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Employment 2026

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Chambers Practice Guides

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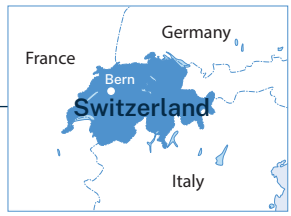

Law and Practice

Contributed by:
Philippe Nordmann, Irène Suter-Sieber, Jonas Knechtli and Gustaf Heintz
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Walder Wyss is one of Switzerland's leading law firms, with more than 300 fee earners at its offices in Basel, Bern, Geneva, Lausanne, Lugano and Zurich. It is the only major Swiss law firm with a dedicated employment law team, comprising 43 professionals, including eight partners, managing associates, counsel, associates and an immigration specialist. The team advises exclusively on employment law matters, offering in-depth expertise in employment contracts, restructurings, executive compensation and cross-border workforce issues. To reflect the growing demand for integrated mobility advice, Walder Wyss has established a specialised immigration desk within its employment team. The group regularly assists multinational clients and Swiss corporates in litigation, transactions, collective dismissals, internal investigations and employment compliance projects. Its multilingual, office-spanning structure ensures seamless client service across Switzerland's German-, French- and Italian-speaking regions, distinguishing Walder Wyss from other large Swiss law firms in this field.

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1. Employment Terms

1.1 Employee Status

Blue-Collar v White-Collar Workers

As a matter of principle, Swiss employment law does not provide for the traditional differentiation between blue-collar and white-collar workers, but it does occasionally provide for similar differentiations. This particularly applies to the following provisions contained in the Federal Act on Work in Industry, Trade and Commerce (the "Labour Act") relating to the maximum weekly working time and minimum rest periods.

- Employees holding a higher executive position, employees performing a scientific activity and employees performing an autonomous artistic activity are entirely exempt from any maximum weekly working time and minimum rest periods.
- For ordinary employees in industrial businesses, office staff, technical and other employees (ie, employees performing predominantly intellectual work in offices or office-like jobs), including sales personnel in large retail trade companies, the maximum weekly working time is principally 45 hours.
- For all other employees, particularly those performing predominantly manual activities, the maximum weekly working time is 50 hours. The same applies to office staff, technical and other employees, including sales personnel in large retail trade companies, working in establishments or parts thereof that employ a majority of employees to whom this maximum weekly working time of 50 hours applies.

Other Employee Statuses

There is a whole range of other employee status categories that are subject to special protection (particularly in connection with their working conditions and dismissal) due to their particular personal situation (see **1.5 Other Employment Terms** and **7.5 Protected Categories of Employee**).

1.2 Employment Contracts

Permanent v Fixed-Term Employment Contracts

There are two main types of employment contract in Swiss employment law: permanent and fixed-term employment contracts.

While permanent employment contracts are entered into for an indefinite period and may only end upon notice of termination, fixed-term employment contracts cease automatically at the end of their fixed term and may, as a matter of principle, not be terminated prematurely. The only exception to this relates to dismissals for serious cause (see **7.3 Dismissal for (Serious) Cause**).

Parties' (Limited) Freedom to Choose a Type of Employment Contract

As a matter of principle, parties are free to choose the type of employment contract that best suits their needs. They may even agree on a hybrid construct – ie, an employment contract that provides for a fixed (maximum) term but may also be terminated earlier by way of notice of termination.

In order to guarantee a minimum of employee protection, however, case law has developed limits to such

freedom. Most notably, multiple consecutive fixed-term employment contracts are to be reinterpreted into one permanent employment contract if there has been no objective reason for choosing consecutive fixed-term employment contracts over one permanent employment contract (so-called "illegal chain employment contracts").

(No) Formal Requirements for Employment Contracts

An employment contract is concluded by way of mutual, corresponding declarations of intent by the employer and the employee, pursuant to which the employee undertakes to work in the service of the employer for a limited or unlimited period, and the employer undertakes to pay remuneration to the employee for such work. As a matter of principle, such agreement does not require the observation of any particular form and can therefore also be concluded orally or even implicitly. However, specific employment contracts such as apprenticeship contracts and contracts with temporary workers require observance of the written form (ie, the contract must be signed in wet ink or by means of qualified electronic signatures by all persons on whom it imposes obligations).

Formal Requirements for Specific Contractual Provisions

For reasons of legal certainty and/or employee protection, a considerable number of specific contractual provisions may only be bindingly agreed upon by observing the written form. This applies, inter alia, to:

- deviations from the statutory compensation for overtime (see **1.3 Working Hours**);
- deviations from the statutory provisions regarding continued salary payments in the case of an employee's incapacity for work (see **1.5 Other Employment Terms**);
- amendments to the statutory notice periods (see **7.2 Notice Periods**); and
- non-compete clauses (see **2.1 Non-Competes**).

1.3 Working Hours

Maximum Working Time per Week/Day

Pursuant to the Labour Act (see **1.1 Employee Status**), the weekly working time may only exceed 45 or 50 hours in exceptional circumstances, and various provisions with regard to minimum rest periods (in particular mandatory minimum breaks and the general prohibition of work during the night and on Sundays/public holidays) must be observed which, inter alia, result in a maximum daily working time of 12.5 or 13 hours (depending on the calculation method). However, these principles do not apply to all categories of employees and businesses.

Part-time employees, whose employment contracts must at least specify their respective workload, are generally subject to the same provisions as full-time employees – ie, the maximum working time is not calculated pro rata temporis.

(No) Possibility of Flexible Arrangements

The parties' freedom to deviate from the above-mentioned principles is very limited; the provisions are basically mandatory.

Overtime and Extra Hours

Swiss employment law differentiates between overtime (ie, the hours worked in excess of the contractually agreed or customary weekly working time) and extra hours (ie, the hours worked in excess of the applicable maximum weekly working time, if any).

While the employee is obliged to perform overtime if such overtime is required and to the extent that the specific employee is able and may conscionably be expected to do so (less frequently the case for part-time employees), the performance of extra hours requires the existence of exceptional circumstances, in addition to the requirements for the performance of mere overtime.

In variable working time systems, there may be a third important category of hours worked in excess of the applicable weekly working time (ie, hours worked based on the employee's time sovereignty).

Compensation for Overtime and Extra Hours

Pursuant to statutory provisions, overtime and extra hours are principally compensated by corresponding time off (if the employee consents) or an additional salary payment including a 25% surcharge (in the absence of the employee's consent).

While the parties may contractually exclude any compensation (whether in cash or in kind) for overtime as long as they observe the written form, compensation is mandatory with regard to extra hours. However, for office staff, technical and other employees, including sales personnel in large retail trade companies, such mandatory compensation for extra hours only applies from the 60th extra hour per calendar year.

1.4 Compensation

Minimum and Maximum Compensation

As a matter of principle, the parties are free to agree on the employee's compensation, although there are deviations from this principle.

The most practically relevant minimum compensation requirements are as follows.

- Selected cantons provide for a general hourly minimum salary (Geneva, Jura, Neuchâtel, Ticino and Basel-Stadt).
- Respective minimum salaries may also be provided for on a communal level. This has been the case in Lucerne since 1 January 2026. Moreover, the Swiss Federal Supreme Court (SFSC) has recently confirmed that minimum salaries may also be introduced in Winterthur and Zurich; however, as of July 2026, the latter are not yet in force.
- Various collective bargaining agreements (CBAs) and so-called standard employment contracts (ie, a special kind of legislative decree) provide for minimum salaries in selected sectors.

The most practically relevant compensation cap is for Swiss stock corporations whose shares are listed on a stock exchange. They are subject to certain restrictions with regard to the compensation paid to members of the board of directors, the executive board and the advisory board, as well as to persons close to them (eg, the prohibition of severance payments contractually agreed or provided for in the company's articles of association).

Thirteenth Monthly Salary

The parties are free to agree that the salary will be paid in 13 instead of 12 monthly instalments. In the absence of a different agreement, such 13th monthly salary will become due at the end of the year. Due to its legal nature as a salary component, the payment of the 13th monthly salary may not be declared subject to conditions, and it must be paid on a pro rata basis if the employment ends before its due date.

Bonus

The term "bonus" is not defined by Swiss law. Accordingly, established case law provides that, depending on the specific (bonus) agreement and the pertinent company practice, a bonus can be qualified either as a salary component or as a gratification (or as one remuneration element consisting of two independent parts).

Legal qualification as salary component or gratification

A bonus qualifies as a salary component if the payment of the bonus and its amount are not subject to the employer's discretion. This is also the case if the exact bonus amount is clearly determinable independent of any subjective assessment.

A bonus qualifies as a gratification, however, if it is a voluntary extra compensation, meaning that the entitlement per se or at least the exact amount of the bonus is ultimately at the employer's discretion.

In addition, if an employee's total compensation is below the five-fold Swiss median salary in the private sector (approximately CHF403,320 in 2024), Swiss law requires that the bonus is only of an accessory nature in order to potentially qualify as a gratification. The bonus is of an accessory nature if it is of secondary importance in relation to the employee's salary; as a rule of thumb, the bonus may not exceed 100% of the salary in order to remain accessory. In the absence of such accessoriness, at least part of the bonus qualifies as a salary component.

Consequences of such legal qualification

The respective legal qualification (salary component v gratification) is of great importance: to the extent that the bonus qualifies as a salary component, it may not be declared subject to conditions (such as an ongoing/not yet terminated employment, vesting, forfeiture, etc) and the employee has a mandatory (pro rata) claim. The exact opposite is true for bonuses that qualify as entirely voluntary gratifications. In the case

of gratifications to which the employee is entitled in principle, they have a mandatory claim to part of the bonus (which may not be determined arbitrarily).

1.5 Other Employment Terms

Vacation

An employee is entitled to at least four weeks of fully paid vacation per year (five weeks if the employee is under the age of 20), at least two weeks of which must be taken consecutively. The timing of the employee's vacation is determined by the employer, although the employer must take due account of the employee's wishes.

The vacation entitlement is mandatory and may not, in principle, be replaced by monetary or other benefits during the employment. Subject to exceptional circumstances, (financial) compensation is only possible at the end of the employment.

Other Absences

As a general rule, the employee is only required to perform their work to the extent that this can reasonably be expected from them. However, the fact that an absence is justified does not necessarily mean that it is also paid.

The most practically relevant reasons for an absence are as follows.

Illness, accident, legal obligations, public duties and pregnancy

If an employee is prevented from working by one of these (or equivalently severe) personal circumstances without being at fault, they remain entitled to their full compensation for a limited time, depending on (and increasing with) their years of service, but only if the employment has lasted or was concluded for longer than three months. Provided that the chosen alternative solution is no less favourable to the employee, it is possible to deviate from this rule (in writing) in employment contracts, standard employment contracts or CBAs. In connection with absences whose financial consequences are already covered by compulsory insurance (eg, in connection with accidents, disability and official duties), the employer is only obliged to pay the potential difference between the insurance benefits and 80% of the employee's compensation.

Family responsibilities

To the extent that an employee is legally obliged to care for close relatives (ie, children, spouses and registered partners) and may not avoid an absence for this purpose through reasonable means, the employee remains entitled to their full compensation as in connection with other legal obligations. Moreover, and potentially in addition to that, an employee is entitled to fully paid short-term leaves of up to three days per incident and a maximum of ten days per year in order to take care of a family member or partner living in the same household with a health impairment (and actually requiring care by the employee). Eventually, working parents of a minor child whose health is seriously impaired due to an illness or accident are generally (jointly) entitled to a care leave of up to 14 weeks per incident and care allowances of 80% of the previous average income (but not more than CHF220/day) during such care leave.

Maternity

Female employees are exempt from the obligation to work for 14 weeks after giving birth. To the extent that the Labour Act applies (see **1.1 Employee Status**), the respective exemption is 16 weeks, and the employee is even prohibited from working during the first eight weeks. During the first 14 weeks, the employee is generally entitled to receive maternity allowances of 80% of the previous average income (but not more than CHF220/day). Should the newborn require hospitalisation, said allowance entitlement and the respective exemption from the obligation to work may be extended up to 22 weeks in total.

Parenthood

After the birth of their child, male employees (or female employees when they are the non-birthing parent) are exempt from the obligation to work for two weeks within the first six months after the child's birth. During such parental leave, the employee is generally entitled to receive parental allowances of 80% of the previous average income (but not more than CHF220/day).

Adoption

Working parents who take in a child under the age of four for adoption are generally (jointly) entitled to an adoption leave of two weeks within the first year after taking in the child. During such adoption leave, the

employee is entitled to receive adoption allowances of 80% of the previous average income (but not more than CHF220/day).

Customary hours and days off

The employee is entitled to the customary hours and days off for dealing with urgent personal matters (such as doctor's appointments) as well as important family matters (such as the passing away of close relatives), but only to the extent that they cannot reasonably be dealt with during the employee's spare time. Despite the absence of a general employer's obligation to continue compensation payments during such customary time off, the latter is assumed once the parties have agreed on a monthly or weekly salary without an express exception in this regard (the opposite is true for hourly salary earners).

Cantonal law may provide for additional entitlements.

Confidentiality and Non-Disparagement

Pursuant to the statutory employee's duty of loyalty, the employee must not exploit or reveal confidential information obtained while in the employer's service, such as manufacturing or trade secrets. While the respective confidentiality obligation applies unrestrictedly during the employment, its application after the end of the employment is limited to the extent required to safeguard the employer's legitimate interests.

The same duty of loyalty also requires the employee to principally refrain from any actions that could be economically damaging to the employer, including making any derogatory statements towards third parties (regardless of their veracity). Whistle-blowing is only protected under very limited prerequisites – ie, if the employee strictly adheres to the principle of proportionality.

Employee Liability

Principle

Subject to a few special provisions, the employee is generally liable for any financial damage they cause to the employer either deliberately or by negligence. While the burden of proof for the existence of financial damages resulting from an employee's breach of contract lies with the employer, it is the employee who must prove that they were not at fault.

The main difference compared to the usual contractual liability lies in the special standard of care and the various circumstances that can lead to a reduction or even complete elimination of the employee's liability.

Circumstances reducing or eliminating the employee's liability

Of particular importance is the employee's degree of fault: mere minor negligence (ignoring something that should have been considered on closer consideration) may result in an extensive reduction or even complete elimination of liability. Medium negligence (ignoring important rules of conduct but not downright elementary duties of caution) may at least result in a significant reduction of liability.

Other practically relevant circumstances are the occupational risk, the level of education or technical knowledge required for the work in question, and the specific characteristics of the employee of which the employer is or should be aware.

Possibility of deviations in favour of the employee

The above-mentioned statutory principles represent the maximum employee liability. Contractual deviations are only possible in favour of the employee.

2. Restrictive Covenants

2.1 Non-Competes

Statutory Prohibition of Competition During Employment

During the term of employment, an employee is prohibited from competing with their employer by virtue of the statutory duty of loyalty.

Post-Contractual Non-Compete Clauses

Validity and enforceability

The employer may only validly agree and enforce a (post-contractual) non-compete undertaking subject to the following prerequisites:

- the non-compete clause must be agreed in writing, and must particularly determine the time, place and scope of the non-compete undertaking;

- the employee must have gained insight into the employer's customer base or manufacturing or business secrets in the course of the employment;
- the employer must face substantial harm as a result of such insight (this is not the case if, for example, the employee's services were predominantly characterised by their personal abilities);
- the employer must have a substantial interest in the prohibition of competition (such interest particularly ceases if the employment is terminated either by the employer without the employee having given reasonable cause to do so or by the employee after the employer has given reasonable cause to do so); and
- the enforceability of a non-compete undertaking requires appropriate limitation in terms of place, time and scope so that there is no unreasonable impediment to the employee's economic advancement.

While the final point above regarding appropriate limitation is not a validity requirement, agreeing on a (substantial) consideration for the employee's compliance with the non-compete clause does at least significantly increase the chances of the latter's enforcement. If a court, acting on its free discretion, deems an agreed non-compete undertaking to be unreasonable, it will reduce the respective undertaking to a reasonable extent.

Consequences of a violation

If the employee violates a valid and enforceable non-compete clause, they become liable to pay damages to the employer. In order to free the employer from the difficult proof of financial damages resulting from such violation, the parties regularly agree on a contractual penalty. The engagement in a competing activity as such may only be prohibited if this has been expressly and unambiguously agreed upon in writing, and if this is exceptionally justified by the employer's violated or threatened interests and the employee's particularly inappropriate behaviour.

2.2 Non-Solicits

Non-Solicitation Clauses With Reference to Employees

The statutory duty of loyalty prevents the employee not only from competing with the employer but also from enticing away employees during the term of the employment.

Pursuant to the rather controversial case law of the SFSC, however, the fact that the statutory provisions only address post-contractual competition in the supply market (but not in the demand market) will, as a matter of principle, exclude any valid agreements on the prohibition of enticing away employees after the termination of the employment. The situation will only be different if such actions also affect the supply market, as is the case when temporary employees are being enticed away.

Non-Solicitation Clauses With Reference to Customers

Since this always involves competition, any prohibitions with regard to enticing away customers are governed by the same restrictions as common non-compete clauses (see **2.1 Non-Competes**).

3. Data Privacy

3.1 Data Privacy Law and Employment

As a general principle, the employer may handle data concerning the employee only to the extent that such data concerns the employee's suitability for their job, or to the extent it is necessary for the performance of the employment contract. The general provisions of the Swiss Federal Data Protection Act (DPA) also apply to employment relationships.

The DPA stipulates a number of principles, including proportionality, transparency and limitations on purpose. It notably also provides for a right of information. This right of information is regularly invoked by employees who have been dismissed by their employer with the purpose of accessing their entire "personnel file". However, the DPA explicitly clarifies that the right of information is limited to personal data as such (ie, it does not extend to entire documents) and that the request for information can be denied, restricted or deferred if it is manifestly unfounded (particularly if it pursues a purpose contrary to data protection as in the case of a request that is made solely for the purpose of obtaining evidence for subsequent civil proceedings) or if it is manifestly querulous.

Monitoring and control systems designed to monitor the behaviour of employees at the workplace are generally prohibited. If monitoring or control systems are required for other (legitimate) reasons, they must be designed and arranged in such a way that they do not affect the employees' health and freedom of movement.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In Switzerland, a dual system exists for the admission of foreign workers to the local labour market. Nationals of member states of the European Union and the European Free Trade Association ("EU/EFTA nationals") benefit from the Treaty of Free Movement (TFM) and generally do not need to meet special requirements in order to be permitted to work in Switzerland. However, as a matter of principle, the nationals of other countries ("third-country nationals") may only be granted access to the Swiss labour market as employees if they meet the strict requirements according to the Swiss Foreigners and Integration Act.

4.2 Registration Requirements for Foreign Workers

EU/EFTA nationals wanting to engage in a remunerated activity in Switzerland according to the TFM are granted a residence permit, which automatically includes a work permit. After immigration to Switzerland, they must register at the community office of the future place of residence and apply to the responsible cantonal authorities for the residence permit. Subject to the presentation of a respective employment contract and depending on the duration thereof, either a short-term residence permit L or a residence permit B (for indefinite durations or durations of one year or more) is generally granted. Cross-border commuters (with a Swiss employment contract) who do not have their main residence in Switzerland and who return to their home country at least once per week may apply for a special cross-border permit for the duration of five years. All three permits may be extended.

Under certain circumstances, an application for a residence permit is not required of EU/EFTA nationals. In such instances, a prior online notification via the so-called notification procedure suffices (eg, in the case of a temporary employment contract with a Swiss employer with a duration of less than three months).

Third-country nationals primarily have to apply for a work permit before a residence permit will be issued. Once the employer has submitted the application for the respective employee with all the necessary documents, the cantonal labour office will assess it and, if approved, forward it to the federal immigration authority where, in the case of a positive decision, the work permit will be granted. Following immigration and registration at the community office of the future place of residence, upon further request, the residence permit (permit L or B) will be issued by the cantonal migration office.

5. New Work

5.1 Mobile Work

Need for a Parties' Agreement

As a matter of principle, mobile work is subject to a parties' agreement – ie, there is neither a general employee's right to mobile work nor a general employee's obligation to mobile work. Temporary exceptions to this may apply in exceptional situations (eg, during pandemics or to accommodate specific health needs).

Equipment, Materials and Expenses

Subject to an agreement or customary practice to the contrary, work equipment and materials will be provided by the employer. The parties may even agree that the employee must provide these without any compensation.

However, necessary work-related expenses (including rent, electricity, internet, etc) must be mandatorily borne by the employer. No necessity is assumed if the employee's mobile working is at their own request and a permanent and suitable workplace is available in the office.

Data Privacy and Confidentiality

Mobile work may result in the application of additional data protection laws. In addition, the employee remains bound by their statutory duty of confidential-

ity irrespective of their place of work (see **1.5 Other Employment Terms**).

Occupational Safety and Health

The employer is obliged to take all reasonable measures to protect the physical and mental health of all their employees, including mobile workers. Within its scope of application, this also includes compliance with the health protection, working time and rest period provisions of the Labour Act (see **1.1 Employee Status**). However, the latter only apply to activities carried out in Switzerland; for activities carried out abroad, other laws may have to be complied with.

Social Security

Employees who are subject to the TFM and are residing in another member state of the European Free Trade Association or the European Union may not carry out a substantial part of their work from their country of residence and remain subject to the Swiss social security system. As per the general rules, this means that being subject to the Swiss social security system requires that an employee carries out less than 25% of their total working activity and earns less than 25% of their total remuneration in their foreign country of residence. However, since 1 July 2023, an increased percentage limit of 49.9% (of the total working time) applies in relation to those states which have also signed the pertinent multilateral understanding (Austria, France, Germany, Italy and Liechtenstein, among others), notably provided that employees are conducting so-called telework from their foreign country of residence, although thresholds from a tax perspective generally differ therefrom.

The situation of employees who are not subject to the TFM has to be assessed on a case-by-case basis.

5.2 Sabbaticals

No General Employee's Right

In principle, there is no employee's right to take a sabbatical in the sense of an unpaid special leave in addition to their statutory rights regarding hours and days off and other absences (see **1.5 Other Employment Terms**). It is only in exceptional cases that there is a legal entitlement (eg, for women who are subject to the Labour Act (see **1.1 Employee Status**) and are pregnant, breastfeeding or have recently given birth). In some cases, CBAs (see **6.3 Collective Bargaining Agreements**) or the employment contract provide for a contractual entitlement.

Parties' Agreement

As a rule, the parties are free to agree on the specific terms and conditions of a sabbatical. While there is no formal requirement to be observed, it is generally in the interest of both parties to put this in writing.

Employer's Information Obligations

In any case, the employer is obliged to provide the employee with certain information on the insurance consequences of taking a sabbatical, which depend on their specific circumstances and may be rather complex.

5.3 Other New Manifestations

Driven by the experience gained during the pandemic, there is a tendency in practice toward greater digitalisation and flexibility, in particular regarding the places and times in which work may be performed. This is regularly manifested in the implementation of policies regarding mobile work, desk sharing and/or flexible working structures.

However, there are rather strict limits to this flexibility, especially to the extent that the working time and rest period provisions of the Labour Act apply (see **1.3 Working Hours**), or where mobile work in general and cross-border mobile work in particular is involved (see **5.1 Mobile Work**).

6. Collective Relations

6.1 Unions

Trade unions play a marginal role in some sectors of the Swiss economy, while for other sectors such social partners are highly relevant and active.

In a nutshell, the role of trade unions is to represent employees vis-à-vis employers and to assert the interests of employees on the political stage. Traditionally, this includes the fight for better working conditions, efficient social security and higher wages. Furthermore, in Switzerland, trade unions have established self-help and social institutions, such as unemploy-

ment insurance. One of the most important tasks of trade unions is negotiating CBAs (see **6.3 Collective Bargaining Agreements**) as counterparties to employers' associations.

6.2 Employee Representative Bodies

The participation rights of employee representative bodies in Switzerland are regulated by the Federal Participation Act, according to which employees of a company with a headcount of 50 or more are entitled to constitute a works council. At the request of 20% of the employees (or if demanded by 100 employees in a company with a headcount of more than 500), a vote must be held in order to determine whether the majority of those employees casting a vote are in favour of the suggested constitution of a works council.

If a works council has been set up, management must provide it with all the information necessary to carry out its tasks properly. In particular, the employer must inform the works council at least once a year about the business performance and its effects on the employment relationships.

Swiss employment law provides for the information and consultation rights of the works council in specific events. This applies to questions of occupational safety, the process of transfer of undertakings, and collective redundancy procedures. In rare cases, the works council even has a right of co-decision making or, in other words, a type of veto right over certain decisions made by management.

The consequences of failing to involve the works council vary. For example, the dismissal of employees in the context of collective redundancies without a proper consultation of the works council is generally valid but deemed abusive (see **7.1 Grounds for Termination** and **8.1 Wrongful Dismissal**).

6.3 Collective Bargaining Agreements

A CBA is a contract between the employer or an employers' association and an employees' association.

The normative regulations become part of the individual employment contract. Those provisions are mandatory and are directly applicable to all employees who benefit from a CBA by contract or by law. Unless they are beneficial to the employee, deviating clauses in employment contracts are invalid. Often, the participating employers also apply the CBA to non-organised employees. Furthermore, CBAs regularly contain contractual provisions that regulate the general obligations and rights of the parties to it, as well as the enforcement of the CBA.

Upon the request of a party to the CBA, the competent authorities may declare a CBA to be generally binding. The effect of this is that the CBA automatically applies to all employers and employees in a particular economic sector or profession, including the ones that do not belong to any association or are not even aware of the existence of the CBA. This procedure has a big practical impact: as of 1 June 2026, as many as 85 CBAs had been declared generally binding (46 on a national level and 39 on a cantonal level).

7. Termination

7.1 Grounds for Termination

(Limited) Freedom of Termination

Ordinary terminations of employment (ie, terminations observing the applicable notice period) do not require a particular lawful reason, although the party giving notice must state its respective reasons in writing if the other party so requests. This is not least because the principle of freedom of termination is limited by the prohibition of terminations in bad faith (so-called "abusive" terminations; see **8.1 Wrongful Dismissal**).

Collective Redundancies

Collective redundancies (ie, the dismissal of a certain minimum number of employees within 30 days and for reasons which are unrelated to the person of the affected employee) are subject to specific procedural requirements. An employer may not decide to carry out collective redundancies before having informed (in writing and with a copy sent to the cantonal employment office) and consulted the works council or (if there is none) the employees. In the context of such consultation, the employer must at least provide the opportunity to formulate (non-binding) proposals on how to avoid redundancies, limit their number and/or mitigate their consequences, failing which any

respective dismissal would qualify as abusive (see **8.1 Wrongful Dismissal**) and entitle each employee to a compensation claim of up to two monthly salaries. The minimum duration of such consultation depends on the circumstances of the individual case; for standard cases, two weeks is a suitable point of reference.

If the employer still intends to carry out collective redundancies after such consultation, they may take this decision, inform the cantonal employment office about the results of the consultation and provide it with further appropriate information in writing, with a copy sent to the works council or (if there is none) to the employees. It is only at this point that the required notices of termination may be issued. The aforementioned need to inform the cantonal employment office is of particular importance since individual employment relationships terminated in the course of collective redundancies may not end until at least 30 days after such notification.

Duty to Issue a Social Plan

An employer normally employing at least 250 employees and intending to make at least 30 employees redundant within 30 days for reasons which are unrelated to the person of the affected employee is obliged to agree on a social plan with the works council or (if there is none) the employees – ie, an agreement setting out measures to avoid redundancies, to reduce their number and to mitigate their consequences. If no agreement can be reached, however, the social plan will eventually be issued by an arbitral tribunal.

7.2 Notice Periods

Required Observance of Notice Periods

Unless the employer or the employee claims that there is good cause for a dismissal for serious cause (see **7.3 Dismissal for (Serious) Cause**), terminating a permanent employment contract unilaterally always requires the observance of a notice period.

Statutory Notice Periods

Pursuant to the statutory provisions, the following notice periods apply:

- during the probation period (by default the first month of an employment), the employment may be terminated at any time by giving seven days' notice; and
- after completion of the probation period, if any, the employment may be terminated at one month's notice during the first year of service, at two months' notice between the second and the ninth year of service and at three months' notice thereafter, with all such notice to expire at the end of a calendar month.

Possible Deviations From the Statutory Notice Periods

Both the probation period and the notice periods (including their effective date) may be amended by written agreement, standard employment contract or CBA, subject to the following restrictions:

- while it is possible to exclude any probation period, the probation period may not be extended beyond three months;
- the notice period may not be less than one month (unless agreed within a CBA and for the first year of service only); and
- the notice periods must principally be the same for both parties (unless the employer has already given notice for economic reasons or at least expressed such an intention) – if the parties nevertheless agree on unequal notice periods, the longer period is applicable to both parties.

Severance

Pursuant to the statutory provisions, the employer is only required to pay the employee compensation during the notice period. While the employer may not unilaterally move the termination date forward by providing a payment in lieu of the notice period, they may put the employee on garden leave during such period (possibly offsetting at least part of the employee's vacation balance and a replacement income), unless the employee exceptionally claims a legitimate interest in effectively rendering their work (eg, professional athletes and surgeons). However, subject to the respective prohibition with regard to Swiss stock corporations whose shares are listed on a stock exchange (see **1.4 Compensation**), providing for severance payments in employment contracts or CBAs is perfectly possible.

(No) Formalities to Be Observed

Issuing a valid notice of termination does not require the observance of any formalities, other than in connection with collective redundancies (see **7.1 Grounds for Termination**) or in the case of a respective contractual agreement (eg, a written form requirement provided by an individual employment contract). For evidentiary purposes, however, it is most recommendable to issue notices of termination in such a way that the fact and date of receipt can be proven.

7.3 Dismissal for (Serious) Cause

Either party may at all times terminate an employment with immediate effect. While the law declares that dismissal for serious cause must be subject to the existence of good cause, even dismissal for serious cause without good cause results in an immediate termination of the employment. The (non-)existence of good cause therefore only determines the further legal consequences of dismissal for serious cause. The party declaring dismissal for serious cause must state its respective reasons in writing if the other party so requests.

Good Cause

Good cause is assumed if the party declaring dismissal for serious cause may not reasonably be expected to continue the employment until the expiry of the applicable notice period or the agreed fixed term. While the competent court has a large margin of discretion when assessing this requirement and will consider all circumstances of the particular case, it is well established that good cause may only be affirmed in exceptional and particularly severe cases. Also, in order not to forfeit the right to dismissal for serious cause, it is necessary for the dismissal to be issued within a few days (usually two to three working days) of becoming aware of the relevant (good) cause.

Consequences of Dismissal for Serious Cause

As already explained, a dismissal for serious cause results in immediate termination of employment.

In the most practically relevant scenario, where the employer issues dismissal for serious cause due to an employee's (alleged) breach of contract, the following applies:

- if the employer exceptionally succeeds in proving good cause, the employee loses any claims arising from the employment that have not yet been earned (in particular future salary payments) and becomes liable to pay damages to the employer; or
- if the employer fails in proving good cause, the employee is entitled to what they would have earned if the employment had been terminated observing the applicable notice period or by expiry of an agreed fixed term (minus any savings and a replacement income resulting therefrom) and to an additional penalty payment of up to six months' salary.

(No) Formalities to Be Observed

With regard to the (absence of) formalities to be observed, the explanations in connection with ordinary terminations (see **7.2 Notice Periods**) principally apply mutatis mutandis. The only (rather theoretical) difference is that dismissal for serious cause may arguably not even be declared subject to the observation of contractually agreed formalities.

7.4 Termination Agreements

Permissibility and Requirements

Swiss employment law principally allows for the conclusion of termination agreements, but there are strict limits on the parties' freedom of contract. Most importantly, termination agreements may not be concluded in order to circumvent statutory provisions protecting employees' interests (in particular, mandatory provisions in connection with incapacities for work due to illness or accident – see **7.5 Protected Categories of Employee**); but must rather constitute actual settlements in which the employer also makes concessions. In most cases, one of the very purposes for concluding a termination agreement is to obtain clarity with regard to the termination date by excluding any prolongation of the employment in connection with an employee's incapacity for work, so the parties regularly agree on an additional "voluntary" employer's payment to compensate the employee for such concession. Another popular motive for such an additional employer's payment is to compensate for the impending consequences of an abusive termination (see **8.1 Wrongful Dismissal**).

Reflection Period

Pursuant to (controversial) case law, the conclusion of a termination agreement initiated by the employer requires the employee to be granted a sufficient reflection period. There are no other specific procedures or formalities to be observed when concluding termination agreements.

Consequences of Non-Compliance

As non-compliance with the "actual settlement" or reflection period requirements may lead to the entire termination agreement being declared null and void, strictly adhering to these requirements is of the utmost importance in order to actually obtain the envisaged legal certainty. Furthermore, employers would be generally well advised to issue a unilateral notice of termination as a first step, and to offer the conclusion of a termination agreement only as a second step. Provided that this sequence is adhered to, the two steps may also follow each other in quick succession, for example, during the same meeting.

7.5 Protected Categories of Employee

Temporal and Substantive Protection Against Dismissal

Notwithstanding the governing principle of freedom of termination, Swiss employment law provides for both temporal and substantive protection against dismissal. In this context, certain categories of employees benefit from stronger protection than others.

Categories Benefiting From Specific Temporal Protection

In particular, the following categories of employees benefit from specific temporal protection against dismissal (after completion of the probation period, if any – see **7.2 Notice Periods**):

- Employees performing Swiss compulsory military service, civil defence service or alternative civilian service – protection against dismissal during such performance and potentially during a certain period before and after.
- Employees being (fully or partially) incapacitated for work due to illness or accident through no fault – protection against dismissal during such incapacitation, but at most for 30, 90 or 180 days (depending on the employee's years of service).
- Pregnant employees and new mothers – protection against dismissal during the pregnancy and for 16 weeks after delivery (possibly for a longer duration in the case of hospitalisation of the newborn or the death of the other parent). Other than in the case of the death of the new mother, employees entitled to parental leave do not benefit from a comparable temporal protection against dismissal, however, and may only benefit from an extension of the notice period corresponding to the days of parental leave not yet taken (see **1.5 Other Employment Terms**).
- Parents of a minor child with serious health impairments – protection against dismissal as long as the entitlement to care leave exists, but no longer than six months from receipt of the first daily care allowance (see **1.5 Other Employment Terms**).

Generally, each of these circumstances triggers separate "proscribed periods", although an exception to this principle applies for incapacities for work arising from one and the same medical condition (relapses in particular).

Any notice of termination given during such proscribed periods is considered void and must be re-issued after the expiry of the proscribed period in order to become effective.

Where notice of termination has been given prior to the commencement of a proscribed period, said notice remains effective. In this case, however, the notice period is temporarily suspended and does not resume until the expiry of the proscribed period. Finally, the prolonged employment is further extended until the next usual end date (ie, generally the next end-of-month, unless agreed otherwise) to ensure consistency with the usual job change dates.

Categories Benefiting From Specific Substantive Protection

In particular, the following categories of employees benefit from specific substantive protection against dismissal.

- Employees performing non-voluntary legal obligations, members of a trade union and employees performing trade union activities (in a lawful man-

ner) and members of the works council or elected members of a body linked to the business – protection against dismissal due to such status.
- Older employees with many years of service – this category may, under certain circumstances (in particular, the employee's position), benefit from an increased employer's duty of care so that the employer must, as a matter of principle, timely inform and consult the employee regarding an intended dismissal, grant the employee a last chance and also evaluate possibilities to continue the employment before effectively giving notice.

Any dismissal due to such status or in violation of an employer's increased duty of care would be considered abusive (see **8.1 Wrongful Dismissal**).

8. Disputes

8.1 Wrongful Dismissal

Grounds for Wrongful ("Abusive") Termination Claims

Despite the principle of freedom of termination, terminations can be considered abusive when issued in bad faith (see **7.1 Grounds for Termination**). This general criterion is specified in a non-exhaustive legal enumeration of circumstances.

A notice of termination is considered abusive when it is given by either party in the following circumstances:

- on account of an attribute pertaining to the person of the other party, unless such attribute relates to the employment or substantially impairs co-operation within the business;
- because the other party exercises a constitutional right, unless the exercise of such right violates an obligation arising from the employment or substantially impairs co-operation within the business;
- solely in order to prevent claims under the employment from accruing to the other party;
- because the other party asserts claims under the employment in good faith; or
- because the other party is performing a non-voluntary legal obligation.

A notice of termination given by the employer is considered abusive when it is given in the following circumstances:

- because the employee is or is not a member of a trade union, or because they carry out trade union activities in a lawful manner;
- while the employee is an elected employee representative on the works council or on a body linked to the business, and the employer cannot cite just cause to terminate the employment; or
- in the context of collective redundancies, without having consulted the works council or (if there is none) the employees (see **7.1 Grounds for Termination**).

However, case law has developed further cases in which a termination may be deemed abusive (see **7.5 Protected Categories of Employee**).

Consequences of Abusive Terminations

Even an abusive termination remains valid and there is, in principle, no claim to continued employment (see **8.2 Anti-Discrimination** for an exception to this principle). However, the terminated party is entitled to a compensation payment of up to six monthly salaries (two monthly salaries in connection with collective redundancies – see **7.1 Grounds for Termination**). The exact amount of compensation is to be determined considering all circumstances of the particular case (such as the seriousness of the terminating party's misconduct).

Procedural Requirements

In order to avoid the forfeiture of such compensation claim, the party receiving notice must submit a written objection against the termination before the expiry of the notice period, and it must bring the claim before the courts within 180 days of the end of the employment.

8.2 Anti-Discrimination

General Principles

Anti-discrimination issues are typically raised in connection with abusive termination claims (see **8.1 Wrongful Dismissal**). In general, it is the terminated party that must prove the existence of the circumstances leading to the abusiveness of the termination.

Specific Provisions Regarding Gender Discrimination

Federal Act on Gender Equality

The Federal Act on Gender Equality (GEA) provides for specific protection against both direct and indirect discrimination on the basis of gender in all areas of working life, not least by providing for a special burden of proof and additional damages/relief.

Burden of proof

The GEA provides for a lowered burden of proof for the employee. In connection with the allocation of duties, the setting of work conditions, pay, basic and continuing education and training, promotion and dismissal (but not in connection with a discriminatory refusal of employment and sexual harassment), discrimination is presumed if the employee can at least substantiate this with prima facie evidence.

Applicable damages/relief

Under the GEA, an employee may challenge a dismissal if it takes place without reasonable cause following an employee's internal complaint of discrimination based on gender or an employee's initiation of respective proceedings before a conciliation board or a court (so-called revenge dismissal). However, according to an express GEA provision, the employee may also opt against continuing the employment and claim a compensation payment for abusive termination (see **8.1 Wrongful Dismissal**).

The GEA also provides for a whole range of remedies against gender discrimination beyond the field of terminations of employment. In particular, an employee may claim the (retrospective and future) elimination of a discriminatory pay gap. In the case of discrimination by way of sexual harassment, the employee may, inter alia, claim a compensation payment of up to six monthly average salaries in Switzerland, unless the employer proves that they took measures that have been proven in practice to be necessary and adequate to prevent against sexual harassment and which they could reasonably have been expected to take.

In the case of a discriminatory refusal of employment, the employee may claim a compensation payment of up to three monthly salaries.

8.3 Digitalisation

While international arbitration proceedings have been highly digitalised for quite some time, the same cannot be said about ordinary civil proceedings in Switzerland. However, since 1 January 2025, there has finally been a legal basis in Switzerland for conducting hearings and examining witnesses through videoconferencing (or teleconferencing) in ordinary civil proceedings. However, this always requires the consent of all parties involved.

9. Dispute Resolution

9.1 Litigation

Specialised Employment Forums

As a matter of principle, employment disputes between private parties are adjudicated by the ordinary judicial instances. Many cantons have established specialised employment court panels for this purpose.

Special provisions apply for employment disputes where the amount in dispute is less than CHF30,000, or for disputes that are based on the GEA (see **8.2 Anti-Discrimination**). In these cases, the court generally establishes the facts ex officio, and the respective proceedings are characterised by their simplicity and effectiveness in terms of time and costs (there are no court fees, for example, but, subject to further cantonal exemptions, there are costs for professional representation).

(No) Class Action Claims

Swiss law does not provide for class action claims. However, the court may decide to order the joinder of separately filed claims.

Representations in Court

Generally, only lawyers are allowed to act as professional representatives in court proceedings. Cantonal law may provide for exceptions from this principle, however, particularly in connection with employment law disputes.

9.2 Alternative Dispute Resolution

Domestic Arbitration

While the topic of the domestic arbitrability of employment disputes is intensely debated in Swiss doctrine,

the SFSC has confirmed that an employee's claims against their employer are not arbitrable if they arise from mandatory provisions of the law or a CBA. However, the situation looks different for arbitration agreements concluded one month after the termination of the employment: from this point in time, the parties may conclude an arbitration agreement with regard to any and all claims arising from the employment.

International Arbitration

In international arbitration, employment disputes will principally be arbitrable without any specific restrictions.

9.3 Costs

In most cases, the general rule applies that procedural costs (court fees and costs for professional representation, if any) are allocated in proportion to the outcome of the case (ratio of prevailing and losing; see **9.1 Litigation** for the potential absence of court fees and costs for professional representation in some cases).

Moreover, it is important to note that the potentially reimbursed costs for professional representation do not correspond to the actual costs incurred but are determined based on cantonal tariffs, mainly depending on the amount in dispute and hardly ever matching the effective costs. Subject to a respective (standard) agreement to this effect, any difference must be borne by the client.

Trends and Developments

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Walder Wyss Ltd is one of Switzerland's leading law firms, with more than 300 fee earners at its offices in Basel, Bern, Geneva, Lausanne, Lugano and Zurich. It is the only major Swiss law firm with a dedicated employment law team, comprising 43 professionals, including eight partners, managing associates, counsel, associates and an immigration specialist. The team advises exclusively on employment law matters, offering in-depth expertise in employment contracts, restructurings, executive compensation and cross-border workforce issues. To reflect the growing demand for integrated mobility advice, Walder Wyss has established a specialised immigration desk within its employment team. The group regularly assists multinational clients and Swiss corporates in litigation, transactions, collective dismissals, internal investigations and employment compliance projects. Its multilingual, office-spanning structure ensures seamless client service across Switzerland's German-, French- and Italian-speaking regions, distinguishing Walder Wyss from other large Swiss law firms in this field.

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Swiss Electorate Votes Against Cap on the Permanent Resident Population

As Switzerland's permanent resident population has seen rapid and constant growth in the past, and current projections do not indicate that this will change in the near future, in May 2024 a popular initiative was launched with the aim of limiting the Swiss permanent resident population to under ten million. Given that most of Switzerland's population growth over the last 20 years is attributed to immigration, the initiative proposed that once Switzerland's population exceeds 9.5 million, the Swiss government had to take measures aimed at stopping further population growth, primarily in the areas of asylum and family reunification. The initiative further proposed that if Switzerland's population were to exceed ten million, the Swiss government would have to terminate all international agreements contributing to population growth. While the overall aim of limiting Switzerland's permanent resident population was highly popular among the electorate, many voters feared that agreeing to the initiative would effectively lead to the termination of the Treaty of Free Movement with the EU (TFM) as well as call into question Switzerland's participation in the EU's Schengen and Dublin agreements, and thereby not only threaten Switzerland's access to European markets but also jeopardise its close co-operation with the EU in the areas of security and asylum. In a close vote held on 14 June 2026, the popular initiative ultimately failed, with approximately 55% of the Swiss electorate voting against it.

(New) Minimum Wages

As of 1 January 2026, a minimum wage of at least CHF22.75 gross per hour must be paid to (almost) all workers who have their habitual place of work in the municipality of Lucerne. Exceptions are generally limited to workers qualifying as interns, apprentices, au pairs, and persons working as part of a government-assisted reintegration programme.

Lucerne thereby joins the cities of Zurich and Winterthur, the electorate of which had already voted in favour of respective minimum wages by popular initiative(s) in 2023. The minimum hourly wage in Zurich was set at CHF23.90 gross and Winterthur's equivalent was set at CHF23.00 gross. However, the enactment of both minimum wages was temporarily stayed by the Zurich administrative court due to controversy over the municipalities' constitutional competence to enact such legislation. On 12 May 2026, the Swiss Federal Supreme Court (SFSC) ended the controversy and found in favour of the municipalities' respective constitutional competence. In its ruling, the SFSC held that the introduction of minimum wages on a municipal level was covered by the autonomy granted to municipalities by the constitutional laws of the canton of Zurich and that the introduction of such minimum wages was furthermore compatible with (other) cantonal law. It is therefore expected that both Zurich and Winterthur will enact their respective minimum wages in the coming months, although (as of August 2026) the exact date is unclear.

On a national level, Switzerland has so far not introduced a minimum wage, but several cantons (ie, Neuchâtel, Jura, Ticino, Basel-City and Geneva) passed minimum wage legislation quite some time ago. These minimum wages currently range from CHF20.00 gross (Ticino) to CHF24.59 gross (Geneva) per hour.

Potential Criminal Consequences for Non-Compliance With Mandatory Working Conditions

Under current Swiss law, an employer (ie, its responsible directors and officers) may generally only face criminal prosecution for non-compliance with a select range of mandatory working conditions, such as infractions involving:

- health and safety regulations;
- planning regulations for industrial business operations;
- working hours and rest periods; or
- special protection for young or female workers.

Both negligent and intentional non-compliance may give rise to criminal prosecution except for employer violations concerning working hours and rest periods, where only intentional non-compliance gives rise to criminal liability. Against this background, employees who believe that other mandatory working conditions have been violated are generally limited to filing a monetary claim for damages in civil court against their employer.

A recent parliamentary initiative aims to change this by reforming the Swiss Federal Act on Unfair Competition (UCA). More specifically, if the initiative were to pass, the UCA would be amended by a new provision to allow for criminal prosecution in cases of general non-compliance with mandatory working conditions. This could, for example, encompass failure to comply with provisions on recording working time or failure to pay wages or wage supplements. Given that the consultation procedure saw rather strong opposition from many prominent political parties and industry/employer associations, it currently remains unclear whether the proposed changes will ever be enacted.

Strengthening Protections of Employee Representatives

On 21 March 2025, the Swiss Federal Council adopted 14 measures for better wage level protection as part of a series of measures taken in light of Switzerland and the EU renewing and amending their bilateral relationship. These measures, which are to be implemented domestically, complement the three-tier safeguard concept negotiated with the EU in the updated TFM and are meant to counteract the effects of the updated TFM and the resulting negative pressure on Swiss wage levels by strengthening employee rights and protections.

While the Swiss federal government, the Swiss cantons as well as domestic employer and employee organisations had already agreed on 13 of the 14 proposed measures, the remaining measure (measure 14) has now also been adopted in an attempt to safeguard the balance of the wage level protection package and comply with Switzerland's obligations towards the International Labour Organisation.

Measure 14 would apply to elected employee representatives, members of a joint body of a pension scheme, and members of national sectoral executive committees operating under a generally applicable collective bargaining agreement, and working in companies with at least 50 employees, which corresponds to around 2% of all companies in Switzerland. In terms of content, measure 14 would essentially create an obligation for the employer and the employee to hold discussions in the event of an intention to terminate employment, with the aim of these discussions being to find a solution to avoid termination (eg, by finding an alternative employment opportunity). The sanctions for non-compliance with the pertinent "procedural" requirements would vary: while non-compliant employers would generally face sanctions of between four and ten monthly salaries, they would have the opportunity to make up for their non-compliance without such a sanction in the case of minor "procedural" errors.

The proposed measures are now being discussed in the Swiss parliament, and it is expected that the Swiss electorate will vote on their enactment as part of a broader package of legislation aimed at renewing and amending the bilateral relationship between Switzerland and the EU. Measure 14 faces particular opposition from employer organisations and industry associations given that its implementation would result in a significant increase in legal protection for employee representatives, who, under the current legal framework, are limited to seeking compensation for wrongful ("abusive") dismissal up to a maximum of six monthly salaries in such situations (see **8.1 Wrongful Dismissal** in the Swiss Law and Practice chapter in this guide).

Extended Furlough Compensation Period

Furlough compensation is a financial support measure provided under the Swiss unemployment insurance scheme. It temporarily covers a portion of an employer's salary costs when employees are affected by a reduced demand for their work, provided they meet the relevant eligibility criteria. The aim of furlough compensation is to prevent redundancies due to unavoidable short-term stoppages in work.

In light of the still challenging economic environment, the Swiss Federal Council recently decided to temporarily maintain the increased maximum entitlement period for furlough compensation, which was previously raised from 12 to 24 months. This decision is based on a recent economic forecast, according to which the Swiss economy is expected to continue to perform below average, with a slightly higher unemployment rate of around 3% anticipated for 2026. This arrangement will remain in force until (at least) 31 January 2027.

Measures Against the Ongoing Skills Shortage

On 27 May 2026, the Swiss Federal Council proposed measures to facilitate labour market access for third-country nationals (ie, nationals from countries other than Switzerland, the EU or the EFTA) educated in Switzerland, and to promote employment among individuals granted protection status S as a result of the war in Ukraine.

The proposed measures would make it easier for third-country nationals to access the Swiss labour market if they have completed higher vocational education or a postdoctoral programme in Switzerland as part of an employment contract and if their work is of high scientific or economic interest. If the pertinent conditions are met, such third-country nationals would be granted a six-month residence permit to seek employment upon completing their training. Currently limited to holders of Swiss university degrees, this regime would thereby be extended to cover the entire higher vocational education sector.

Moreover, employed individuals with protection status S would be allowed to change cantons under certain conditions, and respective unemployed individuals would be required to register with the regional unemployment office with the aim of providing them with better access to services by such institutions.

However, both measures are still subject to parliamentary approval.

Failure to Agree on Targets Does Not Prevent Enforceability of Bonus Claim

In a recent decision, the SFSC once more confirmed its jurisprudence on the distinction between variable salary components and discretionary gratifications. In the case before the SFSC, the parties to the employment relationship had agreed in principle on variable remuneration but had never agreed on the underlying target parameters and evaluation criteria. The SFSC sided with the lower courts and ruled that the employer must pay the variable compensation claimed by the employee. The SFSC determined that the aforementioned compensation met the criteria for being categorised as a variable salary component, as opposed to being considered as a discretionary gratification. This determination was made on the basis that the agreement in question did not incorporate any reservation on the part of the employer to refrain from paying any compensation. Rather, the agreement between the parties included both financial and personal targets based on which, the compensation was to be calculated.

The SFSC ultimately ruled that since the compensation qualified as a salary component rather than a gratification, it must be paid even if the parties had failed to agree on targets. The SFSC held that the fact that there were no finalised targets did not provide an excuse for the employer, but merely posed the question of how the amount due to the employee should be determined. The SFSC found no issue in the lower court's approach, which asked what the parties acting in good faith would have agreed, had they given the matter due consideration, and in the lower court's assumption that under these circumstances, the parties would have continued to apply their previous (transitional) variable compensation solution until the parameters had actually been defined and were applicable.

Recent Restrictive Covenant Jurisprudence

In order to validly conclude a post-contractual non-compete clause under Swiss law, the parties involved must particularly agree on the time, place and scope of the non-compete undertaking in writing (see **2.1 Non-Competes** in the Swiss Law and Practice chapter in this guide). In the past, parties omitting or forgetting to include (at least) one of these three limiting factors in writing generally risked their non-compete undertaking being deemed invalid by the Swiss courts, which mostly applied a strict approach during enforcement procedures. However, in recent years, the Swiss courts seem to have changed their approach slightly and now appear to be more inclined to find in favour of upholding a post-contractual non-compete clause only to then amend its limiting factors as a result of the court's discretion to do so where it deems these to be excessive. While the SFSC already ruled some time ago that a post-contractual non-compete clause whose only limiting factor in terms of scope was the wording "any competing activity" was valid, it has recently gone even further by ruling that a post-contractual non-compete clause lacking any geographical limitation was valid. In its respective decision,

the SFSC sided with the lower court's reasoning that even though the restrictive covenant's wording did not expressly name a territory or another geographical limitation, the contract had to be interpreted in context. The employer was the Swiss country entity of an international group, and the employee worked as a country manager for that Swiss country entity. Based thereon, one could supposedly deduct that the parties had intended to limit the post-contractual non-compete obligation geographically to the territory of Switzerland.

Moreover, in this recent decision the SFSC re-confirmed its long-standing case law that a paid non-compete undertaking is a bilateral contract in which the employee undertakes to refrain from competing, and the employer undertakes to pay the agreed compensation. As a result, the employer cannot unilaterally withdraw from the obligation to pay, or stop paying the compensation, unless the contract expressly reserves such an employer's right.

Lastly, the SFSC clarified that compensation for compliance with a post-contractual non-compete clause paid to an employee generally neither constitutes damages nor wage replacement. The SFSC therefore held that unless the parties expressly provide for offset, the compensation is owed to the employee regardless of whether the employee had other sources of income (including unemployment benefits) during the period of time the employee was restricted by the non-compete undertaking.

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