

# Workplace Investigations

## Contributing Editors

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

## 08. Can the employer search employees' possessions or files as part of an investigation?

### Switzerland

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

The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.<sup>[1]</sup> The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.<sup>[2]</sup>

---

<sup>[1]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

<sup>[2]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

Last updated on 15/09/2022

### Thailand

Author: *Ratthai Kamolwarin, Norrapat Werajong*  
at Chandler MHM

Electronic information created during employment would generally be owned by the employer and would be the employer's assets. If an employee is given a computer or laptop to use for work, the employer has the right to log into that device and take any data that is stored therein, provided that the data does not contain sensitive information of that employee and PDPA requirements are met.

To avoid any potential issues regarding physical data such as documents on the employee's desk, it is advisable to search those areas with the subject employee to show good faith. In practice, the employee

normally agrees to search those areas with the employer, or allows the employer to search alone.

Last updated on 15/09/2022

## 19. What if the employee under investigation raises a grievance during the investigation?



### Switzerland

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

In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

Last updated on 15/09/2022



### Thailand

Author: *Ratthai Kamolwarin, Norrapat Werajong*  
at Chandler MHM

The investigator should guide the employee who has raised the grievance to properly raise their concerns through the grievance protocols or whistleblowing policy (if any). It is acceptable to preliminarily hear their concerns, but the investigation should be initiated separately and subject to the employer's discretion.

Last updated on 15/09/2022

#### Contributors



#### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*



#### Thailand

Ratthai Kamolwarin  
Norrapat Werajong  
*Chandler MHM*

