

# Workplace Investigations

## Contributing Editors

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

### **13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?**

#### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

The practice of stipulating matters to ensure adherence to confidentiality is not uncommon. As such, NDAs are executed as a means of added protection for both the company and the employees involved.

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#### Switzerland

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

In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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### **20. What if the employee under investigation goes off sick during the investigation?**

#### Philippines

Author: *Rashel Ann C. Pomoy*  
at Villaraza & Angangco

Since neither consent nor the presence of the employee is material to the conduct of the investigation, his or her absence would not, in practice, imperil the conduct of the investigation.

As previously discussed, because the employer exercises a wide latitude of discretion in conducting workplace investigations, the employer may choose to proceed with the investigation despite the absence of the employee being investigated. Since the proceeding is only in the investigation phase, the statutory right of the employee to be heard is not violated, even if the investigation takes place without his or her participation.

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## Switzerland

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

The time spent on the internal investigation by the employee should be counted as working time<sup>[1]</sup>. The general statutory and internal company principles on sick leave apply. Sick leave for which the respective employee is not responsible must generally be compensated (article 324a paragraph 1 and article 324b, Swiss Code of Obligations). During certain periods of sick leave (blocking period), the employer may not ordinarily terminate the employment contract; however, immediate termination for cause remains possible.

The duration of the blocking period depends on the employee's seniority, amounting to 30 days in the employee's first year of service, 90 days in the employee's second to ninth year of service and 180 days thereafter (article 336c paragraph 1 (lit. c), Swiss Code of Obligations).

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[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

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### Contributors



#### Philippines

Rashel Ann C. Pomoy  
*Villaraza & Angangco*



#### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*