International Employment Lawyer

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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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.

Last updated on 15/09/2022

Philippines

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There are essentially two phases in a workplace investigation: the fact-finding phase and the administrative proceeding.

The fact-finding phase of workplace investigations is usually governed by the internal policies of the employer, save for investigations relating to gender-based sexual harassment in the workplace. Republic Act No. 11313, otherwise known as the Safe Spaces Act, sets the parameters for these kinds of investigations.

Philippine case law recognises the right of an employer to conduct investigations for other acts of misconduct in the workplace in the exercise of its management prerogative. The Supreme Court has held that it is an employer’s right to investigate acts of wrongdoing by employees, and employees involved in such investigations cannot simply claim that employers are out to get them.

After the fact-finding aspect of the investigation, if the employer decides it has sufficient grounds to proceed to full-blown administrative proceedings, it needs to comply with the due process requirements outlined under the Philippine Labor Code. These requirements are:

- a first notice, or notice to explain, informing the employee of the charges against him or her;
- an opportunity for the employee to be heard; and
- a final notice on the outcome of the administrative action.

Last updated on 26/01/2023

Sweden

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Workplace investigations in Sweden are governed by several rules and regulations. Listed below are the central legislation and regulations that govern a workplace investigation related to alleged employee misconduct.

- The Swedish Discrimination Act (2008:567).
- The Swedish Work Environment Act (1977:1160), which is complemented by the Swedish Work Environment Authority's other statutes.[1]
- The Swedish Whistleblowing Act (2021:890).

If a workplace investigation has been initiated after the receipt of a report filed through a reporting channel established under the Swedish Whistleblowing Act, that law applies provided that the report has been filed by a person who may report under the Act and provided that the subject of the report falls under the material scope of the Act. The Swedish Whistleblowing Act implements Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law and has been given a wide material scope in Sweden. The Swedish Whistleblowing Act may apply if the reported irregularity concerns breaches of certain EU laws or if the reported irregularity is of public interest.

In addition to the regulations mentioned above, certain data protection legislation may affect workplace investigations by restricting what personal data may be processed. Such data protection legislation includes the following:

- Regulation (EU) 2016/679 on the protection of natural persons concerning the processing of personal data and the free movement of such data (the GDPR);
- the Swedish Supplementary Data Protection Act (2018:218);
- the Swedish Supplementary Data Protection Regulation (2018:219);

- Regulation DIFS:2018:2 on the processing of personal data relating to criminal convictions or offences. This regulation governs the processing of personal data relating to criminal convictions or suspected criminal offences in internal workplace investigations that are not governed by the Swedish Whistleblowing Act.[2]

The above-mentioned legislation and regulations may overlap in many aspects and it is therefore important before starting an investigation, as well as during an investigation, to assess which rules and regulations apply to the situation at hand. Another aspect of this is that many issues that can arise during an investigation are not regulated by law or other legislation. If the investigation is a non-whistleblowing investigation there are limited rules on exactly how and by whom the investigation should be carried out.

A Swedish law firm that undertakes a workplace investigation also has to adhere to the Swedish Bar Association's Code of Conduct. The Code of Conduct includes additional considerations, mainly ethical, which will not be addressed in this submission. Furthermore, this submission will not focus on investigations following an employee's possible misappropriation of proprietary information or breach of the Swedish Trade Secrets Act (2018:558). Investigations into such irregularities are often conducted to gather evidence and these investigations include the same or similar investigative measures used in other investigations, such as interviews with employees and IT-forensic searches, but also infringement investigations carried out by the authorities or other measures by the police.

[1] Mainly Systematic Work Environment Management (AFS 2001:1), Organisational and Social Work Environment (AFS 2015:4) and Violence and Menaces in the Working Environment (AFS 1993:2)

[2] Under Section 2 item 4 of DIFS 2018:2, personal data relating to criminal convictions or suspected criminal offences may only be processed if the personal data concerns serious misconduct, such as bribery, corruption, financial fraud or serious threats to the environment, health and safety, by an individual who is in a leading position or who is considered key personnel within the company. The processing of personal data received in a report or collected during an investigation governed by the Swedish Whistleblowing Act is instead governed by the Swedish Whistleblowing Act, which complements the GDPR and the supplementing Swedish act and regulation stated in item (ii) and (iii) above.

Last updated on 15/09/2022

02. How is a workplace investigation usually commenced?

Finland

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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.

Last updated on 15/09/2022

Philippines

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Workplace investigations are normally commenced either through a complaint filed by other employees in the workplace or by HR or other representatives of management.

Under the Safe Spaces Act, employers are required to commence an investigation and decide on complaints regarding gender-based sexual harassment, within ten days of the complaint being brought to their attention. For other workplace misconduct, management is given wide discretion regarding the means and method by which the workplace investigation may be carried out.

Last updated on 26/01/2023

Sweden

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An investigation can be initiated in several ways. It is usually as a result of whistleblowing or a report on

work environment deficiencies, or through other channels (eg, HR, the police, media coverage).

Last updated on 15/09/2022

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.

Last updated on 15/09/2022

Philippines

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A preventive suspension pending investigation is allowed under the law, provided that the continued employment of the subject of the investigation poses a serious and imminent threat to the life or property of the employer or other employees. Additionally, the period of preventive suspension pending investigation should not last longer than 30 days. However, should the employer wish to extend this period, the employer must pay the employee's wages and other benefits. The employee is under no obligation to reimburse the amount paid to them during the extension if the employer should, later on, decide to dismiss the employee after the completion of the process.

In practice, the notice of preventive suspension is issued simultaneously with the first notice or the notice to explain after the employer has conducted its fact-finding investigation and has reason to believe that the employee must be held accountable for his or her actions.

Since placing an employee under preventive suspension requires the existence of a serious and imminent threat to the life or property of the employer or other employees, some employers opt to place the employee or employees involved on agreed paid leave. This will allow the employer to conduct an unhampered workplace investigation while the investigated employee is still able to receive his or her full salary during this period. The exact period of paid leave may be agreed upon by the employer and the employee, but ideally it should not last for more than thirty days.

Last updated on 26/01/2023

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In general, an employee in the private sector may be temporarily suspended for a short period with pay

and other benefits during a workplace investigation. The room for suspension without pay is, by contrast, very limited. An applicable collective bargaining agreement may impose additional restrictions on the right to temporary suspend an employee. The suspension should be limited in time and only be in force during the investigation, but can be repeated for (multiple) additional short periods if necessary to conclude the investigation. An assessment needs to be made on a case-by-case basis as suspension in some cases may be considered unlawful. If not executed with sufficient consideration of the employee's interests, it may be considered a constructive dismissal or a breach of the employer's work environment obligations. If the employee is unionised, trade unions sometimes request that the employer initiates consultations as part of a decision to suspend an employee.

In the public sector, the right to suspension is limited. There are also special regulations regarding the suspension of certain employees, for example, employees who are employed as permanent judges.

Last updated on 15/09/2022

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

Last updated on 15/09/2022

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Under the Safe Spaces Act, an employer should create an independent internal mechanism or a committee on decorum and investigation to investigate and address complaints of gender-based sexual harassment, which should:

- adequately represent the management, the employees from the supervisory rank, the rank-and-file employees, and the union, if any;
- designate a woman as its head and no less than half of its members should be women;
- be composed of members who are impartial and not connected or related to the alleged perpetrator;
- investigate and decide on the complaints within 10 days or less upon receipt thereof;
- observe due process;
- protect the complainant from retaliation; and
- guarantee confidentiality to the greatest extent possible.

For other types of offences, it is the prerogative of management as to who will conduct the investigation and how it will be conducted, provided the proceedings remain impartial.

Last updated on 26/01/2023

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If the workplace investigation falls under the Swedish Whistleblowing Act, the investigation has to be conducted by independent and autonomous persons or entities designated under the Swedish Whistleblowing Act as competent to investigate reports.

If the workplace investigation is not governed by the Swedish Whistleblowing Act, there are no minimum qualification requirements. When appointing an investigator, one should consider who would be most suitable in the given situation. For example, it may in some situations be more suitable to have an external investigator to ensure impartiality.

Last updated on 15/09/2022

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.

Last updated on 15/09/2022

Philippines

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There is generally no legal remedy for an employee to stop a workplace investigation as it is the prerogative of management to conduct it. Nevertheless, if the employee alleges violation of any specific law or contractual provision in the conduct of the investigation, the employee may be able to seek judicial relief for violation of the law or contract, and ask for interim relief.

Last updated on 26/01/2023

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No. It should, however, be noted that the employee under investigation may claim a right to rectification under article 16 of the GDPR and its right to object to processing under article 21 of the GDPR. This may give the employee under investigation an undesirable opportunity to withhold evidence and obstruct or impede the investigation. The risk of these rights being exercised is, however, considered to be low.

Last updated on 15/09/2022

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

Finland

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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.

Last updated on 15/09/2022

Philippines

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Neither the employer nor the employee subject of the investigation can compel co-workers to act as a witness. There is no specific law for whistleblowers or employees who act as witnesses during an investigation. Nevertheless, the employer can have its own whistleblower policy.

Last updated on 26/01/2023

Sweden

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In general, yes, employees in Sweden have a far-reaching duty of loyalty toward their employers. This includes, among other things, a duty to truthfully answer an employer’s questions and to inform the employer of events that may be of interest to the employer. An employee’s obligation to assist is, however, more limited when assistance would entail self-incrimination.

A person acting as a witness under an investigation governed by the Swedish Whistleblowing Act will be protected by confidentiality. Personal data and details that could reveal the identity of a witness may not be disclosed without authorisation.

Last updated on 15/09/2022

07. What data protection or other regulations apply

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.

Last updated on 15/09/2022

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The procedure for gathering physical evidence is governed primarily by company policy. Nevertheless, the Data Privacy Act of the Philippines protects all data subjects from unlawful processing of their personal information without consent.

Last updated on 26/01/2023

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To the extent the gathering of physical evidence includes the processing of personal data, please see question 1.

Last updated on 15/09/2022

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

Finland

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

Last updated on 15/09/2022

Philippines

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Subject to the employees’ reasonable expectation of privacy, gathering physical evidence within the premises of the workplace and through company-issued property has been upheld to be legally permissible in pursuit of the employer’s right to conduct work-related investigations. The search, however, should be limited to the alleged acts complained of and must not be used as a fishing expedition to find incriminating information about the erring employee.

Last updated on 26/01/2023

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An employer can search an employee’s personal possessions (eg, handbag, pockets and locker) if the employer has a legitimate interest in a search. This could, for example, include a reasonable suspicion of theft of employer property. Furthermore, an employer may search, but not continually monitor, an employee’s computer and email provided that it is in accordance with GDPR requirements. For the processing to be lawful under the GDPR, the employer has to establish a purpose and a legal basis for the processing of personal data. Furthermore, data subjects must have received information on the legal basis for and purpose of the processing of personal data beforehand. If the data subjects have not received such information, the employer’s right to process their data is limited. However, if the employer has reasonable grounds to believe that trade secrets or similar has been copied and stolen, no such requirements would typically apply.

Investigations into an employee's possessions may, under certain circumstances, also be carried out by the Swedish authorities.

Last updated on 15/09/2022

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).

Last updated on 15/09/2022

Philippines

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Since there is no specific law that governs whistleblowing, matters that involve whistleblowing will be governed by company policy.

Last updated on 26/01/2023

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If the Swedish Whistleblowing Act governs the investigation, additional considerations apply relating to who may investigate a reported irregularity (see question 4) and the duty of confidentiality and restrictions on access to and disclosure of personal data in investigations (see questions 6, 10 and 11), as well as the rights and protections of whistleblowers.

As regards the rights and protections of whistleblowers, the following can be noted. A person reporting in a reporting channel governed by the Swedish Whistleblowing Act is protected against retaliation and restrictive measures. Thus, companies are prohibited from preventing or trying to prevent a person from reporting, and retaliating against a person who reports. Furthermore, a reporting person will not be held liable for breach of confidentiality for collecting the reported information if the person had reasonable grounds to believe that it was necessary to submit the report to expose irregularities. Under the Swedish Whistleblowing Act, any person reporting irregularities in a reporting channel established under the Swedish Whistleblowing Act may also report irregularities to designated Swedish authorities.

Last updated on 15/09/2022

10. What confidentiality obligations apply during an investigation?

Finland

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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).

Last updated on 15/09/2022

Philippines

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Since the right to investigate ultimately belongs to the employer, it may impose strict confidentiality obligations upon the individuals involved, not only to ensure unhampered investigation proceedings but also and more importantly for the protection of the company and employees involved.

Last updated on 26/01/2023

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If the Swedish Whistleblowing Act applies, the persons or entities handling the investigation have a duty of confidentiality and may not, without permission, disclose any information that could reveal the identity of the reporting person, any person subject to the report or any other person mentioned in the report or during the investigation of the report. Access to personal data is limited to designated competent entities or persons. Investigative material including personal data may not be shared with other persons or entities during the investigation. Once the investigation has reached actionable conclusions, investigative material may be shared with other persons or entities, such as HR or the police, provided that such sharing is necessary to take action on the outcome of the investigation. Investigative material may also be shared if it is necessary for the use of reports as evidence in legal proceedings or under the law or other regulations.

If the Swedish Whistleblowing Act does not apply, there are no particular confidentiality obligations for employers. Yet, an employer needs to consider what information is suitable to share during an investigation, how this is done and to whom it is shared. An employer must also respect employees' privacy in line with what is generally considered good practice in the labour market. This means that an employer should be careful as to what sensitive and personal information is shared during an investigation. Furthermore, the spreading of damaging information (even if true) about an employee to a wider group may be a criminal offence under the Swedish Criminal Code.

Last updated on 15/09/2022

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

Finland

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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.

Last updated on 15/09/2022

Philippines

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During the fact-finding stage of the investigation, the employees under investigation are not generally entitled to information concerning the conduct of the investigation. It is the prerogative of management to involve the employee under investigation during the fact-finding stage. When, however, the employer determines that an administrative disciplinary process must proceed, the employee's right to due process attaches. As such, due process includes the right to be informed of the grounds relied upon by the employer and the opportunity to be heard. The first notice or notice to explain should specifically inform the employee of the charge against him or her.

Last updated on 26/01/2023

Sweden

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According to article 14 of the GDPR, no information must be provided. The exemption in article 14.5(b) applies to the extent the obligation to provide such information is likely to render impossible or seriously impair the objectives of the processing of the personal data of the employee under investigation (ie, to diligently investigate the suspected irregularity).

If the Swedish Whistleblowing Act applies, information about where the personal data processed originates from may not be provided under article 14 of the GDPR, as the personal data must remain confidential subject to obligations under the Swedish Whistleblowing Act.

In addition to the above, an investigation should, to the extent possible and suitable, be characterised by the principles in ECHR (particularly articles 6 and 8). The employee under investigation should, among other things, be presented with sufficient information to safeguard his or her interests and be allowed to respond to the allegations. The investigation must also be compliant with the work environment responsibilities that the employer has concerning the involved parties (see questions 17 and 20).

Last updated on 15/09/2022

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

Finland

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

Last updated on 15/09/2022

Philippines

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The identity of the complainant, witnesses and sources of information may be kept confidential under the employer's policies.

Last updated on 26/01/2023

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If the Swedish Whistleblowing Act applies, their identity must be kept confidential under the duty of confidentiality. If the Swedish Whistleblowing Act does not apply, their identity can to a large extent be kept confidential.

It can also be noted that a workplace investigation carried out in the public sector will often (eventually) become an official document, which means that the document can be requested by the public. There are, however, provisions on secrecy that may restrict the right to gain access to official documents. These provisions are found in the Public Access to Information and Secrecy Act (2009:400).

Last updated on 15/09/2022

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

Finland

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

Last updated on 15/09/2022

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The practice of stipulating matters to ensure adherence to confidentiality is not uncommon. As such, NDAs are executed as a means of added protection for both the company and the employees involved.

Last updated on 26/01/2023

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NDAs can be used for some investigations carried out in the private sector. However, under the Swedish Whistleblowing Act, a contract is void to the extent it retracts or restricts a person's rights under the Swedish Whistleblowing Act. An NDA that restricts the right to report irregularities to authorities or the media would, therefore, typically be void.

Last updated on 15/09/2022

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.

Last updated on 15/09/2022

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The employer's internal policy can indicate that investigation materials must be kept confidential.

Last updated on 26/01/2023

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Attorney-client privilege will apply to all communication and investigative material between a client and its

law firm. Attorney-client privilege is, however, not without limitations. Regarding investigations into alleged employee misconduct, a law firm may have to report suspected money laundering to the authorities and under certain circumstances disclose information to the financial police.

Written material covered by attorney-client privilege generally may not be seized.

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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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

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Since the fact-finding phase of the investigation is considered to be a preliminary step before the commencement of the administrative disciplinary process, an employee's right to representation does not attach.

However, when the administrative disciplinary process commences, the employee has the right to have legal representation during the investigation. While no law requires the employee to have counsel present during the investigation, the employee has the right, if he or she chooses, to be advised by counsel or have legal representation.

Last updated on 26/01/2023

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The employee has no right to bring legal representation. However, the outcome of an investigation may lead to employment-related consequences, so it may be appropriate (depending on the situation) to offer the employee the opportunity to bring a union representative (if the employee is unionised) or a legal representative.

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

Philippines

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Except if provided expressly under a collective bargaining agreement, the union does not have the right to be involved in the investigation. Given that the investigation is between the employee and the company, it follows that the union does not have any right to participate in the investigation proceedings.

Last updated on 26/01/2023

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No, but if the employee under investigation is unionised it is appropriate to inform the union about the investigation. If the employer chooses to take action against the employee during, or after, the investigation, the trade union generally needs to be consulted before any final decisions are made.

If the Swedish Whistleblowing Act applies, the employer is not authorised to inform a works council or trade union about the investigation, as it may be in violation of the duty of confidentiality (see question 10).

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

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Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

Last updated on 26/01/2023

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The employer is responsible for the work environment and must ensure that employees are not at risk of mental (or physical) illness due to an investigation. If an employee, in connection with an investigation, requires support or if risk of ill health is otherwise anticipated, the employer is obliged to assess the situation and provide said employee with sufficient support (eg, counselling or work adjustments).

Last updated on 15/09/2022

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

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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

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If unrelated matters are revealed because of a workplace investigation, the employer may look into the new matter and then determine whether there are sufficient grounds to proceed with an administrative

disciplinary process for the new matter.

Last updated on 26/01/2023

Sweden

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According to the GDPR, personal data can only be processed for specified, explicit and legitimate purposes and may not be further processed in a manner that is incompatible with those purposes. This imposes restrictions on the use of material from previous investigations in new investigations when the material was collected for other purposes. It is, therefore, necessary to ensure whether the new matter relates to the investigation and falls within the purpose of the investigation. If the new matter is unrelated to the investigation and does not fall within the purpose of the investigation, the identified information may not be processed under the GDPR.

Except for what is stated above, no regulation limits how the employer can use information regarding unrelated matters. Unrelated matters may be a myriad of different things, and could in some instances just be discarded, while in other situations the information may invoke a responsibility to act for the employer (eg, if the unrelated matters concern work environment issues or other severe misconduct by an employee who is not the target of the investigation). Furthermore, the employer may always use any revealed information (unrelated or not) as evidence in a court of law, since the principle of free examination of evidence applies.

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

Philippines

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If an employee under investigation raises a grievance during an ongoing investigation, the employer must ensure that the employee under investigation is treated reasonably and fairly. Thus, the employer must also give attention to the complaint made by the employee and determine if there are reasonable grounds for the concern of the employee. If the employer determines the validity of the grievance raised, the employer may conduct a separate investigation for it.

Last updated on 26/01/2023

Sweden

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There are no formal rules or processes for handling grievances in Sweden. Depending on the nature of the grievance, such a complaint may also have to be investigated (unless the grievance is deemed to be trivial). This could, for example, be the case if the grievance concerns new or other work environment issues that the employer is obliged to investigate.

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.

Last updated on 15/09/2022

Philippines

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Since neither consent nor the presence of the employee is material to the conduct of the investigation, his or her absence would not, in practice, imperil the conduct of the investigation.

As previously discussed, because the employer exercises a wide latitude of discretion in conducting workplace investigations, the employer may choose to proceed with the investigation despite the absence of the employee being investigated. Since the proceeding is only in the investigation phase, the statutory right of the employee to be heard is not violated, even if the investigation takes place without his or her participation.

Last updated on 26/01/2023

Sweden

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The employer is responsible for the employee's work environment during the investigation. The employer must assess the situation and the impact on the employee's health and may, depending on the situation, have to postpone certain investigative measures, such as interviewing the employee in question. The investigation may even have to be completed without the employee participating.

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

Philippines

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It is within the employer's discretion to pursue the investigation even if a parallel criminal or regulatory investigation is taking place. As such, different investigations may proceed independently of each other. However, if the workplace investigation would interfere with or hinder the criminal or regulatory investigation, the workplace investigation should defer to the investigation being conducted by the people in authority. Since the nature of a workplace investigation is highly confidential, the police or regulations cannot compel any evidence from the employer without a court order.

Last updated on 26/01/2023

Sweden

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Handling a parallel investigation will have to be assessed on a case-by-case basis depending on the applicable rules. For instance, an investigation under the Swedish Discrimination Act is subject to certain timing requirements with which the employer must comply. In other cases, it may be more appropriate to hold off the workplace investigation while awaiting the outcome of the parallel investigation.

The police or regulator can, depending on the matter at hand, request an employer to share evidence. The police or the regulator may also, under certain circumstances, retain evidence in a search.

Last updated on 15/09/2022

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.

Last updated on 15/09/2022

Philippines

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The employee under investigation should be informed of the results of the investigation and the basis of the conclusion. It should be included in the first notice or the notice to explain.

Last updated on 26/01/2023

Sweden

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This depends on the outcome of the investigation and the applicable rules.

If the outcome of the investigation leads to termination, the employer will have to disclose some information regarding the reason for termination. If the employee questions the termination, the employer may have to disclose more information in a subsequent dispute. If the outcome of the investigation leads to less invasive measures, such as a warning, there are less extensive requirements to provide information.

If the Swedish Whistleblowing Act applies, the duty of confidentiality and the restrictions on access to and disclosure of personal data must be considered (see question 10). If the investigation is based on the rules in the Swedish Discrimination Act, there are also feedback requirements concerning the involved parties.

Last updated on 15/09/2022

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

Philippines

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The employer is not compelled to share its investigation report with the employee. However, it would be ideal for the company to keep in its records a comprehensive report that details the findings of the investigation. This would be useful during the administrative disciplinary process when the employee requests to be informed of the substantive grounds for his or her eventual termination.

Last updated on 26/01/2023

Sweden

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There is no obligation to share the investigation report, neither in full nor key findings, with the involved parties. An assessment needs to be made in each case of what is appropriate to share and with whom.

When sharing an investigation report, certain data protection considerations must be made. A purpose and legal basis for the sharing must be established and, in principle, documented.

If the Swedish Whistleblowing Act applies, the duty of confidentiality and the restrictions on access to and disclosure of personal data must be considered (see question 10).

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

Philippines

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After the investigation has been concluded, the next steps of the employer will depend on the result of the investigation. If there are reasonable grounds to hold the employee for an administrative hearing, the employer may issue a Notice To Explain containing the charges against him or her and allowing the employee to explain his or her side. Otherwise, the employer may terminate the investigation immediately.

Last updated on 26/01/2023

Sweden

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An investigation may result in employment law measures (eg, support, training, relocation, warning, termination or dismissal). An investigation may also be inconclusive and not result in any action.

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

Philippines

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The result of the workplace investigation must be kept private by the employer. These are confidential matters that should not be disclosed to people or entities who did not take part in the investigation. However, if the investigation findings show that a possibly unlawful or criminal activity has taken place, or is about to take place, the employer should share such findings with the authorities.

Last updated on 26/01/2023

Sweden

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Findings may have to be handed over to the police or the regulator – there is no separate legal protection for material in employer investigations related to authorities. If the investigation has been carried out by a law firm, see question 14 on attorney-client privilege.

Last updated on 15/09/2022

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

Philippines

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The outcome of the investigation should only remain on the employee's record for as long as is necessary, but shall not be less than three years as this is the record-keeping requirement under the Philippine Labor Code. If circumstances deem that such a report ceases to have any purpose whatsoever, it should be struck out of the employee's record.

Last updated on 26/01/2023

Sweden

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Under the GDPR personal data may not, according to the general principle on storage limitation, be retained for longer than is necessary for the purposes for which the personal data are processed. The GDPR does not stipulate a generally applicable storage limitation period. Such a regulation is, on the other hand, included in the Swedish Whistleblowing Act. If the Swedish Whistleblowing Act applies, the outcome of the

investigation and all personal data should be retained for as long as necessary, but not for longer than two years after the investigation has been closed.

Last updated on 15/09/2022

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

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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.

Last updated on 15/09/2022

Philippines

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An employer may be liable for illegal termination if a dismissal is made based on wrong information collected during the investigation. Thus, the data and information gathered during the investigation stage must be correct and accurate. Further, investigations should be conducted in a manner that is fair and reasonable to the employee under investigation. Otherwise, the employee may treat the investigation as harassment on the part of the employer, which may subject the employer to a potential lawsuit.

Last updated on 26/01/2023

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Errors resulting in terminations can be unlawful and, if they lead to employees terminating their employment as a result of the employer's missteps, could be seen as constructive dismissal. Constructive dismissal is generally equivalent to an unlawful dismissal. Unlawful terminations generally result in an obligation to pay financial and general damages to the affected employees.

Failure to fulfil the obligations under the Swedish Discrimination Act may lead to an obligation to pay financial and general damages.

If an employer does not fulfil its obligations according to work environment legislation, there is a risk that the Swedish Work Environment Authority will issue injunctions or prohibitions against the employer. If an employer omits to meet its work environment related obligations, and that in turn results in a work related

accident, e.g. self-harm in connection with an internal investigation, it may also, in a worst case scenario, lead to criminal liability.

The Swedish Work Environment Authority is also responsible for monitoring compliance with the provisions of the Swedish Whistleblowing Act. The Swedish Work Environment Authority may, if necessary to ensure compliance with the Swedish Whistleblowing Act, order an operator to comply with the obligations and requirements of the Swedish Whistleblowing Act. Employers violating the Swedish Whistleblowing Act may also be liable to pay damages to the affected employees.

If personal data is processed in a way that violates the GDPR, the authorised supervisory authority may issue warnings or reprimands to the data controller, order the controller to comply with the GDPR, impose a ban on processing, or impose an administrative fine on the controller. Companies violating the GDPR may also be liable to pay damages to data subjects.

Last updated on 15/09/2022

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