

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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01. What legislation, guidance and/or policies govern a workplace investigation?

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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Turkey

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There is no specific legislation governing workplace investigations in Turkish law. However, there are general principles stemming from Labour Law No. 4857 as well as good practice principles. Data protection laws also occasionally intertwine with these. The internal codes and policies of the company should also be followed throughout the process.

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12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

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As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.^[1]

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

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It is possible to keep such information confidential. If this is the case, the investigation team should conduct the interview outside the workplace of the company. This is actually good practice applicable to all internal investigations, unless there is a particular reason that requires the meetings to be held at the company.

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