

Workplace Investigations

Contributing Editors

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

16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



Spain

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As explained in question 15, employees are not entitled to representation during an investigation. However, if a disciplinary procedure starts as a result of the investigation, employee representatives may be entitled to be informed of the disciplinary procedure and its outcome.

The degree and timing of when employee representatives must be involved will depend on several factors such as:

- the employee's affiliation to a union;
- if the employee is an employee representative;
- the seriousness of the potential sanction to be imposed; and
- the information rights that the applicable collective bargaining agreement acknowledges regarding employee representatives.

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Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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United States

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Employers generally have no obligation to inform employees of their right to union representation or to ask if they would like a union representative present during the interview. Union employees may insist, however, that a union representative attend any investigatory interview that could lead to the employee's punishment, although the union representative may not interfere with the interview.

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