

Workplace Investigations

Contributing Editors

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

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

Nigeria

Author: *Adekunle Obebe*
at Bloomfield LP

NDAs are usually part of an employee's contract and, as such, create a contractual obligation between the parties privy to it. However, where the subject matter of an investigation borders on matters of a criminal nature, it might be impossible for parties to the NDA to continually uphold the obligation under the NDA because the parties have an obligation to the state to disclose facts of a criminal nature.

Last updated on 15/09/2022

Switzerland

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

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.

Last updated on 15/09/2022

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

Nigeria

Author: *Adekunle Obebe*
at Bloomfield LP

It is not unusual for an employee under investigation to raise a grievance during the investigation. This grievance may be on the same subject matter as the complaint being investigated or may disclose new facts outside the scope of the matter being investigated.

Where the issue discloses new facts, the employer is required to investigate those facts without suspending the investigation. However, where the grievance relates to the same subject matter as the complaint being investigated, the employer may either suspend the investigation to allow the investigation to recognise the grievance and the complaint against the employer or proceed with the investigation while noting that the matter disclosed is being or will be investigated.

Last updated on 15/09/2022

Switzerland

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

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

Contributors

Nigeria

Adekunle Obebe
Bloomfield LP

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer