

# 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)?

#### Netherlands

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Suspension is usually a disciplinary measure. The employer may, for example, suspend an employee if it is necessary that the employee doesn't work during the investigation into their actions or omissions. Suspension has no specific legal basis in Dutch law, but several conditions can be derived from case law or collective labour agreements.

#### Overriding interest

The measure may only be taken if the employee's presence at work would cause considerable harm to the employer's business or if, due to other compelling reasons that do not outweigh the employee's interests, the employer cannot reasonably be expected to tolerate the employee's continued presence at work. If there is a well-founded fear that the employee will (among other things) frustrate the investigation into their actions, the employer may proceed to suspend the employee.

#### Procedural rules

The principle of acting in line with good employment practice (section 7:611 DCC) plays an essential role in the question of the admissibility of the suspension. The principle of due care leads, among other things, to a duty of investigation for the employer and means the employer must enable the employee to respond adequately to any accusations.

#### Contractual arrangements

Many collective agreements or staff handbooks contain regulations on suspension and deactivation. The regulation may concern the grounds, the duration or the procedure to be followed. The latter includes rules on hearing both sides of the argument, the right to assistance, how the decision must be communicated to the person concerned, and the possibility of "internal appeal" and rehabilitation. Under good employment practice, the employer must proceed swiftly with the investigation and allow the employee to respond to the results. If the employee hinders the investigation in any way, it can be a reason to continue the suspension during the investigation.

#### Pay

In 2003, the Supreme Court ruled that suspension is a cause for non-performance of work that must reasonably be borne by the employer according to section 7:628 DCC. The employee has a right to be paid in nearly all circumstances, with limited exceptions (eg, if the employee is in detention and the employer suspended the employee in response to that).

#### Duration

The duration of the suspension during a workplace investigation is not legally pre-determined. However, the suspension of an employee must be a temporary measure. The relevant collective agreement often stipulates how long the suspension may last.

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## Poland

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Polish law does not provide for the suspension of an employee. Instead, an employer may agree with an employee that he or she will be released from the obligation to perform work during a relevant period of investigation (with the right to remuneration). The employer may not do this unilaterally, unless the employee is in a notice period. As an alternative, which is more common in practice, the employer may force the employee to use outstanding holiday leave (subject to limitations provided by law) or the parties may mutually agree on the use of holiday leave or unpaid leave (if the employee has already used his or her holiday entitlement in full).

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

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