

# Workplace Investigations

## Contributing Editors

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

#### Austria

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According to section 6(1) of the DSG, employees who have access to personal data in the course of their professional activities must maintain data confidentiality and continue to do so even after termination of their employment.

Non-disclosure agreements can generally be used to achieve this but are subject to certain restrictions. They may not be used to conceal criminal activity, violate the privacy rights of individuals, circumvent legal disclosure obligations, prevent the exercise of legal rights or contain clauses that violate existing laws, in particular data protection regulations.

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#### Switzerland

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

## Austria

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The employer must decide how to deal with this information. Possible options are to initiate separate and unrelated investigations or to extend the ongoing investigations.

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## 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.

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