

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?

Greece

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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.

Last updated on 03/04/2023

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.

Last updated on 15/09/2022

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



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According to L.4990/2022, any form of retaliation against complainants is prohibited, including threats of retaliation[\[9\]](#). The complainants have the right to cost-free legal advice about possible acts of retaliation as well as cost-free provision of psychological support (to be defined by Ministerial Decisions)[\[10\]](#). In terms of other types of support, the complainants are not in principle liable for the acquisition of information or releasing the information they reported under specific conditions (eg, the acquisition or access does not independently constitute a criminal offence, if they had reasonable grounds for believing that a report was necessary to reveal the violation)[\[11\]](#).

L. 4808/2021 states that the dismissal or termination of the legal relationship of employment and any other discrimination that constitutes an act of revenge or retaliation is prohibited and invalid[\[12\]](#).

[\[9\]](#) Law 4990/2022 art.17

[\[10\]](#) Law 4990/2022 art.19

[\[11\]](#) Law 4990/2022 art.18 par.1(a)

[\[12\]](#) Law 4808/2021 art.13

Last updated on 03/04/2023



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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.

Last updated on 15/09/2022

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