

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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### 03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?



#### 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.

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#### Switzerland

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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.

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

## 23. Should the investigation report be shared in full, or just the findings?



### Spain

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Since workplace investigations are not regulated in Spain, there are no clear rules as to the amount of information on the investigation that would need to be shared with an employee if the company was compelled to disclose the enquiry (see questions 11 and 22). A good rule of thumb is that an employee should have access to all the information that is relevant to be in a position to oppose the alleged breaches.

Moreover, if the disciplinary measures taken were challenged before a Labour Court – employees in Spain tend to challenge these types of measures – the plaintiff could request the Labour Court to order the company to produce all of the investigation details, including the findings and the full investigation report.

Finally, companies will normally have an interest in producing a report that clearly states the moment in which the fact-finding exercise was concluded and the company had a full picture of the facts. This is because the statute of limitations to sanction employment breaches, which ranges from 10 to 60 days depending on the seriousness of the misconduct, starts to count when the company has a comprehensive view of the events (which would coincide with the date the investigation report was issued).

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### Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).<sup>[1]</sup> Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.<sup>[2]</sup>

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<sup>[1]</sup> Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtdaily.ch> (last visited on 27 June 2022).

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