

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)?

Australia

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It is an important consideration as to whether any of the employees involved in the investigation should be suspended, stood down or asked to undertake alternative duties for the period of the investigation. This decision will need to be made taking into consideration the nature of the complaint, any further damage to workplace relationships that could be caused by employees continuing to interact with each other, and potential work, health and safety issues.

It should not be automatic that the respondent is suspended as the employer will need to consider whether this is necessary in the circumstances. However, a period of suspension should be considered where:

- the allegations involve serious misconduct;
- there is a risk that the conduct will continue throughout the investigation;
- the respondent's presence could exacerbate the situation; or
- the respondent's presence could be disruptive to the investigation.

As an alternative to suspension, other options include working from home, performing amended duties or moving to a different workspace.

If an employee is suspended then they should ordinarily receive their full pay for this period. There are some exceptions to this, for example, if the employee is a casual employee or if a policy, employment contract or other industrial instrument allows the employee to be suspended without pay.

Generally, there is no minimum or maximum period a suspension should last, as this will depend on the length of the investigation.

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Greece

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Internal labour regulations may allow for the suspension of an employee when there is reasonable suspicion that a disciplinary offence has been committed. Given that under Greek law employees have the right to receive wages and to be employed, suspension without a specific provision in the internal labour regulation may only be imposed in an extreme case where the offence and the risk of keeping the employee employed during an investigation is obvious.

Payment of remuneration during suspension should not be withheld, otherwise, the suspension could be considered a disciplinary penalty not provided in law and imposed without completion of the disciplinary procedure, thus illegally harming the employee.

In any case, suspension is one of the ultimate measures that may be taken, in contrast to, for example, a change of work position.

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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.

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