

# 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?**

#### France

Author: *Pascale Lagesse, Valentino Armillei*  
at Bredin Prat

The employee under investigation has the right to be assisted by a lawyer during the interviews and, if the employee chooses to be so, the lawyer must also always be present. The employee may not, however, be accompanied by anyone other than a legal representative (ie, another employee cannot attend the interview).

Last updated on 27/11/2023

#### Singapore

Author: *Jonathan Yuen, Doreen Chia, Tan Ting Ting*  
at Rajah & Tann Singapore

This is dependent on the employee's employment contract and the employer's internal grievance policies and investigative processes. There is no free-standing legal entitlement for an employee to have legal representation. Employers may, at their discretion, consider allowing an employee to bring a colleague or to have legal representation if such a request is reasonable, such as to provide emotional support to the employee who may view the disciplinary hearing as an unnerving and stressful experience or so that the employee may be advised and informed of his or her legal rights in respect of the investigation commenced against him or her.

Last updated on 15/09/2022

#### Switzerland

Author: *Laura Widmer, Sandra Schaffner*

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.<sup>[1]</sup>

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.<sup>[2]</sup> 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.<sup>[3]</sup>

In general, it is advisable to allow the involvement of a legal representative to increase the willingness of the employee involved to cooperate.

---

<sup>[1]</sup> Claudia Götz Staehelin, Unternehmensinterne Untersuchungen, 2019, p. 37.

<sup>[2]</sup> Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 59.

<sup>[3]</sup> 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

## Contributors



### France

Pascale Lagesse  
Valentino Armillei  
*Bredin Prat*



### Singapore

Jonathan Yuen  
Doreen Chia  
Tan Ting Ting  
*Rajah & Tann Singapore*



### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

