

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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15. Does the employee under investigation have a right to be accompanied or have legal representation during the investigation?

Austria

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In general, an employee is not entitled to have a representative present during investigations. However, he is free to reach out to the works council or independently contact a lawyer for advice. The employer must hear the works council upon his or her request on all matters concerning the interests of employees at the company. Once disciplinary proceedings begin, the employee has the right to be represented by a lawyer.

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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.

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16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?



Austria

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The Austrian Labour Constitution Act (ArbVG) does not contain any provisions regarding workplace investigations. The employee has the right to address the works council but is not entitled to have the works council comply with his or her request.

The works council's opportunities for participation are conclusively regulated. Certain investigative or control measures may require the consent or co-determination of the works council.

Under section 96(1)3 ArbVG, the consent of the works council is required if the employer wishes to introduce and maintain control measures or technical systems for monitoring employees that affect human dignity, such as video surveillance or specific staff questionnaires. If there is no works council, the consent of each individual employee is required.

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Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective bargaining agreement, internal regulations or similar.

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