

Workplace Investigations

Contributing Editors

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

18. What if unrelated matters are revealed as a result of the investigation?

Portugal

Author: *André Pestana Nascimento*
at Uría Menéndez - Proença de Carvalho

If new facts arise as a result of the investigation and they are relevant, the employer may include them in the accusation. If, however, the new facts are revealed after the accusation has been served, the employer will have to prepare an addendum to the initial accusation and the employee will be able to use the same defence rights against that addendum.

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Switzerland

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

There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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23. Should the investigation report be shared in full, or just the findings?

Portugal

Author: *André Pestana Nascimento*
at *Uría Menéndez - Proença de Carvalho*

If the employee is accused by the employer, they will be entitled to consult the entire investigation report and not just the findings, as well as the witnesses' depositions, which should be in writing, and any other sources of information that were used by the employer

Even though the law is silent in this respect, courts have ruled that if this is not complied with, the employee's right of defence would be deemed to be disrespected.

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Switzerland

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

In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: *HR Today*, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

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Contributors



Portugal

André Pestana Nascimento
Uría Menéndez - Proença de Carvalho



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

