

# Workplace Investigations

## Contributing Editors

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

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

#### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

An employee can be assisted by a member of a trade union. They are also free to consult a lawyer.

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#### Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*  
at Karatzas & Partners

Greek law does not specifically regulate the right to be accompanied or have legal representation during internal investigations for private-sector employees.

However, the right to legal representation established in article 6 of the European Convention on Human Rights could be interpreted to cover cases such as internal investigations in the workplace. In addition, according to article 136 of Civil Servant Code, the employee under investigation has the right to be represented by an attorney at law. There is an additional argument regarding private-sector employees and their right to legal representation, by applying this provision by analogy.

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#### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

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.

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[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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## Contributors



### Belgium

Nicolas Simon  
*Van Olmen & Wynant*



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Angeliki Tsatsi  
Anna Pechlivanidi  
Pinelopi Anyfanti  
Katerina Basta  
*Karatzas & Partners*



### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*