

# 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)?**



#### South Korea

Author: *Hyunjae Park, Paul Cho, Jihay Ellie Kwack, Kyson Keebong Paek*  
at Kim & Chang

The company may place an employee who is subject to a workplace investigation under administrative leave if this seems necessary or appropriate to ensure the integrity of the workplace investigation. While administrative leave can take different forms, one way is to issue a “standby order” to the relevant employee, instructing him or her not to come into work and prohibiting contact with other employees or customers while the workplace investigation is ongoing.

Administrative leave is not a disciplinary action, but rather an exercise of the company’s authority to take personnel management measures. This authority is generally subject to a “reasonableness” test, with the Korean courts balancing the employer’s business necessity in placing the employee on administrative leave with the inconvenience caused to the employee. In conducting the balancing test, the Korean courts have considered whether the employee receives pay during the leave and the duration of the leave, among other things. In general, if the duration of the leave is not excessive and is with full pay and benefits, the employer’s management prerogative is likely to be recognised.

The company doesn’t need to obtain the employee’s consent but, in practice, a company should consider getting the employee’s acknowledgement that they have received the administrative leave notice.

In addition to Korean labour law, other factors such as the company’s rules of employment or a collective bargaining agreement (if any) may affect the company’s ability to place the employee on administrative leave, by providing for prescribed procedures for placing an employee on administrative leave or requiring the company to obtain the union’s consent if a union leader or executive is involved.

Last updated on 15/09/2022



#### Spain

Author: *Sergio Ponce, Daniel Cerrutti*  
at Uría Menéndez

Yes, a company may suspend an employee if it has valid grounds to believe that keeping an employee under investigation in his or her position during the enquiry could obstruct the investigation or become an obstacle to it (for example, the employee could try to conceal facts or influence other employees within the organisation).

The decision to suspend the employee must be communicated in writing. This will usually take the form of a suspension letter that explains the reasons that have led to the suspension, its expected duration and that the suspension is not a disciplinary measure. Since the suspension is not a disciplinary measure, the employee would be entitled to continue collecting his or her standard remuneration during the suspension.

In Spain, employees have the right to be effectively occupied during their employment. Therefore, the duration of the suspension should be limited in time to what is strictly necessary to avoid what led to the suspension in the first place.

Last updated on 15/09/2022



## Switzerland

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

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

---

<sup>[1]</sup> 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



#### South Korea

Hyunjae Park  
Paul Cho  
Jihay Ellie Kwack  
Kyson Keebong Paek  
*Kim & Chang*



#### Spain

Sergio Ponce  
Daniel Cerrutti  
*Uría Menéndez*



#### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

---

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)