

Workplace Investigations

Contributing Editors

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

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

Philippines

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Since the conduct of an investigation is different from the administrative disciplinary process, management is given wide latitude for the exercise of the same.

After the employer determines that there are sufficient grounds to support the conduct of a formal administrative process, employees that are the subject of an administrative hearing should be allowed to present evidence to support his or her statements. Further, the employee may also provide affidavits of his or her co-employees consistent with his or her testimony.

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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.

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19. What if the employee under investigation raises a grievance during the investigation?



Philippines

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If an employee under investigation raises a grievance during an ongoing investigation, the employer must ensure that the employee under investigation is treated reasonably and fairly. Thus, the employer must also give attention to the complaint made by the employee and determine if there are reasonable grounds for the concern of the employee. If the employer determines the validity of the grievance raised, the employer may conduct a separate investigation for it.

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In the context of private internal investigations, grievances initially raised by the employee do not usually have an impact on the investigation.

However, if the employer terminates the employment contract due to a justified legal complaint raised by an employee, a court might consider the termination to be abusive and award the employee compensation in an amount to be determined by the court but not exceeding six months' pay for the employee (article 336 paragraph 1 (lit. b) and article 337c paragraph 3, Swiss Code of Obligations). Furthermore, a termination by the employer may be challenged if it takes place without good cause following a complaint of discrimination by the employee to a superior or the initiation of proceedings before a conciliation board or a court by the employee (article 10, Federal Act on Gender Equality).

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