

# 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?**

#### Australia

Author: *Joydeep Hor, Kirryn West James, Chris Oliver*  
at People + Culture Strategies

Co-workers can be interviewed as part of an investigation where they are witnesses to a complaint. If the employee refuses to attend the interview or is generally not cooperating with the investigation, the reasons for this will need to be considered carefully by the employer. Employers should consider whether there can be any amendments made to the interview process to accommodate the employee. However, an employer can make a reasonable and lawful direction to an employee to attend an interview. If an employee fails to comply with a lawful and reasonable direction, then it may constitute grounds for disciplinary action.

Witnesses who are employees are entitled to the legal protections that ordinarily attach to their employment, including not being bullied, discriminated against, or harassed and having their health and safety protected. Employers should also ensure that witnesses are not victimised as a result of participating in the investigation and that confidentiality is maintained.

Last updated on 15/09/2022

#### Austria

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at GERLACH

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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## Belgium

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Employees cannot be forced by their employer to act as a witness. If they decide to nonetheless testify as a witness, they do not, in principle, have particular rights. If the employee puts himself in a difficult or even dangerous position to act as a witness, it is up to the employer to offer the necessary protection or take measures to prevent any harm (eg, by keeping the identity of the witness confidential or by planning the hearing at a place or time when the employees involved are not aware of it).

However, this is not the case for whistleblowing reports, where a witness might be seen as a “facilitator” who can receive protection against any retaliation by the employer.

Also, workers who were direct witnesses to official allegations of sexual harassment, violence or bullying at work are protected against retaliation by the employer. This also applies to witnesses in court.

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## Brazil

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Employees cannot be compelled to act as witnesses. Employers may have trouble enforcing internal policies stating that employees who refuse to participate in investigations will be disciplined (warned, suspended or have their contract terminated for cause), but can terminate their contract without cause.

There are no explicit legal protections for employees acting as witnesses, but it is common best practice to have witnesses' identities protected to the extent necessary for the investigation, and to protect them from retaliation.

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## China

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Article 75 of the Civil Procedure Law of the PRC (Amended in 2021) provides, "All entities and individuals that are aware of the circumstances of a case shall have the obligation to testify in court. The persons-in-charge of relevant entities shall support the witnesses to testify in court. "Article 193 of the Criminal Procedure Law of the PRC (Amended in 2018) provides, "Where, after the notification of a people's court, a witness refuses to testify in court without justified reasons, the people's court may compel the witness to

appear in court, unless the witness is the spouse, a parent or a child of the defendant."

According to relevant provisions of the Civil Procedure Law of the PRC, only a court has the power to compel a witness to appear in court. Neither the employer nor any other individual may compel any colleague to act as a witness and testify in court. However, the employer may set forth in the employment contract or its internal rules and regulations that the employee shall cooperate with its internal investigation.

As for the legal system for witness protection, PRC's criminal procedure laws stipulate a relatively detailed legal system for witness protection, such as establishing a crime of retaliating against a witness; making public a witness's personal information such as name, address, employer and contact information for the purpose of protecting the personal safety of the witness; using assumed names in the indictments; and so on. However, there are relatively few legal provisions regarding the legal protection of witness in civil procedure, and provisions only regulate the expenses that may be incurred by the witness for testifying in court. For instance, Article 77 of the Civil Procedure Law of the PRC (Amended in 2021) provides, "The necessary expenses incurred by a witness in fulfilling his obligation to testify in court, including transportation, accommodation and meals, as well as the loss of salaries, shall be borne by the losing party. If a party applies for a witness to testify, the costs and expenses shall be advanced by the party; if the people's court notifies a witness to testify without the application by a party, the costs and expenses shall be advanced by the people's court. "

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## Finland

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There is no legislation on a witness's role in investigations. However, the legislation on occupational safety requires that employees must report any irregularities they observe. Depending on the situation, participating in the investigation may also be part of the person's work duties, role or position, in which case the employer may require the employee to contribute to clarifying the situation. However, there is no formal obligation to act as a witness, and there is no legislation regarding the protection of witnesses. If a witness wishes, they may have, for example, an employee representative as a support person during the hearing.

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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.

Last updated on 15/09/2022

## Germany

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at Hengeler Mueller

Since there is no mandatory law (yet) that provides a framework for workplace investigation interviews, there are also no special protective regulations for employees acting as witnesses.

Employees have a contractual duty to participate in interviews – be it as a suspect or as a witness – as part of workplace investigations. The employee must provide truthful information based on his duty of loyalty if:

- the questions relate to his area of work;
- the employer has an interest worthy of protection in obtaining the information; and
- the requested information does not represent an excessive burden for the employee.

Whether such a burden can be assumed when the employee must make statements by which he may incriminate himself is disputed in German case law and legal literature. The German Federal Labour Court has not yet decided on this question. Since an internal workplace investigation interview is an interview under private law and not under criminal law, there are, in our view, good arguments that the employee must also make a true statement even if he incriminates himself, provided his area of work is concerned. However, some labour courts assume that in these cases such a statement could not be used in criminal proceedings.

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## Greece

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Indirectly involved employees may be interviewed as witnesses in the context of the investigation, as the employee has a duty of loyalty towards the employer originating from the employment relationship. However, they cannot be forced to do so (in contrast with criminal procedures). Any harmful act that could be considered retaliation against witnesses in the context of violence or harassment or whistleblowing investigation is prohibited. In addition, the identity of any employees as witnesses is also covered by the principle of confidentiality.

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## Hong Kong

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Under Hong Kong law, the employee has an implied duty to obey lawful instructions from his or her employer and to serve the employer with fidelity and good faith during the term of his or her employment. A lawful instruction from an employer may include a reasonable request for the employee to participate and provide information in the workplace investigation. If the employee refuses to comply with such instruction or is obstructive or provides untrue or misleading information, it could constitute a ground for summary dismissal under the EO and at common law.

That said, in general terms, an employer should not compel any employee to testify against a co-worker, particularly if such a co-worker is a senior colleague, as evidence provided under compulsion may not be helpful to the investigation.

Employees who act as witnesses must be treated as per their contractual and statutory rights, including the right against self-incrimination. If the investigation involves allegations of discrimination on the ground of sex, race or disability, the employer should ensure that the witnesses will not be victimised or treated less favourably than other employees.

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## India

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Yes, in matters pertaining to sexual harassment, the SH Act expressly stipulates that the IC holds the powers of a civil court to summon any person to be examined as a witness. In misconduct cases, the investigating authority can ask employees to appear and testify before it as witnesses and internal policies should have provisions for this. As a result, employees are duty-bound to fairly and honestly participate in any investigative or disciplinary proceedings relating to the workplace, including offering truthful evidence and testimony on matters they may have observed or experienced as an employee of the organisation. While employees don't have any express statutory protections when acting as witnesses, any such policy should be balanced and include necessary safeguards, such as assuring employees that any retaliation against them will not be tolerated and that the details of their participation will only be shared on a need-to-know basis.

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## Ireland

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Yes, but a qualified yes. To deny an employee who is the respondent to the complaint the right to cross-examine the complainant during a workplace investigation may amount to a breach of fair procedures. This does not mean in practice that a complainant or witness will have to physically or virtually attend a meeting to be subjected to cross-examination. What usually happens, in practice, is that specific questions of the respondent are put to the witness by the investigator for them to respond. On occasion and depending on the circumstances, the witnesses may respond in writing.

Generally, if witnesses do not wish to participate in workplace investigations and they are not the witnesses from whom the complaint originated, there is little that can be done. An employee may not want to be seen as going against a colleague, which impacts the wider issue of staff morale. An employer cannot force them to participate. Also an employee who is the respondent should be careful about seeking to compel witnesses to attend. While the respondent may request support from a colleague to act as a witness, that colleague may view things differently, which can lead to further issues.

In any event, employees cannot be victimised or suffer any adverse treatment for having acted as a witness.

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## Italy

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In general, employees must cooperate with a workplace investigation (as it is part of their general duty of diligence, as provided under article 2104 of the Italian Civil Code), and this may also include a duty to act as a witness.

In this respect, it must be pointed out that, even if the employee has a contractual duty to provide information requested by the employer, one limit to this principle could be, for example, self-incrimination.

However, caution is necessary during the interviews both with the employee under investigation and with co-workers, to avoid the risk of transforming the interview into what could be considered the de facto start of a disciplinary procedure. In other words, during the interview, the employer should only gather information on certain facts, and not put forward charges against the employee; otherwise, this could prevent or limit the employer's possibility to take disciplinary action regarding the same facts.

Furthermore, employees who cooperate within the workplace investigation must be protected against any retaliatory action directly or indirectly linked to their testimony (eg, as far as is possible, anonymity should be guaranteed, and disciplinary measures should apply to those who breach measures in place to protect the employee).

Apart from workplace investigations, employees are protected against retaliatory measures of any kind, which are always null and void and subject to appeal.

For a defensive criminal law investigation (see par. 4), the witness can refuse to testify; in this case, the criminal law lawyer may ask the prosecutor to interview the witness.

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## Japan

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Interviewing co-workers is often conducted in internal investigations. Company employees are generally required to cooperate with company investigations, especially those who are in a position to instruct and supervise employees, or those who are responsible for maintaining corporate order, since cooperation with an investigation is itself the fulfilment of their duty to the company. Other employees are not compelled to cooperate with such an investigation unless it is deemed necessary and reasonable. No specific legal protection is provided for testifying in an investigation.

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## Netherlands

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There is no statutory regime for employee witnesses in internal (workplace) investigations and, hence, no specific statutory regime for legal protection. However, as part of the idea that employees have to act in line with good employment practices (section 7:611 DCC), employees, who potentially acquired knowledge in a work-related context on the subject matter of an investigation, are typically required vis-à-vis their employer to participate in such internal investigations. The required degree of cooperation will depend on the type and nature of the investigation and the matter that is being investigated. The principle of "good employment practices" in turn requires the employer to be guided by proportionality and subsidiarity considerations: which information is relevant to the investigation and what is the least burdensome means of collecting such information?

This may also impact the degree to which an employer can involve employee witnesses in an investigation.

Increased prudence should be observed, among other things, if the relevant employee witnesses may themselves become implicated in the investigation or when the employer envisages sharing certain investigative findings with regulatory or criminal authorities, for instance as part of cooperation arrangements in an ongoing investigation. In such cases, the relevant employee should at least be allowed to retain legal counsel before continuing interview procedures.

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## Nigeria

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The employee's contract, employee handbook or company policies typically mandate an employee to cooperate and participate in good faith in any lawful internal investigation undertaken by the company, and also protects an employee acting as a witness in an internal investigation. Some of the legal protections available to an employee acting as a witness during workplace investigations are freedom from intimidation, threats or the loss of employment.

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## Philippines

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Neither the employer nor the employee subject of the investigation can compel co-workers to act as a witness. There is no specific law for whistleblowers or employees who act as witnesses during an investigation. Nevertheless, the employer can have its own whistleblower policy.

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## 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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## Portugal

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If the employer decides on an internal investigation to assess potential wrongful actions carried out within the company, employees must cooperate. However, employees are entitled to the privilege against self-incrimination established in the Portuguese Criminal Code, according to which individuals are not obliged to self-report.

An employee's refusal to cooperate with an internal investigation may be regarded as a breach of conduct by the employer and, ultimately, may lead to disciplinary sanctions.

Employees who act as witnesses in cases of harassment cannot be sanctioned unless they acted with wilful misconduct, and any sanction applied to an employee who acted as a witness in a harassment procedure will be presumed to be abusive.

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## Singapore

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Singapore law does not impose any statutory or legal obligation on an employee to act as a witness in the investigation. Accordingly, an employer does not have the power to compel its employees to act as witnesses in an investigation.

Notwithstanding this, an employer may require an employee to assist in investigations pursuant to specific contractual obligations in the employee's terms of employment (as may be contained in the employment contract, employee handbook or the employer's internal policies and procedures in dealing with the investigations, etc). Further, a request for an employee to provide evidence of an event that he or she knows of may reasonably be deemed to be a lawful and reasonable directive from an employer.

Consequently, an employee's refusal to act as a witness may amount to an act of insubordination that may attract disciplinary action by the employer.

Employers requiring employees to act as witnesses in an investigation must ensure that they comply with the expectations and norms set out by the Tripartite Guidelines on Fair Employment Practices and the TAFEP Grievance Handling Handbook.

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## South Korea

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While there are no laws to compel co-workers to act as witnesses, the company may have internal policies (eg, rules of employment, code of conduct) that require employees to cooperate with company actions such as a workplace investigation. That said, it would be difficult to enforce such policies even if the employee refuses to cooperate (eg, taking disciplinary action against an employee who refuses to act as a witness).

There may be instances when the company is required to provide certain legal protection to employees acting as witnesses in an investigation. For example, if a whistleblower falling under the WPA is required to act as a witness, they would be entitled to legal protections as discussed in question 1. The company may also have internal policies that provide protection to employees acting as witnesses in an investigation.





## Spain

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A company cannot force an employee to actively take part in a workplace investigation or to act as a witness. However, if a co-worker's decision not to collaborate could be construed as an attempt to conceal evidence of wrongdoing, the company could then enforce disciplinary measures for this reason.

In our experience, employees tend to collaborate during workplace investigations and no retaliatory action can be taken against them for this reason. For example, if an employee provided evidence against his or her direct manager, the manager could not reprimand the employee or take any action that could be construed as such.

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## Sweden

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In general, yes, employees in Sweden have a far-reaching duty of loyalty toward their employers. This includes, among other things, a duty to truthfully answer an employer's questions and to inform the employer of events that may be of interest to the employer. An employee's obligation to assist is, however, more limited when assistance would entail self-incrimination.

A person acting as a witness under an investigation governed by the Swedish Whistleblowing Act will be protected by confidentiality. Personal data and details that could reveal the identity of a witness may not be disclosed without authorisation.

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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.<sup>[1]</sup> 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).<sup>[2]</sup>

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[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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## Thailand

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Normally, the work rules prescribe requirements for cooperation with investigations. An employer may instruct co-workers to give statements as witnesses as this would be a fair and legitimate order of the employer, because investigations are conducted to maintain a good working environment.

Witness protection measures in a workplace can vary as no minimum standard has been set and they are generally subject to work rules and regulations. However, some legislation, which may not relate to a workplace investigation conducted by an employer, also protects the witnesses who are helping authorities investigate violations under the relevant acts. For example, the Labor Relation Act B.E. 2518 (1975) prohibits an employer from terminating an employee or conducting any action that may result in the employee being unable to work because of filing a complaint or being a witness for the authorities, or providing information on issues related to labour protection laws to the authorities.

The employer may have a policy of non-retaliation for the protection of witnesses who have given statements and evidence for a workplace investigation.

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## Turkey

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Co-workers cannot be compelled to act as witnesses in a workplace investigation. Employees also have rights arising from the law that must be respected by the employers and investigators, such as the right to privacy or to remain silent, freedom of expression and communication. These rights must be protected during every step of the workplace investigation process.

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## United Kingdom

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Employees may be reluctant to be interviewed or act as witnesses as part of an investigation, perhaps due to fear of reprisals. The investigator should discuss any concerns with the employee and attempt to alleviate any fears.

In general terms, an employer should not compel any employee to provide a witness statement. There may be circumstances in which this could be seen as a reasonable management instruction (and any refusal to

comply treated as a disciplinary matter), but these will be rare. Evidence that is compelled is unlikely to be particularly useful to the investigator.

It may be possible to establish an express or implied obligation for senior managers to report on another employee's misconduct – as a feature of either their employment contractual duties, their fiduciary duties or their implied duty of fidelity. However, it is unlikely, in the absence of an express obligation, that a junior employee would be compelled to give evidence against a colleague.

Employees who act as witnesses benefit from their usual employment protections, and must be treated as per their contractual and statutory rights, as well as any policy governing the investigation. If the investigation involves allegations which could involve discrimination, the EA 2010 extends protection from victimisation to “giving evidence or information in connection with proceedings under this Act”. Witnesses should therefore not be subject to any detrimental treatment because they have acted as a witness in this type of investigation. Witnesses may also be entitled to protection as whistleblowers if their evidence amounts to a protected disclosure (see question 9).

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## United States

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Yes. The investigator is empowered to decide which witnesses should be interviewed as a part of the fact-gathering process. In addition to interviewing the complainant, the investigation should include individual interviews with other involved parties, including the subject of the complaint, as well as individuals who may have observed the alleged conduct or may have other relevant knowledge, including supervisors or other employees. Many companies' code of conduct, employee handbook or similar policy set forth the requirement for current employees to cooperate fully in any investigation by the company or its external advisors and also provide that failure to do so could result in disciplinary action, up to and including termination.

In the absence of contractual protections, employees may have no legal right to refuse to submit to an interview, even if their answers tend to incriminate them. That being said, when acting as a witness in an internal investigation, a current employee is usually afforded similar legal protections as the subject of an investigation, including the right to oppose unreasonable intrusions into his or her privacy and unreasonable workplace searches. For example, certain state laws prohibit an employer from questioning an employee regarding issues that serve no business purpose.

Last updated on 15/09/2022



## Vietnam

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There are no provisions in Vietnamese law that impose any statutory or legal obligation on an employee to act as a witness in an investigation. Hence, an employer does not have the power to compel its employees to act as witnesses in an investigation. However, a request for an employee to provide evidence or give details of an event that he or she knows of may reasonably be deemed to be a lawful and reasonable directive from an employer. Consequently, an employee's refusal to act as a witness may be tantamount to an act of insubordination, which may lead to disciplinary action by the employer. In any circumstances, if an employee refuses to attend an interview or is generally not cooperating with an investigation, the reasons for this will need to be considered carefully by the employer.

## 26. How long should the outcome of the investigation remain on the employee's record?



### Australia

Author: *Joydeep Hor, Kirryn West James, Chris Oliver*  
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There are legal requirements related to the time you must keep certain employee records in Australia, such as pay slips and time sheets. However, there are no laws concerning disciplinary records.

Employers can rely on previous misconduct to justify an employee's termination of employment where it can be shown it is part of a course of conduct. Accordingly, if complaints have been substantiated, and disciplinary action has been taken, these records should be maintained. However, if a significant period has elapsed since the misconduct, an employer should carefully consider whether it is appropriate to rely on this past behaviour to justify future disciplinary action for similar conduct.

Last updated on 15/09/2022



### Austria

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Data protection law requires that personal data should not be kept longer than necessary for the purpose it was collected. Once the purpose of the internal investigation is fulfilled and the data is no longer needed, it should be deleted or anonymised. Regulations regarding this matter may also be subject to WCAs or internal policies. In any case, it is advisable to keep the results for as long as they may be needed in possible subsequent administrative or judicial proceedings.

Last updated on 29/09/2023



### Belgium

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According to the GDPR, personal data should only be stored for a proportionate amount of time. Usually, this means that it can be stored as long as it is relevant for the employment contract, and even afterwards, if there is a risk of legal proceedings (ie, regarding the dismissal of the employee).

Last updated on 15/09/2022



### Brazil

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The existence of the investigation should be kept on file for at least five years from the date of its conclusion. All information related to the investigation should be kept on file for the same period, but not on the employee's record, to avoid the risk of accidental access by unauthorised individuals.

Last updated on 14/09/2023



## China

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The relevant laws and regulations in the PRC have not clarified the retention period of the investigation findings. According to Article 19 of the Personal Information Protection Law of the PRC, unless otherwise required by laws or administrative regulations, the retention period of personal information shall be the shortest period necessary to achieve the purpose of handling the information. Since the employee's personal information is very likely to be involved in the investigation findings, such report should be retained for the shortest period necessary to achieve the purpose of handling the information. In general, once the investigation is completed, the purpose of the internal investigation has been achieved or it is no longer necessary to achieve the purpose, and the employer may, in accordance with Article 22 of the Administrative Regulations of the PRC on Network Data Security (Draft for Comments), delete or anonymize the personal information within fifteen (15) working days. If it is technically difficult to delete the personal information, or it is difficult to do so within fifteen (15) working days due to business complexity or other reasons, the employer shall not conduct any processing other than storing the personal information and adopting necessary security measures, and shall give reasonable explanations to the employee.

Last updated on 29/11/2023



## Finland

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Please see question 7. The outcome of the investigation involving personal data may be retained only for as long as is necessary considering the purposes of the processing. In general, the retention of investigation-related data may be necessary while the investigation is still ongoing and even then the requirements of data minimization and accuracy should be considered. The data concerning the outcome of an investigation should be registered to the employee's record merely to the extent necessary in light of the employment relationship or potential disciplinary measures. In this respect, the applicable retention time depends on labour law-related rights and limitations, considering eg, the applicable periods for filing a suit.

Last updated on 15/09/2022



## France

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If the outcome of the internal investigation has led to the sanctioning of an employee, this sanction may no longer be invoked to support a new sanction after three years. Moreover, under the GDPR principles, the duration of retention must be proportional to the use of the data. Therefore, the data must be retained only for a period that is "strictly necessary and proportionate". If the employer wants to keep information about the investigation in the longer term, it is possible to archive the employee's record even though the employer will no longer be able to use it against the employee after three years.



## Germany

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If there is no special statutory storage period (which is the case for investigative reports and findings), personal data may only be stored for as long as is necessary for the purposes for which they are collected. As soon as the data is no longer required, it must be deleted. In connection with workplace investigations, the question arises as to how this obligation to delete personal data relates to the company's corporate interests. From the company's perspective, there may well be legitimate interests that speak in favour of retaining existing data for as long as possible. Under the data protection regulations of the DSGVO and the BDSG, data can be stored for as long as it is required for the assertion, exercise or defence of (civil) legal claims. This means that the data can, in any event, be saved at least as long as any measures related to the workplace investigation have not yet been completed and any legal disputes have not yet been concluded.

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## Greece

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Under the General Data Protection Regulation, employees' personal details and information must be kept in the business records for as long as is necessary for the purposes of the employment relationship. Otherwise, stored data must be deleted. However, under L.4990/2022<sup>[14]</sup>, reports remain in the relevant record for a reasonable and necessary time, and in any case until the completion of investigations or proceedings before the courts that have been initiated as a consequence of a complaint against the employee under investigation, the complainant or any third parties.

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<sup>[14]</sup> L.4990/2022 art.16 par.1

Last updated on 03/04/2023



## Hong Kong

Author: *Wynne Mok, Jason Cheng, Audrey Li*  
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There is no legal requirement in Hong Kong on this. However, since the investigation records will likely contain personal data, employers should be mindful of the requirement under the PDPO that personal data should not be kept for longer than necessary.<sup>[1]</sup>

According to the Code of Practice on Human Resources Management published by the Privacy Commissioner for Personal Data, generally, employment data about an employee can be kept for the entire duration of his or her employment, plus a recommended period of no more than seven years after the employee leaves employment unless there is a subsisting reason that justifies a longer retention period. A longer retention period may be justified where there is ongoing litigation or a parallel investigation. Even where it is deemed necessary to retain the outcome of the investigation concerning a departed employee,

the employer should ensure that other personal data on the employee's record (that is unrelated to the purpose of retention) are erased after the expiry of the recommended retention period.

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[1] DPP2 (in Sch. 1) and PDPO section 26.

Last updated on 15/09/2022



## India

Author: *Atul Gupta, Kanishka Maggon, Kopal Kumar*  
at Trilegal

There is no statutory guidance on this. It is common for employers to retain details of disciplinary proceedings on an employee's record for the entire duration of their employment.

It is also advisable to retain the details of any investigations or disciplinary proceedings for at least three years after an individual has been dismissed on account of such proceedings, as this is the general limitation period for raising claims of unfair dismissal. In labour matters, courts in India often allow delays in filing suit after the limitation period, meaning organisations sometimes make a practical call to retain details of investigations and disciplinary proceedings for longer.

Last updated on 15/09/2022



## Ireland

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Irrespective of the outcome of the investigation, the fact that an employee was subject to an investigation is not the key issue. The key concern is whether any further action was taken as a result of the investigation. If a disciplinary process ensued, then it is the outcome of that disciplinary record and any subsequent appeal that would or would not be noted on an employee's record. If a disciplinary sanction were imposed then the length of time the sanction remains on the employee's record would depend on what is specified in the disciplinary policy.

Last updated on 11/10/2023



## Italy

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The employer would normally keep the outcomes of the investigation for the entire duration of the employment relationship with the involved employee.

After the termination of the employment relationship, it appears reasonable to conclude that the employer would be entitled to retain this information for the time necessary to exercise its defence rights in litigation (taking into account that 10 years is the statute of limitations for contractual liability). Further requirements or restrictions under general privacy laws (and particularly the GDPR) should also be checked.

According to Art. 14 WB Decree, internal and external whistleblowing reports (including related documents)

must be kept for as long as necessary for report processing, but no more than five years from the date of transmission of the procedure's final outcome.

Last updated on 10/01/2024



## Japan

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Records related to responses to whistleblowing must be kept for an appropriate period, but there is no legal stipulation on the retention period. Each entity is required to set an appropriate period after considering the need for evaluation and inspection, and the handling of individual cases. There is no legally stipulated retention period for other investigation results.

Last updated on 15/09/2022



## Netherlands

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at De Brauw Blackstone Westbroek

The outcomes are usually kept in the records until termination of the employment agreement and only deleted when personal records are deleted.

Last updated on 15/09/2022



## Nigeria

Author: *Adekunle Obebe*  
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The law does not provide for the time the outcome of the investigation may remain on the employee's record. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

Last updated on 15/09/2022



## Philippines

Author: *Rashel Ann C. Pomoy*  
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The outcome of the investigation should only remain on the employee's record for as long as is necessary, but shall not be less than three years as this is the record-keeping requirement under the Philippine Labor Code. If circumstances deem that such a report ceases to have any purpose whatsoever, it should be struck out of the employee's record.

Last updated on 26/01/2023



## Poland

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Neither Polish law nor the Draft Law specifically provide for a mandatory period during which the outcome of the investigation should be kept on the employee's record.

At the same time, the Draft Law indicates that the register of whistleblowing reports, which should also contain information about follow-up actions undertaken as a result of the report, should be kept for 15 months starting from the end of the calendar year in which the follow-up actions have been completed, or the proceedings initiated by those actions have been terminated.

Also, while determining how long the outcome of an internal investigation should be kept, additional legal considerations can be taken into account, especially data privacy.

The GDPR does not specify precise storage time for personal data. The employer must assess what will be an appropriate time for storage of the data, taking into consideration the necessity of keeping personal data concerning the purpose of the processing in question. Employees' personal data should be kept for the period necessary for the performance of the employment relationship and may be kept for a period appropriate for the statute of limitations for claims and criminal deeds. A longer retention period may result from applicable laws. Following the Regulation of the Minister of Family, Labour and Social Policy on employee documentation, the employer may keep a copy of the notice of punishment and other documents related to the employee's incurring of disciplinary responsibility in the employee record.

There are different retention periods for the data contained in employee files:

- 10 years if the employee was hired on or after 1 January 2019;
- if the employment relationship began between 1 January 1999 and 1 January 2019, the retention period is 50 years, but may be reduced to 10 years if the employer provides the Polish Social Insurance Institution with certain mandatory information; and
- for 50 years if the employee was hired before 1 January 1999. It does not matter whether the person is still working or not.

Last updated on 20/04/2023

## Portugal

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There are no specific rules in the Portuguese Labour Code on this matter.

However, article 332 of the PLC states that the employer should keep an updated record of disciplinary sanctions, so the competent authorities can easily verify compliance with applicable provisions. Accordingly, it is advisable to maintain a record of disciplinary sanctions during the entire employment relationship.

Also, please note that some collective bargaining agreements state that the disciplinary register must be deleted from the employee's record periodically.

Last updated on 15/09/2022

## Singapore

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This depends on the company's internal disciplinary policy and the severity of the offence. For instance, a written warning issued against an employee for minor misconduct is usually kept in the respondent employee's file for one year and if the employee does not commit any further breaches during this time, the written warning will be expunged. However, if there is a finding of serious misconduct, particularly if such a determination results in the dismissal of the employee, these records are generally kept in the employee's file for the duration of time such records are statutorily required to be maintained.

Last updated on 15/09/2022



## South Korea

Author: *Hyunjae Park, Paul Cho, Jihay Ellie Kwack, Kyson Keebong Paek*

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There is no legal requirement on how long the records of the investigation (eg disciplinary action) should be maintained by the company. Many companies maintain a record of disciplinary action throughout the employment period.

Last updated on 15/09/2022



## Spain

Author: *Sergio Ponce, Daniel Cerrutti*

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The outcome of the investigation will contain personal data of the affected employee. For this reason, this information should only be kept for as long as a legal obligation or liability in connection with the information could arise for the company. Since the general statute of limitations for employment liability is one year, this is a good guideline.

In addition to the above, two specific rules apply:

- once the information becomes irrelevant for the purpose for which it was obtained and processed, the information should no longer be stored on the employee's record or elsewhere; and
- the employees' information (including those of the reporter and the affected employees) should only be stored in whistleblower systems during the time that is necessary to decide on whether the facts need to be investigated or not and, in any case, for a maximum period of three months.

Last updated on 15/09/2022



## Sweden

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Under the GDPR personal data may not, according to the general principle on storage limitation, be retained for longer than is necessary for the purposes for which the personal data are processed. The GDPR does not stipulate a generally applicable storage limitation period. Such a regulation is, on the other hand, included in the Swedish Whistleblowing Act. If the Swedish Whistleblowing Act applies, the outcome of the investigation and all personal data should be retained for as long as necessary, but not for longer than two years after the investigation has been closed.



## Switzerland

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From an employment law point of view, there is no statute of limitations on the employee's violations. Based on the specific circumstances (eg, damage incurred, type of violation, basis of trust or the position of the employee), a decision must be made as to the extent to which the outcome should remain on the record.

From a data protection point of view, only data that is in the interest of the employee (eg, to issue a reference letter) may be retained during the employment relationship. In principle, stored data must be deleted after the termination of the employment relationship. Longer retention may be justified if rights are still to be safeguarded or obligations are to be fulfilled in the future (eg, data needed regarding foreseeable legal proceedings, data required to issue a reference letter or data in relation to a non-competition clause).<sup>[1]</sup>

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[1] Wolfgang Portmann/Isabelle Wildhaber, *Schweizerisches Arbeitsrecht*, 4. Edition, Zurich/St. Gallen 2020, N 473.

Last updated on 15/09/2022



## Thailand

Author: *Ratthai Kamolwarin, Norrapat Werajong*  
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There is no period required by law for keeping the outcome of the investigation on the employee's record. However, if termination of employment is the outcome of the investigation, an employer should keep details of the investigation for at least 10 years, in line with the prescribed period for an employee to file an unfair dismissal claim against an employer. An employer may use the details of an investigation to defend such a claim. For other disciplinary action, the retention of investigation details on the employee's record is at the employer's discretion.

Last updated on 15/09/2022



## Turkey

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There is no provision in the legislation setting forth a specific duration for keeping the outcome of the investigation findings in personnel files. However, based on general principles, the outcome of the investigation can remain on the employee's personnel files as long as the employer has a lawful interest in such processing without unnecessarily harming the privacy rights of the employee.

Last updated on 15/09/2022

## United Kingdom

Author: *Phil Linnard, Clare Fletcher*  
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The investigation outcome may not need to be noted on the accused employee's record at all. Usually only the outcome of any subsequent disciplinary or grievance process would be noted, rather than the prior investigation.

The employer should keep the investigation report for as long as it remains relevant. This would usually be no longer than six years, unless regulatory obligations dictate otherwise. The report along with all documentation and witness statements gathered during the investigation should be retained securely and confidentially but for no longer than is absolutely necessary under the requirements of the DPA 2018 and the employer's data protection policies and procedures. There may be additional retention requirements in a regulated context; the position for each particular business and employee should be checked.

Last updated on 15/09/2022

## United States

Author: *Rachel G. Skaistis, Eric W. Hilfers, Jenny X. Zhang*  
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There is no requirement for the results of a workplace investigation to remain on an employee's record for any specific period. It is often helpful, however, for information relating to the outcome of such an investigation (regardless of whether the allegations are substantiated) to be accessible to the human resources or legal functions such that during the initial complaint intake process described above, any prior complaints and investigations relating to the same individual or group of individuals can be taken into account to identify any recurring issues or systemic violations.

Last updated on 15/09/2022

## Vietnam

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Vietnamese law does not provide for a period during which the outcome of the investigation should remain on the employee's records and files. However, this will depend on the employer's record-retention policies, which must comply with applicable data protection laws.

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