

Workplace Investigations

Contributing Editors

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

08. Can the employer search employees' possessions or files as part of an investigation?



India

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at Trilegal

Yes, an employer can search its employees' official possessions and files as part of an investigation. It may be difficult, however, to seize personal assets or possessions of an employee (such as the individual's mobile phone or personal laptop).

Employers should expressly create policies that address key issues associated with employee surveillance, forensic searches and investigations, such as:

- whether or not the official assets and infrastructure of the company can be used for personal purposes by employees;
- the organisation's right to monitor, surveil or search any authorised or unauthorised use of its corporate assets; and
- that the employee should not have any expectation of privacy when using the companies' resources, etc.

Any forensic review of digital data must be carried out with due regard to Indian rules of evidence to avoid situations where such evidence becomes unreliable in a future legal claim or dispute.

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Switzerland

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The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.^[1] The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.^[2]

[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

[2] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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Turkey

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There is no explicit answer to this question. However, it is important to make a distinction between employees' possessions and files that are strictly personal and employees' possessions and files that are found on devices or files provided for company use. For the first category, the employer does not have the right to search employees' possessions and files. For the latter category though, justifications need to be established, by observing the requirements explained in question 7. Furthermore, the employers must also ensure that employees are fully and explicitly informed in advance of the monitoring operations, either through a provision included in the employment agreement, or in a separate notice or employee policy, the receipt of which should be duly acknowledged by the employee.

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