

Workplace Investigations

Contributing Editors

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

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

Ireland

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at Ogier

Failure by an employer to provide the identity of the complainant, witnesses or sources of information seriously impinges upon the employee's right to fair procedure and could result in a flawed investigation.

Last updated on 11/10/2023

Japan

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at Mori Hamada & Matsumoto

For whistleblowing investigations, whistleblower protection is required (see question 9).

Witnesses and other sources of information are not protected by the Whistleblower Protection Act.

In addition, as a response to a report of harassment, the Ministry of Health, Labour and Welfare guidelines require that necessary measures be taken to protect the privacy of the reporter, the offender, and others, and that these measures be announced to the company.

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Switzerland

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As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also

entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.^[1]

[1] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 390.

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