

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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17. What other support can employees involved in the investigation be given?

Switzerland

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The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

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

^[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

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Thailand

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The employees may then file a complaint with the labour inspection officer of the Labour Protection and Welfare Department to investigate the situation if they view that the conduct of the employer in the investigation violates the LPA. For example, if the employer issues a written order for suspending an employee for more than seven days. The labour inspection officer may issue an order requesting

compliance, where failure to comply with such an order would result in a criminal penalty.

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

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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).

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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.

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