

# Workplace Investigations

## Contributing Editors

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

#### Japan

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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

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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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## 13. Can non-disclosure agreements (NDAs) be used to keep the fact and substance of an investigation confidential?

### Japan

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It is possible to use NDAs in investigations.

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### Switzerland

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In addition to the above-mentioned statutory confidentiality obligations, separate non-disclosure agreements can be signed. In an internal investigation, the employee should be expressly instructed to maintain confidentiality.

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