

# Workplace Investigations

## Contributing Editors

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

## 02. How is a workplace investigation usually commenced?

### Japan

Author: *Chisako Takaya*  
at Mori Hamada & Matsumoto

The trigger for an investigation in the workplace may be:

- when an employee makes a report (eg, a report of harassment, a report of misconduct by another employee, etc);
- when an investigation is conducted by the Labour Standards Inspection Office or another regulatory agency;
- when a criminal or illegal act is discovered in the workplace; or
- when an internal audit conducted by the company reveals a problem.

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### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

Internal investigations are usually initiated after reports about possible violations of the employer's code of conduct, applicable laws or regulations have been submitted by employees to their superiors, the human resources department or designated internal reporting systems such as hotlines (including whistleblowing hotlines).

For an internal investigation to be initiated, there must be a reasonable suspicion (grounds).<sup>[1]</sup> If no such grounds exist, the employer must ask the informant for further or more specific information. If no grounds for reasonable suspicion exist, the case must be closed. If grounds for reasonable suspicion exist, the appropriate investigative steps can be initiated by a formal investigation request from the company management.<sup>[2]</sup>

[1] Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 21.

[2] Klaus Moosmayer, *Compliance, Praxisleitfaden für Unternehmen*, 2. A. München 2015, N 314.

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### 03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?

#### Japan

Author: *Chisako Takaya*  
at Mori Hamada & Matsumoto

Court precedent states that a valid requirement for a stay-at-home order is it "would not be considered to put employees at a legal disadvantage (deprive them of their rights and imposes obligations on them), except in exceptional cases where employees are legally entitled to request work, unless there are special circumstances such as discrimination in salary increases and the like." (Tokyo High Court decision 25 January 2012, All Japan Mariners' Union). Therefore, it is considered possible to order the employee to stay at home during the investigation period if necessary. Some companies stipulate in their work rules that they may order employees to take special leave or stay at home when an incident occurs that could be the subject of disciplinary action.

In principle, the payment of salary in full during the stay-at-home period is required. However, work rules may stipulate that an employee will not be paid during the investigation period, and in cases where the employee is clearly responsible and it is inappropriate to allow the employee to work (eg, where it is almost certain that the employee has embezzled money on the job), the employee may be ordered to stay at home without pay. In addition, if the work rules stipulate that an absence allowance under the Labour Standards Law (60% or more of wages) must be paid for the stay-at-home period, such an allowance may be paid under the said rules.

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#### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
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.

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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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## Contributors

### Japan

Chisako Takaya  
*Mori Hamada & Matsumoto*

### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)