

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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### **03. Can an employee be suspended during a workplace investigation? Are there any conditions on suspension (eg, pay, duration)?**



#### South Korea

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The company may place an employee who is subject to a workplace investigation under administrative leave if this seems necessary or appropriate to ensure the integrity of the workplace investigation. While administrative leave can take different forms, one way is to issue a “standby order” to the relevant employee, instructing him or her not to come into work and prohibiting contact with other employees or customers while the workplace investigation is ongoing.

Administrative leave is not a disciplinary action, but rather an exercise of the company’s authority to take personnel management measures. This authority is generally subject to a “reasonableness” test, with the Korean courts balancing the employer’s business necessity in placing the employee on administrative leave with the inconvenience caused to the employee. In conducting the balancing test, the Korean courts have considered whether the employee receives pay during the leave and the duration of the leave, among other things. In general, if the duration of the leave is not excessive and is with full pay and benefits, the employer’s management prerogative is likely to be recognised.

The company doesn’t need to obtain the employee’s consent but, in practice, a company should consider getting the employee’s acknowledgement that they have received the administrative leave notice.

In addition to Korean labour law, other factors such as the company’s rules of employment or a collective bargaining agreement (if any) may affect the company’s ability to place the employee on administrative leave, by providing for prescribed procedures for placing an employee on administrative leave or requiring the company to obtain the union’s consent if a union leader or executive is involved.

Last updated on 15/09/2022



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

Last updated on 15/09/2022

## 23. Should the investigation report be shared in full, or just the findings?



### South Korea

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As discussed in question 22, when taking disciplinary action against an employee based on the outcome of an investigation, the company would need to disclose sufficient detail on the employee's wrongdoing. However, this does not mean that the full investigation report would need to be shared with the employee to be disciplined. Key details of the investigation findings that apply to the relevant employee due to be disciplined should be shared, and not other findings concerning other persons.

There is also no requirement under Korean law for a company to disclose the investigation report or investigation findings to the whistleblower. If the company discloses the personal identity of the target employees, such disclosure could constitute a violation of the PIPA, libel or defamation under the Criminal Code. If the whistleblower strongly requests that the company share the investigation report or the findings, the company may consider providing a summary of the key findings concerning the allegations that the whistleblower raised, without disclosing personal information.

Last updated on 15/09/2022



### Switzerland

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In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).<sup>[1]</sup> Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.<sup>[2]</sup>

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<sup>[1]</sup> Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: *HR Today*, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

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