

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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06. Can co-workers be compelled to act as witnesses? What legal protections do employees have when acting as witnesses in an investigation?

Austria

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An essential part of an internal investigation is the questioning of employees. Their statements contribute significantly to clarifying possible violations. In particular, the legal principles that apply to criminal proceedings, including the right to refuse to testify, do not apply directly to internal investigations.

Employees do not legally have to participate in such interviews. Their duty to cooperate arises indirectly from other legal provisions, in particular from employees' duties of loyalty and service under labour law.

Austrian law suggests there is a general principle of loyalty, which triggers a "duty to inform" under some circumstances; in principle, the employee and any witnesses are expected to provide information in the context of internal investigations. While the employee is not compelled to incriminate him or herself, he or she also may not withhold work-related information that the employer legitimately wishes to protect, for the sole reason that it might incriminate him or her. The decision as to whether the employee must disclose information depends on a balancing of interests in the specific case.

Investigators and employers must strictly adhere to the permissible limits. This requires compliance with labour law, criminal law and data protection law.

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France

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Co-workers can spontaneously act as witnesses and provide statements to superiors before, during or after the interviews. Co-workers can also be interviewed as witnesses at the investigator's request, although they are not under any obligation to answer the questions and they cannot be compelled to do so. The investigators have an absolute obligation of discretion during the investigation and cannot reveal any

details of the information gathered.

Certain employees may benefit from whistleblower status, which implies that they may be exempt from potential criminal and civil liability relating to their report or testimony and they are protected from any retaliatory measures from the employer. “Facilitators” who helped the whistleblower and the individuals connected with the whistleblower and risk retaliatory measures by testifying as a witness may also benefit from this status, as of 1 September 2022.

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