

Workplace Investigations

Contributing Editors

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

22. What must the employee under investigation be told about the outcome of an investigation?

Japan

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at Mori Hamada & Matsumoto

Although there is no legal obligation to report the results of the investigation to the employee, when taking disciplinary action it is generally necessary, from a due process point of view, to explain the facts of the disciplinary action and the results of the investigation, and to allow the employee to explain him or herself. Particularly in the case of serious disciplinary actions such as dismissal, failure to provide an adequate opportunity for an explanation is a possible ground for denying the validity of the disciplinary action.

Last updated on 15/09/2022

Switzerland

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Workplace investigations often result in an investigation report that is intended to serve as the basis for any measures to be taken by the company's decisionmakers.

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.^[1] In principle, the employee concerned is entitled to receive a written copy of the entire investigation report free of charge (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 et seq, Ordinance to the Federal Act on Data Protection). Redactions may be made where the interests of the company or third parties so require, but they are the exception and must be kept to a minimum.^[2]

^[1] Arbeitsgericht Zürich, Entscheide 2013 No. 16; Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 393 et seq.

^[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p.

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