

Workplace Investigations

Contributing Editors

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

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

Poland

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In general, an employee may not be forced to act as a witness, but based on the provisions of the Polish Labour Code, an employee must act for the benefit of a working establishment or employer and perform work in line with the instructions of an employer. A lack of cooperation from an employee (eg, refusing to attend a hearing, hiding facts or even false testimony) may constitute a basis for the loss of an employer's trust in the employee and, as a consequence, may constitute a valid reason for termination (in some specific situations, even without notice).

There is no formal protection for employees who act as witnesses. However, participation in an investigation cannot result in negative consequences (eg, no retaliation is allowed). Also, during an investigation, employees who are bound by professional secrecy are not required to provide information that would imply a breach of such secrecy.

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Switzerland

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Due to the employee's duty of loyalty towards the employer and the employer's right to give instructions to its employees, employees generally must take part in an ongoing investigation and comply with any summons for questioning if the employer demands this (article 321d, Swiss Code of Obligations). If the employees refuse to participate, they generally are in breach of their statutory duties, which may lead to measures such as a termination of employment.

The question of whether employees may refuse to testify if they would have to incriminate themselves is disputed in legal doctrine.^[1] However, according to legal doctrine, a right to refuse to testify exists if criminal conduct regarding the questioned employee or a relative (article 168 et seq, Swiss Criminal

Procedure Code) is involved, and it cannot be ruled out that the investigation documentation may later end up with the prosecuting authorities (ie, where employees have a right to refuse to testify in criminal proceedings, they cannot be forced to incriminate themselves by answering questions in an internal investigation).[2]

[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

[2] Same opinion: Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, published on [hrtoday.ch](https://www.hrtoday.ch), last visited on 17 June 2022.

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18. What if unrelated matters are revealed as a result of the investigation?



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It depends on the circumstances of the revealed issue and the employer's compliance culture. Normally, if a new issue is revealed during the investigation, it should be analysed and investigated if appropriate.

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Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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