

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 20. What if the employee under investigation goes off sick during the investigation?

### Greece

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In principle, the health of an ordinary employee would not prevent the investigation procedure from taking place (eg, interviews with witnesses or the collection of evidence would not be postponed or suspended). However, if the employee under investigation is unwell and they can't participate in the procedure, the investigation may be suspended or postponed until the employee can take part. Bearing in mind the majority of company internal policies and regulations governing workplace investigations provide for a specific framework and timetable for the whole procedure to be completed, the long-term sickness of an employee under investigation may impede the completion of the procedure in the prescribed time. As a result, the person conducting the investigation may seek alternative measures to facilitate participation (eg, teleconferencing).

On a related note, if sickness occurs after the investigation is completed and the employer decides upon the imposition of disciplinary measures against the said employee and the initiation of a relevant procedure, the decision should be duly and timely communicated to the employee, irrespective of whether his or her presence in the workplace is not possible because of the illness.

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### Switzerland

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The time spent on the internal investigation by the employee should be counted as working time<sup>[1]</sup>. The general statutory and internal company principles on sick leave apply. Sick leave for which the respective employee is not responsible must generally be compensated (article 324a paragraph 1 and article 324b, Swiss Code of Obligations). During certain periods of sick leave (blocking period), the employer may not ordinarily terminate the employment contract; however, immediate termination for cause remains possible.

The duration of the blocking period depends on the employee's seniority, amounting to 30 days in the

employee's first year of service, 90 days in the employee's second to ninth year of service and 180 days thereafter (article 336c paragraph 1 (lit. c), Swiss Code of Obligations).

[1] Ullin Streiff/Adrian von Kaenel/Roger Rudolph, Arbeitsvertrag, Praxiskommentar zu Art. 319–362 OR, 7. A. 2012, Art. 328b N 8 OR.

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## Vietnam

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Workplace investigations do not require the presence or active cooperation of the employee under investigation. Thus, the investigation may start or continue in the employee's absence due to illness.

If the employee's presence is necessary for the conclusion of the investigation, the employer may invite the employee to provide information either by submitting his or her answers to a written questionnaire or attending a virtual meeting. However, the employee may not accede to the employer's requests and proposals, especially if the employee has an illness. As a result, the employer may not be able to conclude the investigation due to the absence of the involved employee.

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