

Workplace Investigations

Contributing Editors

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

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

France

Author: *Pascale Lagesse, Valentino Armillei*
at Bredin Prat

An employee may be suspended or relocated during a workplace investigation by:

- suspending the employee as a precautionary measure (eg, pending a confirmation of dismissal);
- temporarily assigning the employee to another site; or
- exempting the employee from having to work while continuing to pay them their salary.

The employee can be suspended as a precautionary measure, pending confirmation of dismissal, but this implies that disciplinary proceedings have already begun and that the investigation is therefore at a relatively advanced stage and that there is sufficient evidence to suggest the need for disciplinary action. It should be made clear to the employee that the suspension is a provisional measure (in the absence of specifying this, the suspension could be interpreted as a disciplinary layoff constituting a sanction and, in some jurisdictions, as depriving the employer of the possibility of dismissing the employee for the same facts).

Temporary reassignment can also be considered. However, this contractual change must not apply for long and the measure taken must be temporary. The employer must act promptly – the measure is only valid for as long as the investigation continues. Failing this, and because of the absence of concurrent disciplinary proceedings, there is considerable risk that the temporary reassignment may be reclassified by a judge as an illegal modification of the employment contract or as a disciplinary sanction preventing the employee from subsequently being dismissed.

Finally, paid exemption from work is also possible and consists of temporarily suspending, by mutual agreement, the obligation of the employer to provide work for the employee and the employee's obligation to work, without affecting their remuneration. Such a measure must generally be taken with the consent of the employee, because it implies a suspension (and therefore a modification) of the employment contract. This measure may be useful in temporarily removing an employee with whom the employer maintains a good relationship. This may be an employee who is or feels they are a victim of harassment, especially when the employee is not on sick leave.

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.

^[1] David Rosenthal et al., *Praxishandbuch für interne Untersuchungen und eDiscovery*, Release 1.01, Zürich/Bern 2021, p. 181.

Last updated on 15/09/2022

09. What additional considerations apply when the investigation involves whistleblowing?

France

Author: *Pascale Lagesse, Valentino Armillei*
at Bredin Prat

Evidence obtained in the context of an investigation must specify who provided it and the date it was provided. No retaliatory measures may be taken against the whistleblower for the act of whistleblowing.

In certain cases, the whistleblower report must be forwarded to the judicial authorities (eg, when there is an obligation to assist persons in imminent danger, for serious offences or a disclosure that a vulnerable person is in danger (ie, minors under 15 or a person who is unable to protect themselves)).

Last updated on 15/09/2022

Switzerland

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

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

Last updated on 15/09/2022

Contributors

 France

Pascale Lagesse
Valentino Armillei
Bredin Prat



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com