

Workplace Investigations

Contributing Editors

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

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

Austria

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There is no additional support for the employees concerned. However, the employer may offer support measures to the employees to ensure better cooperation. The choice of support measures is at the employer's discretion. For example, the employer could offer to bear lawyer's fees, if the employee is cooperative. Such decisions must always be made on a case-by-case basis.

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Switzerland

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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.

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