

Workplace Investigations

Contributing Editors

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

03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*
at GERLACH

Yes. An employer may always, and without legal restrictions, temporarily suspend an employee during an internal investigation, provided he or she continues to be paid.

However, suspending the employee does not release the employer from an obligation to terminate employment without notice. It must be clear to the employee that the suspension is a temporary measure in preparation for dismissal. A suspension does not entitle the employer to postpone the reasons for dismissal for any length of time. The longer the suspension lasts, the more likely it is that the employer intends to keep the employee.

Last updated on 29/09/2023

Brazil

Author: *Patricia Barboza, Maury Lobo*
at CGM

Yes, an employee can be suspended during or before a workplace investigation. However, suspending an employee is not a legal requirement in Brazil. It is also not standard business practice and entails legal risk, as detailed below.

While internal policies in line with a company's global investigation approach may determine whether investigated employees are suspended during an investigation, the suspension of an accused employee is not recommended. The only exception is when the accused employee, upon becoming aware of the existence of the investigation, poses a clear and imminent risk of physical danger to other employees or interfering with the investigation.

The suspension of an employee during an investigation makes it difficult for the company to keep the investigation confidential, because the absence of the investigated employee will have to be explained to

his or her colleagues and business contacts. As a result, the investigated employee may be exposed to the stigma of being associated with potential misconduct.

Even if the accusation is confirmed and the individual is terminated with cause, the employer cannot disclose the reason for the termination or that the contract was terminated for a cause or violation in the employee's employment records. Also, if the employer shares such information with prospective employers they may be liable for damages.

Termination for cause on the grounds of dishonest conduct, if not upheld by the labour court, usually leads to liability for damages to the former employee due to the accusation and the stigma associated with it.

Therefore, if the company decides to suspend the employee during the investigation and terminate his or her employment at the end of the investigation, the suspension will be associated with wrongdoing, and the individual will have grounds to claim damages for the association between the termination, the investigation and wrongdoing, which will likely be presumed by a labour court (damage *in re ipsa*).

On the other hand, if the accusation is deemed groundless, the connection between the employee and potential wrongdoing resulting from his or her suspension can be used as grounds for damages because of the resulting environment at the workplace or the development of mental health conditions such as depression or anxiety by the investigated employee due to the investigation and uncertainty about the negative effect of it on his or her reputation.

Because suspension during an investigation is not a disciplinary measure, if the company decides to suspend, the employee's salary cannot be affected. Also, the suspension period must be as short as possible, and can in no circumstance be longer than 30 days. If it exceeds 30 days, it would trigger termination for cause by the company, which increases the amount of statutory severance due to the employee.

Last updated on 14/09/2023

Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

It is possible to suspend an employee during a workplace investigation.^[1] While there are no limits on duration, the employee will remain entitled to full pay during this time.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 181.

Last updated on 15/09/2022

Contributors



Austria

Michaela Gerlach
Sonia Ben Brahim
GERLACH



Brazil



BRAZIL

Patricia Barboza

Maury Lobo

CGM



Switzerland

Laura Widmer

Sandra Schaffner

Bär & Karrer

www.internationalemploymentlawyer.com