

# Workplace Investigations

## Contributing Editors

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

## 05. Can the employee under investigation bring legal action to stop the investigation?



### India

Author: *Atul Gupta, Kanishka Maggon, Kopal Kumar*  
at Trilegal

An employee has very limited ability to bring legal action to stop the investigation, as no disciplinary measure is taken against an individual during the investigation stage. The risk of claims or disputes generally arises after the employer has taken disciplinary measures against the individual.

An employee could, however, bring claims in some circumstances – for example, if the individual has been suspended without pay, or if the individual's assets have been seized as part of the investigation without following due process. Therefore, it is critical that robust internal guidelines are framed that lay out the framework to follow in investigations to mitigate the risk of legal claims or disputes.

Last updated on 15/09/2022



### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

Last updated on 15/09/2022

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

## India

Author: *Atul Gupta, Kanishka Maggon, Kopal Kumar*  
at Trilegal

Concerning SH cases, the IC must supply a copy of the preliminary findings to the complainant and accused (where both are employees of the organisation) to allow them to make their representations before final findings and recommendations are shared. The IC's final report with recommendations for disciplinary action, if any, must also be shared with both parties.

For other forms of misconduct, it is not mandatory to share the details of the fact-finding investigation itself. However, if disciplinary action is contemplated and a disciplinary inquiry is necessary against the employee under investigation, the relevant details of the evidence gathered against the individual will need to be shared with him or her as part of the charge sheet. On the other hand, where no disciplinary inquiry is being conducted after an investigation (eg, if there is no merit in the allegations), the employer may choose to not share the investigative findings and only inform the individual that no further action is being taken.

Last updated on 15/09/2022

## Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.<sup>[1]</sup> 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.<sup>[2]</sup>

---

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

<sup>[2]</sup> Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 394.

Last updated on 15/09/2022

### Contributors

#### India

Atul Gupta  
Kanishka Maggon  
Kopal Kumar

*Trilegal*



## Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)