

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)?

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.

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Turkey

Author: *Elvan Aziz, Gülce Saydam Pehlivan, Emre Kotil, Osman Pepeoğlu*
at Paksoy

An employee can be suspended during a workplace investigation provided his or her prior written consent is obtained to this effect during or immediately before the investigation. Obtaining a generic written consent from the employee regarding suspension, which is not tied to a specific event, will not be valid. If there is a suspension of employment due to the workplace investigation, the obligations of the parties arising from the employment relationship continue, except for the employer's obligation to pay a salary (and provide benefits, if any) and the employees' duty to perform work.

There is no provision or established court decision setting forth the rules regarding the length of the suspension period; however, as a general rule, this period should be as brief as possible, so as not to cause any impression that the employment relationship has been terminated by the employer. Suspension of an employee on full pay during a workplace investigation, which is also known as garden leave, is a commonly used alternative to a conventional suspension method described above. During the garden leave period, an

employee can be banned from entering the workplace and performing any of his or her duties either partially or entirely while continuing to be paid his or her regular salary, along with fringe benefits. Garden leave is not a concept regulated under Turkish employment legislation, but rather developed in practice, mostly by the Turkish subsidiaries of multinational companies. An ideal approach for the implementation of garden leave would be to obtain the written consent of the employees either at the commencement of employment or during the investigation.

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United States

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Yes. An employer may suspend the subject of an internal investigation with full pay pending the outcome of an investigation. However, this measure should be used sparingly, for example in cases where an employee has been accused of gross misconduct or where it is the only means of separating the alleged victim of harassment from the accused to prevent continued harassment. As an alternative means of separating the victim from the accused, an employer can consider interim measures such as a schedule change, transfer or leave of absence for the alleged victim with his or her consent (employers should take care not to take any action that could be perceived as retaliatory against the complainant – even if well-intentioned – including involuntarily transferring him or her or forcing a leave of absence).

Where an employer does determine that suspending the subject of an investigation is warranted while the company carries out its investigation, it should provide him or her with a written statement briefly outlining the reason for the suspension and the estimated date the employee will be advised of the investigation outcome and his or her final employment status.

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