

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.^[1] 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.^[2]

^[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

^[2] 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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09. What additional considerations apply when the investigation involves whistleblowing?

Switzerland

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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.

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18. What if unrelated matters are revealed as a result of the investigation?



Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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