

# Workplace Investigations

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## 05. Can the employee under investigation bring legal action to stop the investigation?

### Spain

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No, an employee under investigation has no direct legal option to stop an investigation. This is because conducting an enquiry is within the employers' legally acknowledged powers, attached to their capacity to manage their business and enforce employment contracts and internal policies.

Notwithstanding the above, if the investigation breaches an employee's rights (privacy, dignity, remuneration, etc), the individual could:

- file a lawsuit aimed at stopping said breach (and potentially seeking an award for damages); or
- file a claim with the Labour Inspectorate with the same purpose.

The result, in this case, would stop the enquiry.

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### Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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## 18. What if unrelated matters are revealed as a result

# of the investigation?



## Spain

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The issue with revealing unrelated matters to the investigation is that it may jeopardise the entire enquiry. If the unrelated matters are private or the disclosure is construed as a breach of employees' fundamental rights, then the materials gathered during the investigation could be considered to be unlawfully obtained and would not be admitted as evidence in court.

Moreover, the employee could seek damages and a fine could be imposed on the company for breaching its employee's rights.

Finally, if unrelated matters are revealed, it could be a clear sign that the company has failed to conduct a diligent investigation and use the least intrusive means available to it (see question 1). One of the reasons to minimise the number of employees conducting the investigation (see question 4) is to reduce damages if matters unrelated to the investigation are revealed.

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## 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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