

Workplace Investigations

Contributing Editors

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

17. What other support can employees involved in the investigation be given?



India

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

Every workplace investigation is unique and varies based on the facts and circumstances of each case. As a result, the nature or type of support to be given to an employee would also vary from case to case. The bare minimum should be an assurance that there will be no retaliation against them for participating in the investigation. Other measures may include:

- changing the reporting relationship if the accused is the reporting manager or boss of the complainant;
- conducting investigations and interviews virtually or through videoconferencing in cases where parties or witnesses may not be able to physically appear before the investigating authorities; and
- allowing witnesses to be cross-examined virtually or through a written questionnaire where there is a fear of intimidation or retaliation from the parties.

The employer should be mindful that any interim measures or support it extends does not prejudice any particular party.

Under the SH Act, employers are legally required to assist the complainant if he or she chooses to file a complaint about workplace sexual harassment with the police under the Indian Penal Code or any other law that is in force. Further, the complainant can also seek interim protective measures from the IC, such as a request for transfer for the accused or the complainant or to grant leave to the complainant for three months.

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Switzerland

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

The employer does not generally need to provide specific support for employees that are subject to an

internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

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

^[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

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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.

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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.^[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. 394.

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Atul Gupta
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