

# Workplace Investigations

## Contributing Editors

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

### Switzerland

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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>

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<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.

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### Thailand

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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.

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## 24. What next steps are available to the employer?



### Switzerland

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If the investigation uncovers misconduct, the question arises as to what steps should be taken. Of course, the severity of the misconduct and the damage caused play a significant role. Furthermore, it must be noted that the cooperation of the employee concerned may be of decisive importance for the outcome of the investigation. The possibilities are numerous, ranging, for example, from preventive measures to criminal complaints.<sup>[1]</sup>

If individual disciplinary actions are necessary, these may range from warnings to ordinary or immediate termination of employment.

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<sup>[1]</sup> David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 180 et seq.

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Upon completion of the investigation, the employer can decide to take proper disciplinary action against the employee if it is found that the employee committed an offence or violated the work rules. An employer may also file a report with the police if the findings of the investigation amount to a criminal offence.

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