

# Workplace Investigations

## Contributing Editors

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

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

### Switzerland

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

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's 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.<sup>[1]</sup>

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

Last updated on 15/09/2022

### Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

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.

Last updated on 15/09/2022

## 21. How do you handle a parallel criminal and/or regulatory investigation?

### Switzerland

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

The actions of the employer may carry through to a subsequent state proceeding. First and foremost, any prohibitions on the use of evidence must be considered. Whereas in civil proceedings the interest in establishing the truth must merely prevail for exploitation (article 152 paragraph 2, Swiss Civil Procedure Code), in criminal proceedings, depending on the nature of the unlawful act, there is a risk that the evidence may not be used (see question 27 and article 140 et seq, Swiss Civil Procedure Code).

Last updated on 15/09/2022

### Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*  
at Paksoy

If the issues being examined during an investigation are also subject to parallel criminal or regulatory investigation, the workplace investigation will probably be stayed. This is primarily because parallel criminal or regulatory investigations would necessitate a more comprehensive examination and public bodies overseeing such investigations have a broader legal prerogative to gather evidence. It is, therefore, advisable to stay the internal investigation to not interfere with the criminal or regulatory authorities. If a prosecutor or a court requires the employer to give evidence or share certain documents, the police can compel the employer to share evidence. Regulatory bodies may also ask the employer to share evidence and the powers conferred on such regulatory bodies will be a determining factor in whether they can compel the employer.

Last updated on 15/09/2022

#### Contributors

##### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

##### Turkey

Elvan Aziz  
Gölce Saydam Pehlivan  
Emre Kotil  
Osman Pepeoğlu  
*Paksoy*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)