

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)?

Switzerland

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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

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.

Last updated on 15/09/2022

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



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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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This is a fact-specific inquiry that depends on the specific circumstances and laws of the relevant state. In general, NDAs are frowned upon but can be used to an extent to keep certain facts and the substance of an investigation confidential. NDAs can never prevent employees from assisting in official agency investigations, however. NDAs also cannot lawfully prohibit employees from officially reporting illegal conduct by their employer.

Last updated on 15/09/2022

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