

Workplace Investigations

Contributing Editors

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15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?



Brazil

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Legally, a minor or someone with limited mental capacity must be represented by his or her parents or legal guardian in a meeting at work. Besides that, employers are not legally required to allow any external person to accompany employees during investigations, since these are internal proceedings and, generally, employee participation should be voluntary and not subject to retaliation, including if the employee refuses to participate.

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Switzerland

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In the case of an employee involved in an internal investigation, a distinction must be made as to whether the employee is acting purely as an informant or whether there are conflicting interests between the company and the employee involved. If the employee is acting purely as an informant, the employee has, in principle, no right to be accompanied by their own legal representative.[\[1\]](#)

However, if there are conflicting interests between the company and the employee involved, when the employee is accused of any misconduct, the employee must be able to be accompanied by their own legal representative. For example, if the employee's conduct might potentially constitute a criminal offence, the involvement of a legal representative must be permitted.[\[2\]](#) Failure to allow an accused person to be accompanied by a legal representative during an internal investigation, even though the facts in question are relevant to criminal law, raises the question of the admissibility of statements made in a subsequent criminal proceeding. The principles of the Swiss Criminal Procedure Code cannot be undermined by alternatively collecting evidence in civil proceedings and thus circumventing the stricter rules applicable in criminal proceedings.[\[3\]](#)

In general, it is advisable to allow the involvement of a legal representative to increase the willingness of the employee involved to cooperate.

[1] Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

[2] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 59.

[3] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 392; Niklaus Ruckstuhl, BSK-StPO, Art. 158 StPO N 36.

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United Kingdom

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There is no statutory right to be accompanied at a disciplinary investigation meeting; the right only applies to disciplinary hearings (section 10 ERA 1999). There is, however, a right to be accompanied by a colleague or trade union representative at any grievance investigation meeting, under section 10, although this is only in respect of the person who raises the grievance (not any person who is the subject of the grievance or other witnesses).

That said, the employer's policies and contracts should be checked to see if they contain a broader right to be accompanied. Employers may also need to allow a broader right to be accompanied as a reasonable adjustment for disabled employees (for example, to allow family members or medical professionals to be present). Equally, where the allegations are sufficiently serious (eg, criminal, especially if the findings are likely to be shared with the police), it may be appropriate to allow legal representation during the investigation.

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