

Workplace Investigations

Contributing Editors

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

Spain

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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

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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.

13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?



Spain

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Yes. NDAs are the preferred instrument to ensure that employees conducting the investigation, as well as those who participate as witnesses or collaborators, will keep the enquiry and its existence confidential.

Last updated on 15/09/2022



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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

Last updated on 15/09/2022

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