

Workplace Investigations

Contributing Editors

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



India

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There is no statutory guidance on this. It is common for employers to retain details of disciplinary proceedings on an employee's record for the entire duration of their employment.

It is also advisable to retain the details of any investigations or disciplinary proceedings for at least three years after an individual has been dismissed on account of such proceedings, as this is the general limitation period for raising claims of unfair dismissal. In labour matters, courts in India often allow delays in filing suit after the limitation period, meaning organisations sometimes make a practical call to retain details of investigations and disciplinary proceedings for longer.

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Ireland

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Irrespective of the outcome of the investigation, the fact that an employee was subject to an investigation is not the key issue. The key concern is whether any further action was taken as a result of the investigation. If a disciplinary process ensued, then it is the outcome of that disciplinary record and any subsequent appeal that would or would not be noted on an employee's record. If a disciplinary sanction were imposed then the length of time the sanction remains on the employee's record would depend on what is specified in the disciplinary policy.

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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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