

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

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

France

Author: *Pascale Lagesse, Valentino Armillei*
at Bredin Prat

If the outcome of the internal investigation has led to the sanctioning of an employee, this sanction may no longer be invoked to support a new sanction after three years. Moreover, under the GDPR principles, the duration of retention must be proportional to the use of the data. Therefore, the data must be retained only for a period that is "strictly necessary and proportionate". If the employer wants to keep information about the investigation in the longer term, it is possible to archive the employee's record even though the employer will no longer be able to use it against the employee after three years.

Last updated on 15/09/2022

Nigeria

Author: *Adekunle Obebe*
at Bloomfield LP

The law does not provide for the time the outcome of the investigation may remain on the employee's record. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

Last updated on 15/09/2022

Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

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.

Last updated on 15/09/2022

Contributors



France

Pascale Lagesse
Valentino Armillei
Bredin Prat



Nigeria

Adekunle Obebe
Bloomfield LP



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer