

Workplace Investigations

Contributing Editors

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

09. What additional considerations apply when the investigation involves whistleblowing?

Switzerland

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

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

Last updated on 15/09/2022

Thailand

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

It is down to the employer's discretion and subject to the whistleblowing policy (if any) to commence the investigation resulting from a complaint from a whistleblower. Whistleblowers and those who cooperate with an investigation should be protected. Normally the employer would not try to identify the whistleblowers. Also, it is best not to reveal the identity of the witness or the source of information; otherwise, they may feel uncomfortable giving information or raising their concerns next time. Any allegations of retaliation that surface during the investigation should be treated as a new report of possible misconduct that could be subject to additional investigation.

Last updated on 15/09/2022

23. Should the investigation report be shared in full, or just the findings?

Switzerland

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

In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

Last updated on 15/09/2022

Thailand

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

It depends on with whom the investigation report should be shared. If there is a court case or criminal case to be further investigated by police, the investigation report should be shared in full as this would be used as documentary evidence to make a case stronger. On the contrary, if the investigation report is requested by the employee under investigation, employers are entitled to use their discretion as to what information to share.

Last updated on 15/09/2022

Contributors

Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

Thailand

Ratthai Kamolwarin
Norrapat Werajong
Chandler MHM

