

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Yes, however, the need for an NDA is assessed always on a case-by-case basis.

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Yes, NDAs can be used to keep the fact and substance of an investigation confidential. There are no express prohibitions against such NDAs under Singapore law. However, information or evidence covered by the NDA may still be discoverable in court or arbitration proceedings; and may also be subject to disclosure requests or directions by the police or statutory authorities, including the MOM.

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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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14. When does privilege attach to investigation materials?

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The privilege of investigation materials concerns a rather limited amount of cases. In practice, materials may be considered privileged in connection with the litigation process under the Procedural Code (4/1734). For example, communications between a client and an attorney may attract protection against forcible public disclosure.

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Litigation privilege may attach to investigation materials if there was a reasonable prospect of litigation at the time of the creation of the materials, and the materials were created for the dominant purpose of a pending or contemplated litigation.

Legal advice privilege may attach to investigation materials if the materials were created to seek or obtain legal advice; or if the materials contain legal advice that is so embedded or has become such an integral part of the materials that the legal advice cannot be redacted from them. If the legal advice is separable from the materials, then only the parts of the materials containing legal advice will be protected by privilege.

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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.

Last updated on 15/09/2022

15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?

Finland

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at Roschier

The employee under investigation has a right to have a support person present (eg, a lawyer or an employee representative) during the hearings and a right to assistance in preparing written statements.

Last updated on 15/09/2022

Singapore

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This is dependent on the employee's employment contract and the employer's internal grievance policies and investigative processes. There is no free-standing legal entitlement for an employee to have legal representation. Employers may, at their discretion, consider allowing an employee to bring a colleague or to have legal representation if such a request is reasonable, such as to provide emotional support to the employee who may view the disciplinary hearing as an unnerving and stressful experience or so that the employee may be advised and informed of his or her legal rights in respect of the investigation commenced against him or her.

Last updated on 15/09/2022

Switzerland

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In the case of an employee involved in an internal investigation, a distinction must be made as to whether the employee is acting purely as an informant or whether there are conflicting interests between the company and the employee involved. If the employee is acting purely as an informant, the employee has, in principle, no right to be accompanied by their own legal representative.^[1]

However, if there are conflicting interests between the company and the employee involved, when the employee is accused of any misconduct, the employee must be able to be accompanied by their own legal representative. For example, if the employee's conduct might potentially constitute a criminal offence, the involvement of a legal representative must be permitted.^[2] Failure to allow an accused person to be accompanied by a legal representative during an internal investigation, even though the facts in question are relevant to criminal law, raises the question of the admissibility of statements made in a subsequent criminal proceeding. The principles of the Swiss Criminal Procedure Code cannot be undermined by alternatively collecting evidence in civil proceedings and thus circumventing the stricter rules applicable in criminal proceedings.^[3]

In general, it is advisable to allow the involvement of a legal representative to increase the willingness of the employee involved to cooperate.

[1] Claudia Götz Staehelin, *Unternehmensinterne Untersuchungen*, 2019, p. 37.

[2] Simona Wantz/Sara Licci, *Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen*, in: *Jusletter* 18 February 2019, N 59.

[3] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, *SJZ* 114/2018, p. 392; Niklaus Ruckstuhl, *BSK-StPO*, Art. 158 *StPO* N 36.

Last updated on 15/09/2022

16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?

Finland

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A works council or a trade union does not have a role in the investigation.

Last updated on 15/09/2022

Singapore

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An employee who is a member of a works council or trade union has the right to seek assistance from the works council or trade union representative (whichever is applicable) and have the works council or trade

union involved in resolving the grievances.

For unionised companies, the grievance procedure and the role of the union representative are usually set out in the collective agreement entered into between the company and the works council or trade union. In some organisations, the employee handbook or grievance policy will also state when the trade union representative will be involved in the investigation process.

Last updated on 15/09/2022

Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

Last updated on 15/09/2022

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

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They can request assistance, for example, from an occupational health and safety representative, a shop steward or the occupational healthcare provider.

Last updated on 15/09/2022

Singapore

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Employers may provide support, such as:

1. offering counselling for its employees to encourage open discussions and communication on any issues that they may be facing or clarify any questions they may have in respect of the investigation process;
2. reminding its employees of its zero-retaliation policy; and, if need be
3. making the necessary work arrangement to minimise potential interaction that would further aggravate the conflict or situation between the employees involved.

Employers may also inform employees of the external resources available to them if they require any assistance in respect of the investigation provided by external parties such as TAFEP, the Singapore National Employers Federation, National Trade Union Congress, and Legal Aid Bureau.

Last updated on 15/09/2022

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]

^[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

18. What if unrelated matters are revealed as a result of the investigation?

Finland

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If they are related to the work or workplace, the employer will handle the emerging matters separately. In internal investigations, the employer is allowed to use any material legally available.

Last updated on 15/09/2022

Singapore

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If unrelated matters that require further investigation are revealed as a result of the investigation, the employer should take the necessary steps to investigate these matters, where relevant, under the employer's grievance reporting, investigation and disciplinary processes. This should be done separately and independently from the existing investigation. Please note that section 424 of the Criminal Procedure Code imposes a legal duty on any person who is aware that another has committed certain specified offences to "immediately" report the matter to the police, "in the absence of reasonable excuse" not to do

so. Failure to comply with this requirement is punishable with imprisonment for up to six months, and/or a fine.

Last updated on 15/09/2022

Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

Last updated on 15/09/2022

19. What if the employee under investigation raises a grievance during the investigation?

Finland

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If the nature of the grievance relates to the employer's obligations to handle such matters in general, the grievance will be investigated either separately or as a part of the ongoing investigation.

Last updated on 15/09/2022

Singapore

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The employer should require the employee to raise the grievance under the company's existing grievance reporting, disciplinary and investigation processes so that the grievance, to the extent that it is relevant to the current investigation, can be investigated together. Otherwise, the grievance can be dealt with separately and independently of the existing investigation.

Last updated on 15/09/2022

Switzerland

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In the context of private internal investigations, grievances initially raised by the employee do not usually

have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

Last updated on 15/09/2022

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

Finland

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As a general rule, sick leave does not prevent an investigation from progressing. Depending on the nature of the sickness, the employee can attend hearings and take part in the procedure. If the sickness prevents the employee from participating, the employer can put the process on hold temporarily.

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Singapore

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If the employee under investigation has already responded to the allegations made against him or her and his or her participation is no longer required at this stage in the investigation, the employer may proceed with the investigation even while the employee is off sick.

However, if the employee under investigation has not responded to the allegations made against him or her and his or her participation is still required in the investigation, the company may exercise its discretion to pause the investigation until the employee can assist in the investigations. To prevent an employee from using a medical condition as an excuse to delay or avoid the investigation, the company may require the employee to provide specific medical documentation to address the issue of the employee's ability to participate in the investigation and to adjust the investigation process accordingly. For instance, instead of scheduling an in-person interview, the company may send a list of written questions for the employee to answer, and may also extend timelines for responding, etc.

If the employee is unable to return to work for the foreseeable future, the employer may consider reaching a provisional outcome based on the available evidence, which would be subject to change when the employee under investigation can return to work.

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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^[1]. 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).

[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

Last updated on 15/09/2022

21. How do you handle a parallel criminal and/or regulatory investigation?

Finland

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Regardless of a possible criminal investigation, the employer must run its internal workplace investigation without unnecessary delay. A workplace investigation and a criminal investigation are two separate processes and can be ongoing simultaneously, so the criminal process does not require the workplace investigation to be stayed. Thus, parallel investigations are to be considered as two separate matters. The police may only obtain evidence or material from the company or employer if strict requirements for equipment searches are met after a request for investigation has been submitted to the police.

Last updated on 15/09/2022

Singapore

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Generally, there are no issues with an internal investigation being conducted in parallel to a criminal or regulatory investigation. The employer should inform the authorities of the ongoing internal investigation and comply with lawful directions from the authorities, for example, to share evidence gathered during the investigation with the authorities.

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Switzerland

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The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

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22. What must the employee under investigation be told about the outcome of an investigation?

Finland

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The employer's conclusions from the investigation.

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Singapore

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The employee under investigation should be told of the findings that have been made against the employee, the disciplinary action (if any) that will be taken against the employee and any avenue or timeline for the employee to appeal the outcome of the investigation.

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Switzerland

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Workplace investigations often result in an investigation report that is intended to serve as the basis for any measures to be taken by the company's decisionmakers.

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.^[1] In principle, the employee concerned is entitled to receive a written copy of the entire investigation report free of charge (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 et seq, Ordinance to the Federal Act on Data Protection). Redactions may be made where the interests of the company or third parties so require, but they are the exception and must be kept to a minimum.^[2]

[1] Arbeitsgericht Zürich, Entscheide 2013 No. 16; Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 393 et seq.

[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 394.

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23. Should the investigation report be shared in full, or just the findings?

Finland

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The employee under investigation may only be informed of the conclusions.

Last updated on 15/09/2022

Singapore

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It would suffice for a summary of the investigation's findings to be shared with the complainant and the respondent employees.

Last updated on 15/09/2022

Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.[2]

[1] Nicolas Facincani/Reto Sutter, Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

Last updated on 15/09/2022

24. What next steps are available to the employer?

Finland

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The employer decides whether misconduct has taken place or not. Depending on the case, the employer may recommend a workplace conciliation in which the parties try to find a solution that can be accepted by both sides. The employer may choose to give an oral reprimand or a written warning. If the legal conditions are met, the employer may also terminate the employment agreement.

Last updated on 15/09/2022

Singapore

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The employer should take any follow-up steps required and keep track of whether any appeal against the outcome of the investigation is lodged. If any appeal is lodged, the employer should handle this appeal following its internal procedure. To the extent necessary, any disciplinary measures against the respondent employee should be stayed pending the outcome of the appeal.

Last updated on 15/09/2022

Switzerland

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If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.^[1]

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

Last updated on 15/09/2022

25. Who can (or must) the investigation findings be disclosed to? Does that include regulators/police? Can the interview records be kept private, or are they at risk of disclosure?

Finland

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In general, investigation materials, including findings, that includes personal data should only be processed by the personnel of the organisation who are responsible for internal investigations. However, it may in some situations be required by applicable legislation that findings are disclosed to competent authorities for the performance of their duties, such as conducting investigations in connection with malpractice and violations of the law.

Last updated on 15/09/2022

Singapore

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A summary of the investigation's findings should be disclosed to the employee who lodged the grievance and the employee under investigation.

If there are parallel criminal or regulatory investigations, the investigation findings should also be disclosed to the authorities.

Interview records or transcripts should be kept private unless disclosure is required by a court order or at the direction of the authorities.

Last updated on 15/09/2022

Switzerland

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The employer is generally not required to disclose the final report, or the data obtained in connection with the investigation. In particular, the employer is not obliged to file a criminal complaint with the police or the public prosecutor's office.

Exceptions may arise, for example, from data protection law (see question 22) or a duty to release records may arise in a subsequent state proceeding.

Data voluntarily submitted in a proceeding in connection with the internal investigation shall be considered private opinion or party assertion.^[1] If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.^[2]

[1] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 123.

[2] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 102 et seq.

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26. How long should the outcome of the investigation remain on the employee's record?

Finland

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Please see question 7. The outcome of the investigation involving personal data may be retained only for as long as is necessary considering the purposes of the processing. In general, the retention of investigation-related data may be necessary while the investigation is still ongoing and even then the requirements of data minimization and accuracy should be considered. The data concerning the outcome of an investigation should be registered to the employee's record merely to the extent necessary in light of the employment relationship or potential disciplinary measures. In this respect, the applicable retention time depends on labour law-related rights and limitations, considering eg, the applicable periods for filing a suit.

Last updated on 15/09/2022

Singapore

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This depends on the company's internal disciplinary policy and the severity of the offence. For instance, a written warning issued against an employee for minor misconduct is usually kept in the respondent employee's file for one year and if the employee does not commit any further breaches during this time, the written warning will be expunged. However, if there is a finding of serious misconduct, particularly if such a determination results in the dismissal of the employee, these records are generally kept in the employee's file for the duration of time such records are statutorily required to be maintained.

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Switzerland

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From an employment law point of view, there is no statute of limitations on the employee's violations. Based on the specific circumstances (eg, damage incurred, type of violation, basis of trust or the position of the employee), a decision must be made as to the extent to which the outcome should remain on the record.

From a data protection point of view, only data that is in the interest of the employee (eg, to issue a

reference letter) may be retained during the employment relationship. In principle, stored data must be deleted after the termination of the employment relationship. Longer retention may be justified if rights are still to be safeguarded or obligations are to be fulfilled in the future (eg, data needed regarding foreseeable legal proceedings, data required to issue a reference letter or data in relation to a non-competition clause).[1]

[1] Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

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27. What legal exposure could the employer face for errors during the investigation?

Finland

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There are no regulations regarding the actual investigation process. Therefore, the employer cannot be accused of procedural errors as such. However, once the matter has been adequately investigated, the employer must decide whether or not misconduct has taken place. If the employer considers that misconduct has taken place, the employer must take adequate measures for remedying the situation. Failure to adequately conduct the investigation could result in criminal sanctions being imposed on the employer as an organisation or the employer's representative, or damages.

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Singapore

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The employer may be exposed to legal action for a failure to properly conduct the investigation, including having such portions of the investigation set aside or held to be void by the courts, and be made to pay damages to the affected employee; or face investigation and administrative penalties by regulatory authorities such as the MOM.

In addition, after the Workplace Fairness Legislation comes into force, breach of its requirements may also expose the employer or culpable persons to potential statutory penalties. The Tripartite Committee on Workplace Fairness recommended, among other things, for the Workplace Fairness Legislation to provide for a range of penalties including corrective orders, work pass curtailment and financial penalties against employers or culpable persons, depending on the severity of the breach. It is thus expected that employers or culpable persons may be exposed to potential statutory penalties if the requirements of the Workplace Fairness Legislation are not complied with.

Last updated on 15/09/2022

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As there are no specific regulations for internal investigations, the usual legal framework within which the employer must act towards the employee derives from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights.

But, for example, unwarranted surveillance could conceivably result in criminal liability (article 179 et seq, Swiss Criminal Code) for violations of the employee's privacy. Furthermore, errors made by the employer could have an impact on any later criminal proceedings (eg, in the form of prohibitions on the use of evidence).[1]

Evidence obtained unlawfully may only be used in civil proceedings if there is an overriding interest in establishing the truth (article 152 paragraph 2, Swiss Civil Procedure Code). Consequently, in each case, a balance must be struck between the individual's interest in not using the evidence and in establishing the truth.[2] The question of the admissibility of evidence based on an unlawful invasion of privacy is a sensitive one – admissibility in this case is likely to be accepted only with restraint.[3] Since the parties in civil proceedings do not have any means of coercion at their disposal, it is not necessary, in contrast to criminal proceedings, to examine whether the evidence could also have been obtained by legal means.[4]

Unlawful action by the employer may also have consequences on future criminal proceedings: The prohibitions on exploitation (article 140 et seq, Swiss Criminal Procedure Code) apply a priori only to evidence obtained directly from public authorities. Evidence obtained unlawfully by private persons (ie, the employer) may also be used if it could have been lawfully obtained by the authority and if the interest in establishing the truth outweighs the interest of the individual in not using the evidence.[5] Art. 140 paragraph 1 Swiss Criminal Procure Code remains reserved: Evidence obtained in violation of Art. 140 paragraph 1 Swiss Criminal Procure Code is subject to an absolute ban on the use of evidence (e.g. evidence obtained under the use of torture[6]).[7]

[1] Cf. ATF 139 II 7.

[2] ATF 140 III 6 E. 3

[3] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), *Zivilprozessrecht*, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

[4] Pascal Grolimund in: Adrian Staehelin/Daniel Staehelin/Pascal Grolimund (editors), *Zivilprozessrecht*, Zurich/Basel/Geneva 2019, 3rd Edition, §18 N 24a.

[5] Decision of the Swiss Federal Court 6B_1241/2016 dated 17. July 2017 consid. 1.2.2; Decision of the Swiss Federal Court 1B_22/2012 dated 11 May 2012 consid. 2.4.4.

[6] Jérôme Benedict/Jean Treccani, *CR-CPP Art. 140 N. 5 and Art. 141 N. 3*.

[7] Yvan Jeanneret/André Kuhn, *Précis de procédure pénale*, 2nd Edition, Berne 2018, N 9011.

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