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?



Author: Pascale Lagesse, Valentino Armillei at Bredin Prat

The employee under investigation, like the other employees interviewed and the whistleblower, must be informed that the investigation has been completed. However, there is no obligation to provide them with the report and, for reasons of confidentiality, it is very often best not to do so.

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South Korea

Author: Hyunjae Park, Paul Cho, Jihay Ellie Kwack, Kyson Keebong Paek at Kim & Chang

There is no legal obligation for a company to disclose the outcome of an investigation to the employee who was subject to it. Having said that, if the company wishes to take disciplinary action against the employee based on the outcome of an investigation, it is required to disclose sufficient detail on the employee's wrongdoing that is subject to disciplinary action. This information should be provided to the employee before the disciplinary action committee (DAC) hearing to provide the employee with sufficient time to present and defend his or her position during the DAC hearing.

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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.

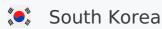
[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 394.

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Contributors



Pascale Lagesse Valentino Armillei Bredin Prat



Hyunjae Park Paul Cho Jihay Ellie Kwack Kyson Keebong Paek Kim & Chang



Switzerland

Laura Widmer Sandra Schaffner Bär & Karrer

www.internationalemploymentlawyer.com