

Workplace Investigations

Contributing Editors

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

17. What other support can employees involved in the investigation be given?

Philippines

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Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

Last updated on 26/01/2023

Switzerland

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The employer does not generally need to provide specific support for employees that are subject to an internal investigation. The employer may, however, allow concerned employees to be accompanied by a trusted third party such as family members or friends.^[1] These third parties will need to sign separate non-disclosure agreements before being involved in the internal investigation.

In addition, a company may appoint a so-called lawyer of confidence who has been approved by the employer and is thus subject to professional secrecy. This lawyer will not be involved in the internal investigation but may look after the concerned employees and give them confidential advice as well as inform them about their rights and obligations arising from the employment relationship.^[2]

^[1] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 390.

[2] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern, 2021, p. 133.

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United States

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The employer's counsel should provide an *Upjohn* warning at the start of any interview, and delivery of the warning should be documented by a note-taker. An *Upjohn* warning is the notice an attorney (in-house or outside counsel) provides a company employee to inform the employee that the attorney represents only the company and not the employee individually.

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