

Workplace Investigations

Contributing Editors

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01. What legislation, guidance and/or policies govern a workplace investigation?

Sweden

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Workplace investigations in Sweden are governed by several rules and regulations. Listed below are the central legislation and regulations that govern a workplace investigation related to alleged employee misconduct.

- The Swedish Discrimination Act (2008:567).
- The Swedish Work Environment Act (1977:1160), which is complemented by the Swedish Work Environment Authority's other statutes.[\[1\]](#)
- The Swedish Whistleblowing Act (2021:890).

If a workplace investigation has been initiated after the receipt of a report filed through a reporting channel established under the Swedish Whistleblowing Act, that law applies provided that the report has been filed by a person who may report under the Act and provided that the subject of the report falls under the material scope of the Act. The Swedish Whistleblowing Act implements Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law and has been given a wide material scope in Sweden. The Swedish Whistleblowing Act may apply if the reported irregularity concerns breaches of certain EU laws or if the reported irregularity is of public interest.

In addition to the regulations mentioned above, certain data protection legislation may affect workplace investigations by restricting what personal data may be processed. Such data protection legislation includes the following:

- Regulation (EU) 2016/679 on the protection of natural persons concerning the processing of personal data and the free movement of such data (the GDPR);
- the Swedish Supplementary Data Protection Act (2018:218);
- the Swedish Supplementary Data Protection Regulation (2018:219);
- Regulation DIFS:2018:2 on the processing of personal data relating to criminal convictions or offences. This regulation governs the processing of personal data relating to criminal convictions or suspected criminal offences in internal workplace investigations that are not governed by the Swedish Whistleblowing Act.[\[2\]](#)

The above-mentioned legislation and regulations may overlap in many aspects and it is therefore important

before starting an investigation, as well as during an investigation, to assess which rules and regulations apply to the situation at hand. Another aspect of this is that many issues that can arise during an investigation are not regulated by law or other legislation. If the investigation is a non-whistleblowing investigation there are limited rules on exactly how and by whom the investigation should be carried out.

A Swedish law firm that undertakes a workplace investigation also has to adhere to the Swedish Bar Association's Code of Conduct. The Code of Conduct includes additional considerations, mainly ethical, which will not be addressed in this submission. Furthermore, this submission will not focus on investigations following an employee's possible misappropriation of proprietary information or breach of the Swedish Trade Secrets Act (2018:558). Investigations into such irregularities are often conducted to gather evidence and these investigations include the same or similar investigative measures used in other investigations, such as interviews with employees and IT-forensic searches, but also infringement investigations carried out by the authorities or other measures by the police.

[1] Mainly Systematic Work Environment Management (AFS 2001:1), Organisational and Social Work Environment (AFS 2015:4) and Violence and Menaces in the Working Environment (AFS 1993:2)

[2] Under Section 2 item 4 of DIFS 2018:2, personal data relating to criminal convictions or suspected criminal offences may only be processed if the personal data concerns serious misconduct, such as bribery, corruption, financial fraud or serious threats to the environment, health and safety, by an individual who is in a leading position or who is considered key personnel within the company. The processing of personal data received in a report or collected during an investigation governed by the Swedish Whistleblowing Act is instead governed by the Swedish Whistleblowing Act, which complements the GDPR and the supplementing Swedish act and regulation stated in item (ii) and (iii) above.

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Switzerland

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There is no specific legal regulation for internal investigations in Switzerland. The legal framework is derived from general rules such as the employer's duty of care, the employee's duty of loyalty and the employee's data protection rights. Depending on the context of the investigation, additional legal provisions may apply; for instance, additional provisions of the Swiss Federal Act on Data Protection or the Swiss Criminal Code.

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16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



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No, but if the employee under investigation is unionised it is appropriate to inform the union about the

investigation. If the employer chooses to take action against the employee during, or after, the investigation, the trade union generally needs to be consulted before any final decisions are made.

If the Swedish Whistleblowing Act applies, the employer is not authorised to inform a works council or trade union about the investigation, as it may be in violation of the duty of confidentiality (see question 10).

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Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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