

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

Philippines

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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

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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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24. What next steps are available to the employer?

Philippines

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After the investigation has been concluded, the next steps of the employer will depend on the result of the

investigation. If there are reasonable grounds to hold the employee for an administrative hearing, the employer may issue a Notice To Explain containing the charges against him or her and allowing the employee to explain his or her side. Otherwise, the employer may terminate the investigation immediately.

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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.^[1]

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

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

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