Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May Clare Fletcher at Slaughter and May

20. What if the employee under investigation goes off sick during the investigation?



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The company will seek a physician's diagnosis and opinion and determine whether to proceed with the investigation. If an employee's mental health suffers because of the investigation, the company may be charged with a violation of its duty of care.

Last updated on 15/09/2022

Nigeria

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The investigation would be suspended until the employee returns from sick leave. The investigation will immediately restart upon the return of the employee.

Last updated on 15/09/2022



Switzerland

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The time spent on the internal investigation by the employee should be counted as working time[1]. 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.

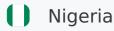
Last updated on 15/09/2022

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