

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)?

Australia

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It is an important consideration as to whether any of the employees involved in the investigation should be suspended, stood down or asked to undertake alternative duties for the period of the investigation. This decision will need to be made taking into consideration the nature of the complaint, any further damage to workplace relationships that could be caused by employees continuing to interact with each other, and potential work, health and safety issues.

It should not be automatic that the respondent is suspended as the employer will need to consider whether this is necessary in the circumstances. However, a period of suspension should be considered where:

- the allegations involve serious misconduct;
- there is a risk that the conduct will continue throughout the investigation;
- the respondent's presence could exacerbate the situation; or
- the respondent's presence could be disruptive to the investigation.

As an alternative to suspension, other options include working from home, performing amended duties or moving to a different workspace.

If an employee is suspended then they should ordinarily receive their full pay for this period. There are some exceptions to this, for example, if the employee is a casual employee or if a policy, employment contract or other industrial instrument allows the employee to be suspended without pay.

Generally, there is no minimum or maximum period a suspension should last, as this will depend on the length of the investigation.

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Austria

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Yes. An employer may always, and without legal restrictions, temporarily suspend an employee during an internal investigation, provided he or she continues to be paid.

However, suspending the employee does not release the employer from an obligation to terminate employment without notice. It must be clear to the employee that the suspension is a temporary measure in preparation for dismissal. A suspension does not entitle the employer to postpone the reasons for dismissal for any length of time. The longer the suspension lasts, the more likely it is that the employer intends to keep the employee.

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Belgium

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In principle, you cannot unilaterally suspend an employee during a workplace investigation, as there is a risk of constructive dismissal (ie, wrongful termination of the employment contract by the unilateral modification of one of its essential elements). Consequences could include the payment of an indemnity in lieu of notice based on seniority as foreseen by the Employment Contracts Act, plus possible damages (three to 17 weeks remuneration if an unreasonable dismissal, plus alternative or additional damages based on real prejudice suffered). The parties can nevertheless agree on a suspension of the employment contract. In this scenario, the remuneration will still have to be paid. Furthermore, a suspension could be a sanction that follows the outcome of the investigation, but even then it will only be possible for a limited time (and a suspension without pay is usually only allowed by the courts for a maximum of three days). However, if the complaint is about sexual harassment, bullying or violence at work, the prevention advisor (see question 4) can recommend that the employer take certain actions, which in grave circumstances could lead to employee suspension. The suspended employee should continue to receive his pay if this occurs.

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Brazil

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Yes, an employee can be suspended during or before a workplace investigation. However, suspending an employee is not a legal requirement in Brazil. It is also not standard business practice and entails legal risk, as detailed below.

While internal policies in line with a company's global investigation approach may determine whether investigated employees are suspended during an investigation, the suspension of an accused employee is not recommended. The only exception is when the accused employee, upon becoming aware of the existence of the investigation, poses a clear and imminent risk of physical danger to other employees or interfering with the investigation.

The suspension of an employee during an investigation makes it difficult for the company to keep the investigation confidential, because the absence of the investigated employee will have to be explained to his or her colleagues and business contacts. As a result, the investigated employee may be exposed to the stigma of being associated with potential misconduct.

Even if the accusation is confirmed and the individual is terminated with cause, the employer cannot disclose the reason for the termination or that the contract was terminated for a cause or violation in the

employee's employment records. Also, if the employer shares such information with prospective employers they may be liable for damages.

Termination for cause on the grounds of dishonest conduct, if not upheld by the labour court, usually leads to liability for damages to the former employee due to the accusation and the stigma associated with it.

Therefore, if the company decides to suspend the employee during the investigation and terminate his or her employment at the end of the investigation, the suspension will be associated with wrongdoing, and the individual will have grounds to claim damages for the association between the termination, the investigation and wrongdoing, which will likely be presumed by a labour court (damage *in re ipsa*).

On the other hand, if the accusation is deemed groundless, the connection between the employee and potential wrongdoing resulting from his or her suspension can be used as grounds for damages because of the resulting environment at the workplace or the development of mental health conditions such as depression or anxiety by the investigated employee due to the investigation and uncertainty about the negative effect of it on his or her reputation.

Because suspension during an investigation is not a disciplinary measure, if the company decides to suspend, the employee's salary cannot be affected. Also, the suspension period must be as short as possible, and can in no circumstance be longer than 30 days. If it exceeds 30 days, it would trigger termination for cause by the company, which increases the amount of statutory severance due to the employee.

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China

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When an employer is found to have engaged in misconduct of an employee, whether it has the right to suspend the employee from his/her duties and subject him/her to investigation, there are no explicit provisions in the existing labor law. Generally speaking, suspension of investigation arranged internally by an employer is within the scope of autonomous management of the employer. However, such suspension of investigation is subject to certain restrictions, and the basic rights and interests of the employee must be guaranteed. For example, the employer should continue to pay social insurance fund for the employee.

Suspension investigation shall generally be specified in advance in the labor contract or rules and regulations, and the duration of suspension investigation should be within the necessary and reasonable period. Indefinite suspension or the suspension of obviously long time will not be supported by arbitral tribunals and courts.

Generally annual leave may be taken preferentially by the employees during suspension period. The annual leave period shall be deemed as normal attendance, and the salary shall remain unchanged. Under the circumstance that the annual leave has been used up, in judicial practice, there are few cases supporting the claim that the employer can fully deduct the employee's salary during the suspension period. It is generally believed that the employer shall at least guarantee the basic living needs of the employee during the suspension period (i.e. the salary shall not be lower than the local minimum salary standard) or pay the employee as per the original salary standard. However, in judicial practice, some arbitrators and judges hold the view that an employer may use its discretion to reduce employees' salary if all of the following conditions are met:

- it is stipulated in its rules and regulations or a contract that it is entitled to suspend employees from their duties and reduce salaries if their fraudulent behaviour harms the employer's interests;
- the rules and regulations are stipulated in its rules and regulations, and are publicly announced and accepted by the employees; and
- there is evidence showing the corresponding fraudulent behaviour of the employees.

Finland

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There is no legislation on temporary suspension in the event of a workplace investigation or similar. In some situations, the employer may relieve the employee from their working obligation with pay for a short period.

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France

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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.

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Germany

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Generally, under German employment law, an employee has a right to perform his^[1] work and, therefore, suspending an employee would only be possible with the employee's consent. If an employer decided to suspend an employee without his consent, the employee could then claim his right to employment has been affected and seek a preliminary injunction before the competent labour court.

Unilaterally suspending an employee is, in principle, not permissible. Exceptions are made in cases where the employer has a legitimate interest. Typically, such legitimate interest exists after the employer has issued a notice of termination. During a workplace investigation, the employer may have a legitimate interest in suspending the employee, for example, if there is a risk that evidence may be destroyed, colleagues may be influenced, or the employee's presence may otherwise have a detrimental effect on the investigation or employer. Whether or not there is a legitimate interest must be assessed in each case. In practice, it is rare for employees to take legal action against a suspension.

In any event, during a suspension, the employee would be entitled to further payment of his salary without the employer receiving any services in return.

^[1] The pronouns he/him/his shall be interpreted to mean any or all genders.

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Greece

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Internal labour regulations may allow for the suspension of an employee when there is reasonable suspicion that a disciplinary offence has been committed. Given that under Greek law employees have the right to receive wages and to be employed, suspension without a specific provision in the internal labour regulation may only be imposed in an extreme case where the offence and the risk of keeping the employee employed during an investigation is obvious.

Payment of remuneration during suspension should not be withheld, otherwise, the suspension could be considered a disciplinary penalty not provided in law and imposed without completion of the disciplinary procedure, thus illegally harming the employee.

In any case, suspension is one of the ultimate measures that may be taken, in contrast to, for example, a change of work position.

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Hong Kong

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It may be appropriate to suspend an employee during a workplace investigation, for instance, where the investigation has revealed misconduct on his or her part (even on a preliminary basis), or his or her continued presence in the business would hinder the progress of the investigation. However, the employer will have to consider the relevant legislative provisions and the terms of the employment contract before making any decision on suspension.

Under section 11 of the EO, an employer may suspend an employee without pay pending a decision as to whether the employee should be summarily dismissed (up to 14 days) or pending the outcome of any criminal proceedings against the employee arising out of his or her employment (up to the conclusion of the

criminal proceedings). If an employee is suspended as above, however, the employee may terminate his or her employment without notice or payment in lieu of notice.

It is more common for an employer to suspend an employee with pay during an investigation concerning his or her conduct rather than exercising its statutory right as mentioned above. This could avoid an unnecessary dispute with the employee concerned. Indeed, it is common for employers to include in employment contracts specific provisions to give themselves the right to suspend an employee with pay in certain circumstances. The provisions normally set out the circumstances in which the employer may exercise the right, the maximum period of suspension and other arrangements during the suspension period (eg, how the employee's entitlements under the employment contract are to be dealt with).

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India

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Yes, an employee can be suspended or placed on administrative leave during an investigation if the circumstances warrant it. It is recommended to include the right to suspend in employee-facing policies. The employee should be informed about the suspension in writing, by issuing a suspension letter. In practice, a suspension is used when the charges against the employee are serious or if the employee's presence at the workplace is likely to prejudice the investigation in any manner (eg, where there are concerns that evidence may be tampered with or witnesses pressurised). The requirement to suspend the employee should be assessed on a case-by-case basis and should not be exercised in every instance. If an employee is suspended, the investigation and inquiry should be completed as quickly as possible.

Further, concerning payment during the period of suspension, the law varies depending on the state and the category of employee. Generally, Indian law requires that individuals who are "workmen" be paid a subsistence allowance during the period of suspension, usually at the rate of 50% of their regular wages during the first 90 days of the suspension, and at varying rates thereafter. The exact rates at which subsistence allowance is paid will vary from state to state. In our experience, many companies choose to suspend employees with full salary even if there is an applicable subsistence allowance statute. This helps take some pressure off of the timeline within which the investigation and subsequent disciplinary inquiry can be completed.

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Ireland

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Workplace suspensions in Ireland are a contentious issue and can result in an employer defending injunction proceedings in the High Court before an investigation has started.

In the case of *Governor and Company of the Bank of Ireland v Reilly*, the judge stated: "The suspension of an employee, whether paid or unpaid, is an extremely serious measure which can cause irreparable damage to his or her reputation and standing."

In the 2023 case of *O'Sullivan v HSE*, the Supreme Court held that the Health Service Executive acted fairly and reasonably as an employer in suspending a consultant doctor after he had performed experiments on patients without their consent. This ruling overturned the Court of Appeal's earlier decision that previously found the suspension to be unlawful, as the consultant did not represent an immediate threat to the health of patients.

The Supreme Court considered whether the employer's decision to place the consultant on administrative leave met the test set out in the English case of *Braganza v BP Shipping Limited & Anor*. In that case, the court held that the decisionmaker's discretion would be limited "by concepts of good faith, honesty and genuineness and the need for absence of arbitrariness, capriciousness, perversity and irrationality."

In relying on the principles set out in the *Braganza* case, the Irish courts have reinforced the right of a decision-maker in an employment context to have discretionary power when implementing a suspension and that any decision to do so must be made honestly and in good faith. Employers should obtain legal advice when considering whether to suspend an employee in any circumstance.

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Italy

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In general, from an Italian employment law perspective, there is no specific legal rule governing the suspension of an employee during a workplace investigation.

However, it should be noted that:

- certain National Collective Bargaining Agreements (NCBAs) may provide, in particular circumstances, for the possibility of suspending (with pay) an employee (eg, when the employee is under criminal proceedings – as stated, for example, in the NCBA for executives of credit, financial and investment companies);
- according to well-established case law, the employer may suspend the employee from work (with pay) in the framework of a disciplinary procedure (which, according to Italian law, must be followed before applying any disciplinary sanction, including dismissal^[1]), where the facts behind the procedure are sufficiently serious;
- certain case-law decisions have also stated that – even in the absence of a disciplinary procedure – the employer may suspend (with pay) the employee when it has very serious suspicions of an employee's unlawful conduct, and for the time that is strictly necessary to ascertain his or her liability.

The above may be done by the employer, for instance, if keeping the employee in service may cause a risk of tampering with evidence or a risk of damage to the physical safety of other employees or company property.

Normally, in the above-mentioned circumstances, the suspension is with pay and with job security.

^[1] The steps of the disciplinary procedure can be summarised as follows: (i) the employer must send a letter to the employee in which the disciplinary facts are described in detail and precisely; (ii) the employee can submit his written or oral defence to the employer within five days from receiving the letter (or different term provided under applicable collective bargaining); during this period, the employer cannot take any punitive measures against the employee; (iii) after receiving the employee's defence (or, if the employee has not submitted any defence within the relevant term), the employer may serve the executive with a notice of dismissal (certain NCBAs set a term within which a sanction, if any, should be applied by the employer). Failure to comply with the procedure results in the dismissal being null and void. According to the law, the dismissal takes effect from the commencement of the disciplinary procedure itself.

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Japan

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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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Netherlands

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Suspension is usually a disciplinary measure. The employer may, for example, suspend an employee if it is necessary that the employee doesn't work during the investigation into their actions or omissions. Suspension has no specific legal basis in Dutch law, but several conditions can be derived from case law or collective labour agreements.

Overriding interest

The measure may only be taken if the employee's presence at work would cause considerable harm to the employer's business or if, due to other compelling reasons that do not outweigh the employee's interests, the employer cannot reasonably be expected to tolerate the employee's continued presence at work. If there is a well-founded fear that the employee will (among other things) frustrate the investigation into their actions, the employer may proceed to suspend the employee.

Procedural rules

The principle of acting in line with good employment practice (section 7:611 DCC) plays an essential role in the question of the admissibility of the suspension. The principle of due care leads, among other things, to a duty of investigation for the employer and means the employer must enable the employee to respond adequately to any accusations.

Contractual arrangements

Many collective agreements or staff handbooks contain regulations on suspension and deactivation. The regulation may concern the grounds, the duration or the procedure to be followed. The latter includes rules on hearing both sides of the argument, the right to assistance, how the decision must be communicated to the person concerned, and the possibility of “internal appeal” and rehabilitation. Under good employment practice, the employer must proceed swiftly with the investigation and allow the employee to respond to the results. If the employee hinders the investigation in any way, it can be a reason to continue the suspension during the investigation.

Pay

In 2003, the Supreme Court ruled that suspension is a cause for non-performance of work that must

reasonably be borne by the employer according to section 7:628 DCC. The employee has a right to be paid in nearly all circumstances, with limited exceptions (eg, if the employee is in detention and the employer suspended the employee in response to that).

Duration

The duration of the suspension during a workplace investigation is not legally pre-determined. However, the suspension of an employee must be a temporary measure. The relevant collective agreement often stipulates how long the suspension may last.

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Nigeria

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Yes, an employee can be suspended during an investigation to allow the employer to investigate the allegations against the employee unhindered and without undue interference by that employee. A suspension under the law merely prevents the employee from discharging the ordinary functions of his or her role without any deprivation of his rights during the period of the suspension. Thus, unless there is an express provision in the contract of employment or employee's handbook stating that the employee can be suspended with or without half pay, the employee would be entitled to a full salary.

Further, the duration for which the employee may be suspended should be as contained in the employee's contract, employee's handbook, or letter of suspension.

In the recent case of *GLOBE MOTORS HOLDINGS NIGERIA LIMITED v. AKINYEMI ADEGOKE OYEWOLE (2022)*, the court held, *"Since suspension is not a termination of the employment contract nor a dismissal of the employee, the implication is that the employee is still in continuous employment of the employer until he is recalled or formally terminated or dismissed. Pending his recall or dismissal, a suspended employee is entitled to his wages or salary during the period of suspension, unless the terms of the contract of employment or the letter of suspension itself is specific that the suspended employer will not be paid salaries during the period of suspension"*.

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Philippines

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A preventive suspension pending investigation is allowed under the law, provided that the continued employment of the subject of the investigation poses a serious and imminent threat to the life or property of the employer or other employees. Additionally, the period of preventive suspension pending investigation should not last longer than 30 days. However, should the employer wish to extend this period, the employer must pay the employee's wages and other benefits. The employee is under no obligation to reimburse the amount paid to them during the extension if the employer should, later on, decide to dismiss the employee after the completion of the process.

In practice, the notice of preventive suspension is issued simultaneously with the first notice or the notice to explain after the employer has conducted its fact-finding investigation and has reason to believe that the employee must be held accountable for his or her actions.

Since placing an employee under preventive suspension requires the existence of a serious and imminent threat to the life or property of the employer or other employees, some employers opt to place the

employee or employees involved on agreed paid leave. This will allow the employer to conduct an unhampered workplace investigation while the investigated employee is still able to receive his or her full salary during this period. The exact period of paid leave may be agreed upon by the employer and the employee, but ideally it should not last for more than thirty days.

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Poland

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Polish law does not provide for the suspension of an employee. Instead, an employer may agree with an employee that he or she will be released from the obligation to perform work during a relevant period of investigation (with the right to remuneration). The employer may not do this unilaterally, unless the employee is in a notice period. As an alternative, which is more common in practice, the employer may force the employee to use outstanding holiday leave (subject to limitations provided by law) or the parties may mutually agree on the use of holiday leave or unpaid leave (if the employee has already used his or her holiday entitlement in full).

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Portugal

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After the employee is notified of the accusation, the employer may decide on a preventive suspension of the employee if the employee's presence on company premises is deemed problematic. In this case, the employee's salary will continue to be paid.

As per article 330(5) of the Portuguese Labour Code, a preventive suspension may also be determined during the 30 days before the accusation is made, provided that the employer, in writing, justifies why is necessary (eg, for interfering with the inquiry) and why the accusation cannot be served at that moment.

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Singapore

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Yes. Section 14(1) read with 14(8) of the Employment Act 1968 provides that an employee can be suspended during a workplace investigation

However, pursuant to section 14(8) of the Employment Act 1968, the employer:

- may suspend the employee from work for:
 - a period not exceeding one week; or
 - such longer period as the Commissioner for Labour may determine on an application by the employer; but
- must pay the employee at least half the employee's salary during the period the employee is suspended from work.

Section 14(9) of the Employment Act 1968 further states that if the inquiry does not disclose any misconduct on the employee's part, the employer must immediately restore to the employee the full amount of the withheld salary.

In addition to the above legislative requirements, the company is required to also comply with its policies relating to such suspensions.

In terms of the threshold to be crossed before a suspension can take place, the Singapore Courts have highlighted that suspending an employee quickly as part of a “knee-jerk” reaction to an unclear or unspecific allegation with dubious credibility is arguably a breach of the implied term of mutual trust and confidence that exists in all employment relationships ([56] of *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2021] SGHC 123). The employer would need to have proper and reasonable cause to suspend an employee for disciplinary purposes ([56(d)] of *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577; [2013] SGHC 32), for example, where multiple credible sources claimed that they had been sexually harassed by an employee, and the employer had strong grounds to believe that if the employee was not suspended, the safety and wellbeing of the other employees in the organisation would be threatened.

In contrast, an employer is not entitled to suspend an employee during a workplace investigation where the employer has only received one complaint that has not been properly described or substantiated with sufficient details from an unverified or unreliable source against an employee who has a good track record with the organisation. This is especially so if the complaint is so unclear that further inquiries should be made before the allegation can be properly ascertained and characterised (see also [51] of *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2021] SGHC 123).

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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.

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Spain

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Yes, a company may suspend an employee if it has valid grounds to believe that keeping an employee under investigation in his or her position during the enquiry could obstruct the investigation or become an obstacle to it (for example, the employee could try to conceal facts or influence other employees within the organisation).

The decision to suspend the employee must be communicated in writing. This will usually take the form of a suspension letter that explains the reasons that have led to the suspension, its expected duration and that the suspension is not a disciplinary measure. Since the suspension is not a disciplinary measure, the employee would be entitled to continue collecting his or her standard remuneration during the suspension.

In Spain, employees have the right to be effectively occupied during their employment. Therefore, the duration of the suspension should be limited in time to what is strictly necessary to avoid what led to the suspension in the first place.

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Sweden

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In general, an employee in the private sector may be temporarily suspended for a short period with pay and other benefits during a workplace investigation. The room for suspension without pay is, by contrast, very limited. An applicable collective bargaining agreement may impose additional restrictions on the right to temporarily suspend an employee. The suspension should be limited in time and only be in force during the investigation, but can be repeated for (multiple) additional short periods if necessary to conclude the investigation. An assessment needs to be made on a case-by-case basis as suspension in some cases may be considered unlawful. If not executed with sufficient consideration of the employee's interests, it may be considered a constructive dismissal or a breach of the employer's work environment obligations. If the employee is unionised, trade unions sometimes request that the employer initiates consultations as part of a decision to suspend an employee.

In the public sector, the right to suspension is limited. There are also special regulations regarding the suspension of certain employees, for example, employees who are employed as permanent judges.

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Switzerland

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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.

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Thailand

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While an employee is being investigated by the employer, the LPA permits the employer to suspend that employee from work for the duration of the investigation, provided that the suspension can only be made when permitted by the work rules or an agreement related to the conditions of employment. Also, a suspension order must be made in writing and specify the offence and period of the suspension, which may not exceed seven days. Note that the employer must give a written suspension order in advance to the employee before the work suspension.

As aforementioned, the LPA only permits the employer to suspend the employee under investigation from work only for seven days. During the interim period of the suspension, the employer must pay the employee at the rate indicated in the work rules or the agreement reached between the employer and the employee, which must not be less than half of the employee's wages for a working day before his or her suspension. If the employer determines that the employee subject to investigation is not guilty following the outcome, the employer must compensate the employee for outstanding wages from the date of suspension with 15% interest per annum.

In some complicated cases, a workplace investigation does not conclude within seven days, and, in which case the employer should consult with a legal advisor.

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Turkey

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at Paksoy

An employee can be suspended during a workplace investigation provided his or her prior written consent is obtained to this effect during or immediately before the investigation. Obtaining a generic written consent from the employee regarding suspension, which is not tied to a specific event, will not be valid. If there is a suspension of employment due to the workplace investigation, the obligations of the parties arising from the employment relationship continue, except for the employer's obligation to pay a salary (and provide benefits, if any) and the employees' duty to perform work.

There is no provision or established court decision setting forth the rules regarding the length of the suspension period; however, as a general rule, this period should be as brief as possible, so as not to cause any impression that the employment relationship has been terminated by the employer. Suspension of an employee on full pay during a workplace investigation, which is also known as garden leave, is a commonly used alternative to a conventional suspension method described above. During the garden leave period, an employee can be banned from entering the workplace and performing any of his or her duties either partially or entirely while continuing to be paid his or her regular salary, along with fringe benefits. Garden leave is not a concept regulated under Turkish employment legislation, but rather developed in practice, mostly by the Turkish subsidiaries of multinational companies. An ideal approach for the implementation of garden leave would be to obtain the written consent of the employees either at the commencement of employment or during the investigation.

Last updated on 15/09/2022

United Kingdom

Author: *Phil Linnard, Clare Fletcher*

at Slaughter and May

In the UK, suspension is not seen as a neutral act, so should not be a default approach at the start of an investigation. It may be appropriate if, for example, there is a risk to the health and safety of the employee in question (or any other employee), a risk that their continued presence in the business could prejudice the investigation, or risk of continued wrongdoing.

The employer should always check the individual's employment contract to see if it contains the power to suspend. Suspension should generally always be with pay to avoid any breach of contract. It should also be regularly reviewed and kept to a minimum duration.

Employers should not suspend employees under investigation as a knee-jerk reaction to bare allegations. There must be at least some evidence to support the need for suspension (which may require a preliminary investigation before deciding to suspend). Alternatives to suspension should always be considered, such as a temporary transfer to a different area of work, if the employee agrees or it is otherwise permitted by their contract.

If authorities such as regulators or prosecutorial agencies are involved in the investigation, they may have an opinion about an employee's suspension, particularly if they wish to conduct interviews. Consider whether or not to involve the authorities in the suspension discussions at an early stage.

ACAS have produced a [guide to suspension during investigations](#) (last updated Sept 2022) which gives further guidance on these issues.

Last updated on 15/09/2022



United States

Author: *Rachel G. Skaistis, Eric W. Hilfers, Jenny X. Zhang*
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Yes. An employer may suspend the subject of an internal investigation with full pay pending the outcome of an investigation. However, this measure should be used sparingly, for example in cases where an employee has been accused of gross misconduct or where it is the only means of separating the alleged victim of harassment from the accused to prevent continued harassment. As an alternative means of separating the victim from the accused, an employer can consider interim measures such as a schedule change, transfer or leave of absence for the alleged victim with his or her consent (employers should take care not to take any action that could be perceived as retaliatory against the complainant – even if well-intentioned – including involuntarily transferring him or her or forcing a leave of absence).

Where an employer does determine that suspending the subject of an investigation is warranted while the company carries out its investigation, it should provide him or her with a written statement briefly outlining the reason for the suspension and the estimated date the employee will be advised of the investigation outcome and his or her final employment status.

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Vietnam

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Article 128 of the 2019 Labor Code explicitly states that an employer has the right to temporarily suspend an employee who is being investigated for committing an alleged act of misconduct in breach of the labour rules, if the following conditions are met:

- the misconduct committed is complex in nature, and any further work carried out by the employee may jeopardise the ongoing investigation. The law does not clearly define “complex nature”; it may be open to various interpretations by the employer. In practice and from our experience, allegations of sexual harassment may be considered complex misconduct and, therefore, can be a ground for suspension;
- the employer has consulted with (and effectively obtained the approval of) the grassroots-level representative organisation of the employee. No formal process is stipulated under the law for such consultation with this organisation. From our experience, the consultation can be in the form of a meeting between the management of the employer and the executive committee of the organisation. However, the organisation should require the employee to acknowledge their consent in writing by signing the meeting minutes;
- the period of suspension cannot exceed 15 days or 90 days in “special circumstances”. The law does not define what falls under “special circumstances”. In our view, this will be subject to the interpretation and discretion of the employer after consulting with the grassroots-level representative organisation of the employee; and
- the employee must be paid 50% of his or her wage that would be due during the period of the temporary suspension in advance. When the temporary suspension ends, if no disciplinary measure is imposed on the employee, the employer must pay the full wage for the period of the suspension by paying the remaining 50%.

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