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In-Depth: Employment Law (formerly The Employment Law Review) is an insightful global survey of the employment law frameworks and related developments in key jurisdictions around the world. It analyses the most consequential current issues faced by employers, including recent case law, legislative and regulatory changes and best practices.

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Switzerland

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Introduction

Swiss employment law is generally regarded as relatively liberal and, particularly when compared with many neighbouring European jurisdictions, employer-friendly. It derives from a range of constitutional, statutory, contractual and judicial sources, including:

- the Federal Constitution;
- cantonal constitutions;
- public law, in particular the Federal Act on Work in Industry, Crafts and Commerce (the Labour Act) and the five ordinances issued under it, which regulate working conditions and occupational health and safety;
- civil law, in particular the Swiss Code of Obligations (CO);
- collective bargaining agreements, if applicable;
- individual employment agreements; and
- customary practice, legal doctrine and case law.

In addition to these, the following sources also play a significant role in Swiss employment law:

- the Federal Act on the Equal Treatment of Women and Men;
- the Federal Act on Personnel Recruitment and Hiring-out of Employees;
- the Federal Act on Information and Consultation of Workers (the Participation Act);
- the Federal Act on Data Protection (FADP);
- the Federal Merger Act;
- the Federal Act on Merger, Demerger, Transformation and Transfer of Assets (the Merger Act);
- the Federal Act on Private International Law;
- the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 2007 (the Lugano Convention);
- the Agreement on Free Movement of Persons between Switzerland and the European Union and European Free Trade Association; and
- the Federal Act on Foreign Nationals and Integration.

As a general rule, employment disputes must first be submitted to mandatory conciliation proceedings before formal court proceedings may be commenced. If no settlement is reached, the conciliation authority issues an authorisation to proceed, allowing the claimant to bring the claim before the competent court, generally within three months.

Employment disputes with a value not exceeding 30,000 Swiss francs are generally subject to simplified proceedings. The same applies to disputes under the Federal Act on Gender Equality, irrespective of the amount in dispute. In these proceedings, the parties are generally exempt from court fees, although legal representation costs may still be awarded, and the court has an enhanced duty to establish the relevant facts. Rather than

being confined entirely to the facts pleaded by the parties, the court must assist them in identifying and presenting the legally relevant facts and evidence.

Public authorities generally have only limited involvement in the terms of individual employment relationships. They nevertheless play an important role in enforcing public law requirements, including those concerning work and residence permits, collective redundancies and authorisations for night and Sunday work.

Year in review

Swiss employment law remained comparatively stable throughout 2026, with no far-reaching legislative reform reshaping the employment landscape. Instead, the year has been characterised by developments in practice, driven by changing workplace models, technological innovation and an increasingly challenging economic environment. Four themes have been particularly prominent.

Cross-border remote working has become part of everyday business rather than an exception. Following the implementation of permanent social security arrangements under the multilateral framework agreement and the gradual introduction of corresponding tax rules with neighbouring countries, many employers have adopted more flexible remote working models for cross-border employees. At the same time, businesses have become increasingly aware that international remote work requires careful coordination of employment, immigration, tax and social security rules. As a result, many employers have introduced more sophisticated governance frameworks, approval processes and internal policies for international remote work and business travel.

The use of artificial intelligence and digital HR tools has continued to accelerate. AI-assisted recruitment, automated HR processes and AI-supported workplace tools are becoming increasingly common across industries. While Swiss employment law does not yet contain AI-specific legislation, employers are paying greater attention to transparency, data protection, internal governance and appropriate human oversight when deploying these technologies. Questions surrounding the lawful processing of employee data under the revised Federal Act on Data Protection continue to play an important role in practice.

Employment litigation continues to benefit from the ongoing digitalisation of civil proceedings. The revised Swiss Civil Procedure Code, which entered into force in 2025, further shaped litigation practice throughout 2026. Among other changes, the introduction of an explicit legal basis for conducting hearings by videoconference has provided courts and litigants with additional procedural flexibility, subject in particular to the agreement of the parties and the applicable procedural safeguards. This may prove particularly useful in disputes involving international parties.

Economic uncertainty also resulted in a noticeable increase in restructuring projects and workforce optimisation measures. Employers across a range of industries continued to review organisational structures, reduce costs and adapt their workforce to changing business needs. In practice, this has led to a growing number of reorganisations, collective redundancy procedures, transfers of undertakings and negotiations of separation agreements. As employers increasingly operate across multiple jurisdictions, these

projects frequently require the coordination of Swiss employment law with foreign legal systems and multinational HR strategies.

Overall, Swiss employment law continues to offer employers a comparatively flexible legal framework. Rather than being shaped by frequent legislative intervention, developments during 2026 were largely driven by evolving business practices, technological innovation and an increasingly international workforce.

Significant cases

Rather than fundamentally changing Swiss employment law, recent decisions of the Swiss Federal Supreme Court primarily refined established principles and provided welcome guidance on issues that frequently arise in practice. In particular, the Court clarified important aspects of post-contractual restrictive covenants, employer duties in connection with employee protection and procedural questions affecting employment litigation.

One of the most significant employment law decisions of the past year concerned post-contractual non-compete clauses providing for financial compensation;[1] Swiss law does not require employers to compensate employees for complying with a post-contractual non-compete obligation. Where the parties nevertheless agree on this compensation, the Federal Supreme Court confirmed that the obligation to refrain from competition and the agreed compensation constitute reciprocal contractual obligations. Consequently, unless the employment agreement expressly provides otherwise, an employer may not unilaterally waive the non-compete clause in order to avoid paying the agreed compensation. The Court further clarified that the agreed compensation is not in the nature of damages but constitutes the agreed contractual consideration for the employee's restraint. As a result, the employer cannot, in principle, offset income earned by the employee during the restricted period or unemployment benefits received by the employee against the agreed compensation. The decision serves as an important reminder that employers wishing to retain flexibility should expressly reserve a contractual right to waive the non-compete clause, while also regulating the financial consequences of the waiver.

Following the entry into force of the revised Federal Act on Data Protection, the interaction between employment law and data protection continues to receive increased attention: Swiss courts confirmed that employees enjoy extensive rights to obtain information concerning their personal data. However, these rights are not intended to provide unrestricted access to an employer's entire personnel file or to create a general discovery mechanism for employment litigation. Requests that are manifestly abusive or clearly pursue purposes unrelated to data protection may therefore be refused or restricted.[2]

Basics of entering into an employment relationship

Employment relationship

Under Swiss law, individual employment contracts are governed by article 319 et seq. of the CO, which contain mandatory, semi-mandatory and default provisions.

There is generally no requirement for an employment contract to be concluded in writing. With only a few statutory exceptions, such as apprenticeship agreements, employment contracts may be concluded in writing, orally or even by implication. Written agreements are nevertheless strongly recommended in practice, not least because several contractual provisions are only valid if agreed in writing, including provisions concerning probationary periods, notice periods, post-contractual non-compete obligations and certain arrangements regarding overtime compensation.

Swiss law recognises both indefinite and fixed-term employment contracts. Fixed-term employment contracts automatically terminate upon expiry of the agreed term without notice, unless the parties have agreed otherwise. Successive fixed-term contracts concluded without objective justification may, however, be recharacterised as a single employment relationship of indefinite duration.

An employment contract may be concluded before the employee actually commences work. Once the parties have reached agreement on the essential terms of the employment relationship, a binding contract may exist irrespective of whether employment has already commenced. Unlike in some other jurisdictions, stand-alone offer letters are not commonly used in Switzerland. International employers should therefore exercise caution when using offer letters based on foreign templates, as these may already constitute a binding employment contract if they contain the essential terms of the employment relationship and indicate the parties' intention to be legally bound.

For employment relationships of indefinite duration and fixed-term employment contracts exceeding one month, article 330b CO requires the employer to provide the employee in writing, within one month of commencement of employment, with at least the following information:

- the names of the contracting parties;
- the commencement date;
- the employee's function;
- remuneration, including salary, bonuses, allowances and other remuneration; and
- weekly working hours.

Although not legally required, employment contracts typically also address matters such as the duration of the employment relationship, where applicable, the probationary period, notice periods, annual leave, continued salary payments during periods of incapacity for work, confidentiality, intellectual property and any post-contractual restrictive covenants.

Employment terms may subsequently be amended by mutual agreement, typically by way of an amendment agreement. Where the employee does not agree to proposed changes, the employer may, subject to the applicable legal requirements, terminate the existing employment relationship while offering continued employment on amended terms, commonly referred to as a notice of change.

Probationary periods

Under Swiss law, the first month of an employment relationship of indefinite duration is deemed to be a probationary period, unless the parties agree otherwise. The probationary period may be waived, shortened or extended by written agreement, but may not exceed three months.

Fixed-term employment relationships do not automatically include a probationary period. The parties may, however, agree one in writing.

During the probationary period, either party may terminate the employment relationship on seven days' notice, unless a different notice period has been agreed in writing or is provided for in an applicable collective bargaining agreement.

If the employee is unable to work during the probationary period because of illness, accident or the performance of a statutory obligation not voluntarily assumed, the probationary period is extended by the duration of the employee's effective absence.

Establishing a presence

A foreign company may employ an individual working in Switzerland without first incorporating a Swiss subsidiary or registering a branch. The foreign company may enter into an employment agreement directly with the Switzerland-based employee, although this may trigger immigration, tax, social security, payroll and regulatory obligations.

Alternatively, the employee may be engaged through a licensed Swiss staff leasing agency or another compliant third party employment structure. Staff leasing is highly regulated in Switzerland and may only be carried out by appropriately licensed providers.

A foreign company may also engage an independent contractor in Switzerland. However, the contractual designation is not decisive. The authorities assess the actual relationship, including the degree of organisational integration, subordination, economic dependence, entrepreneurial risk and freedom to determine how and when the services are performed. If the individual is found to be an employee rather than genuinely self-employed, the foreign company may face retroactive social security contributions, insurance obligations, payroll liabilities and employment law claims.

Depending on the activities performed and the organisational structure, a Switzerland-based employee or contractor may create a permanent establishment for tax purposes. The assessment is fact-specific and may depend, among other things, on whether the individual has a fixed place of business at the company's disposal, habitually concludes contracts or otherwise plays a principal role in the company's Swiss business activities. If a permanent establishment is created, the foreign company may become subject to Swiss corporate taxation and related registration and compliance obligations.

As a general rule, employees working in Switzerland are subject to the Swiss social security system, subject to any applicable international social security agreement. The foreign employer must therefore typically register with the competent social security authorities, arrange mandatory accident insurance and, where the statutory thresholds are met, affiliate the employee with an occupational pension scheme.

The employer is generally responsible for deducting and remitting employee social security contributions and, for employees who do not hold a Swiss permanent residence permit, withholding tax at source. Other statutory benefits and obligations, including continued

salary payments during incapacity for work and mandatory leave entitlements, apply in accordance with Swiss law.

Restrictive covenants

Swiss law distinguishes between restrictions applicable during employment, which primarily arise from the employee's statutory duty of loyalty, and post-contractual restrictive covenants, which are enforceable only if the statutory requirements are met.

During the employment relationship, employees are generally prohibited from competing with their employer as part of their statutory duty of loyalty. They must refrain from any activities that compete with their employer's business or otherwise harm the employer's legitimate interests.

Following termination of the employment relationship, parties may agree on a post-contractual non-compete undertaking. To be enforceable, the non-compete clause must be agreed in writing and must be appropriately limited with regard to its duration, geographical scope and subject matter. Although Swiss law permits non-compete clauses for up to three years, courts will generally only uphold restrictions that are reasonably necessary to protect the employer's legitimate business interests. In practice, restrictions exceeding 12 months are frequently considered excessive unless justified by exceptional circumstances.

A further prerequisite is that the employee obtained knowledge of the employer's customer base or manufacturing or business secrets during the employment relationship and that the use of this knowledge is capable of causing significant harm to the employer. Mere access to confidential information is not sufficient.

Post-contractual non-compete clauses are generally not enforceable where customer relationships depend predominantly on the employee's personal qualities rather than on the employer's business organisation. This is often the case in professions such as lawyers or physicians, where clients primarily follow the individual rather than the business.

Unlike in some jurisdictions, Swiss law does not require employers to provide financial compensation in return for a post-contractual non-compete undertaking. Nevertheless, contractual compensation may increase the likelihood that a court considers the agreed restriction proportionate and therefore enforceable.

A post-contractual non-compete undertaking becomes unenforceable if the employer no longer has a legitimate interest in maintaining the restriction or if the employer terminates the employment relationship without the employee having given justified cause for the termination.

If a court considers the agreed restriction to be excessive, it will generally reduce the clause to what it considers reasonable rather than declare it entirely invalid. To facilitate enforcement in practice, employers commonly provide for a contractual penalty, allowing them to enforce the clause without first having to prove their actual financial loss.

Swiss law also permits customer non-solicitation clauses, provided they satisfy substantially the same requirements as post-contractual non-compete clauses.

Employee non-solicitation clauses are considerably more controversial. According to the prevailing case law of the Swiss Federal Supreme Court, post-contractual prohibitions on soliciting employees are generally not enforceable because the statutory rules governing post-contractual restrictive covenants only protect competition on the supply side of the market. Exceptions may exist where the solicitation of employees simultaneously affects the employer's customer market, such as in the staff leasing sector.

Wages

General

Swiss employment law is largely based on the principle of freedom of contract. Accordingly, the parties are generally free to determine the employee's remuneration, subject to mandatory statutory provisions, applicable collective bargaining agreements and any mandatory minimum wage legislation.

Unlike many other jurisdictions, Switzerland does not have a nationwide statutory minimum wage. However, several cantons have introduced cantonal minimum wages, and minimum salary requirements are frequently contained in generally applicable collective bargaining agreements. Employers should therefore verify whether mandatory minimum wage provisions apply at the employee's place of work.

Special remuneration rules apply to Swiss listed companies. In particular, certain forms of remuneration for members of the board of directors and executive management are prohibited or require prior shareholder approval under Swiss corporate law.

Distinction between variable pay and discretionary bonuses

The legal treatment of bonuses is one of the distinctive features of Swiss employment law. Unlike many other jurisdictions, Swiss law differentiates between a variable salary component and a discretionary gratification (bonus), with important consequences for employees' contractual entitlements, particularly upon termination of employment. As a result, bonus disputes remain among the most frequently litigated remuneration issues before the Swiss courts.

Swiss law does not define the term "bonus". Instead, according to established case law of the Swiss Federal Supreme Court, a bonus may qualify as (1) a variable salary component, (2) a discretionary gratification or (3) a combination of both, depending not only on the contractual wording but also on the employer's actual remuneration practice.

A bonus constitutes a variable salary component where both the entitlement and the amount are determined by objective criteria or are otherwise not subject to the employer's discretion. By contrast, a bonus qualifies as a discretionary gratification where the employer retains genuine discretion as to whether, or at least in what amount, the payment is made. Many bonus arrangements combine objective performance criteria with an element of employer discretion and therefore fall somewhere between these two categories.

The legal qualification has significant practical consequences. Variable salary components form part of the employee's remuneration and are therefore subject to the mandatory provisions of Swiss employment law. In particular, they generally give rise to a pro rata entitlement upon termination of employment. By contrast, a genuine discretionary gratification may validly be made subject to additional conditions, such as the employee remaining employed on the payment date, provided the statutory requirements developed by the Swiss Federal Supreme Court are satisfied.

Whether a bonus qualifies as salary or as a discretionary gratification is ultimately assessed on a case-by-case basis. Swiss courts consider not only the contractual wording but also the parties' conduct in practice, including the consistency of previous bonus payments and the extent to which the employer has in fact exercised its contractual discretion. Employers should therefore ensure that their contractual documentation and remuneration practice remain aligned, as inconsistent implementation may result in a bonus being reclassified as a contractual salary entitlement.

Working time

Regulations regarding working time can be found in the Labour Act, which is applicable to most employees. However, it does not apply to professional personnel or senior managers who make decisions on the course, structure and development of the business.

The Labour Act stipulates a strict obligation to record employees' working time, including the start, end and break times during a working day. In practice, however, there have been deviations in many businesses from this statutory obligation in recent years. It is possible to legally waive or simplify the requirement for time recording. A waiver is only permitted if the concerned employees earn more than 120,000 Swiss francs per year and they have a high degree of independence in their work, especially regarding their working time. In addition, an exemption to the time-keeping obligation requires a collective agreement.

To ensure the health of employees, a maximum number of working hours per week must be respected. In this regard, the Labour Act distinguishes between two categories of employees: category 1 includes employees of industrial enterprises, white-collar employees such as office workers, technical staff and employees in large retail companies; and category 2 includes all other workers, particularly employees in the construction sector, workers in commerce and sales staff in small retail undertakings. The maximum working time of the two categories of employees differs. While the maximum working time for category 1 employees is 45 hours per week, the maximum for category 2 employees is 50 hours. An exception is made if employees of both categories work together in the same company. In this case, the maximum working time is 50 hours per week for all employees. The Labour Act does not regulate the effective hours an employee must work per week. This is regulated in collective bargaining agreements and individual employment contracts.

In Switzerland, night work (ie, work between 11pm and 6am) is generally forbidden. Only certain businesses and specific groups of employees (as outlined by Ordinance No. 2 to the Labour Act) are permitted to work at night. Otherwise, a special permit is required. A permit for night work may be granted if either a particular or urgent need is presented. It is strictly forbidden to exceed nine hours of work at night (10 hours including breaks). A different rule applies if the employee only performs night work on three out of seven

consecutive nights. In this case, they are allowed to work for 10 hours (12 hours including breaks), subject to further requirements outlined in Ordinance No. 1 to the Labour Act. It is possible to agree on special compensation for night work, which can be of a temporal or monetary nature.

Overtime and excess hours

Swiss law distinguishes between overtime and excess hours, which are governed by different statutory regimes.

Overtime consists of hours worked in excess of the contractual working time but within the statutory maximum working hours under the Labour Act. Unless otherwise agreed, overtime must generally be compensated by payment at the employee's ordinary salary plus a statutory supplement of 25%. However, this statutory regime may largely be modified or excluded by written agreement or by an applicable collective bargaining agreement.

Excess hours, by contrast, are hours worked beyond the statutory maximum weekly working hours of 45 or 50 hours under the Labour Act. Unlike overtime compensation, the statutory rules governing excess hours are largely mandatory and cannot generally be waived by agreement.

For office employees, technical staff and employees of large retail businesses, the statutory wage supplement is only payable once more than 60 excess hours have accrued during a calendar year. Furthermore, these employees may generally not perform more than two excess hours per day. The annual maximum is 170 excess hours for employees subject to the 45-hour limit and 140 excess hours for employees subject to the 50-hour limit.

Foreign workers

Swiss immigration law distinguishes primarily between Swiss nationals, nationals of EU/EFTA member states and third country nationals, with substantially different admission requirements applying to each category.

Swiss employers are generally required to verify that foreign employees are authorised to work in Switzerland before employment commences. While there is no general register of foreign employees that employers must maintain, employers are responsible for ensuring that the necessary work and residence authorisations are in place throughout the employment relationship.

For Swiss nationals and most EU/EFTA nationals, access to the Swiss labour market is comparatively straightforward and generally follows the rules of the Agreement on the Free Movement of Persons. Depending on the duration and nature of the employment, notification procedures or residence permits may nevertheless be required.

By contrast, the employment of third country nationals is subject to significantly stricter requirements. Work permits are generally granted only where:

- admission serves the overall economic interests of Switzerland;

- no suitable candidate could be recruited from Switzerland or the EU/EFTA labour market (subject to limited exceptions);
- the employee is appropriately qualified; and
- the applicable salary and employment conditions correspond to Swiss market standards.

Work permits for third country nationals remain subject to annual federal quotas.

Foreign employees working in Switzerland are generally subject to Swiss employment law to the extent Swiss law governs the employment relationship or mandatory Swiss employment provisions apply, irrespective of their nationality.

As a general rule, employees working in Switzerland are also subject to the Swiss social security system, unless an applicable international social security agreement provides otherwise. Employers are generally responsible for registering employees with the competent authorities, deducting employee social security contributions and, where applicable, withholding tax at source.

There is no statutory limit on the number of foreign workers that a company may employ. In practice, however, the admission of third country nationals is constrained by the statutory work permit requirements and the annual quota system.

The increasing prevalence of cross-border remote working, workstation arrangements and internationally mobile workforces has added further complexity. Even short periods of work performed from or in Switzerland may trigger immigration, employment, tax or social security consequences. Employers should therefore assess cross-border working arrangements on a case-by-case basis rather than assuming that occasional remote work can be implemented without regulatory implications.

Global policies

Swiss law does not generally require employers to adopt internal disciplinary rules or employee handbooks. Subject to a limited number of statutory exceptions, employers are free to determine whether, and to what extent, they implement internal policies governing the employment relationship.

Nevertheless, internal policies are widely used in practice, particularly by medium-sized and larger employers. Typical policies address matters such as codes of conduct, anti-discrimination and anti-harassment, whistleblowing procedures, conflicts of interest, IT and data security, remote working, business travel, expense reimbursement, use of artificial intelligence, compliance, social media, health and safety and disciplinary procedures.

Although Swiss law does not generally prescribe specific employment policies, employers have a statutory duty to protect employees' personality rights, health and personal integrity. Depending on the employer's size and business activities, this may require appropriate organisational measures and internal policies, particularly in relation to workplace harassment, discrimination, health and safety, working time and data protection.

Internal policies do not require approval by any government authority and generally do not require the consent of employee representatives or trade unions. Likewise, employees do not usually need to sign internal policies. It is generally sufficient for employers to communicate the applicable policies appropriately and ensure that employees have ready access to them, for example through an intranet or another electronic platform.

Employers should, however, carefully distinguish between policies that regulate the organisation of the workplace and those that affect employees' contractual rights and obligations. While employers may generally issue or amend internal policies within the scope of their managerial authority, changes that alter contractual terms and conditions typically require the employee's consent or, where appropriate, implementation by way of a notice of change.

International employers should also exercise caution when applying US- or UK-style global policies to Swiss employees without appropriate localisation. Such policies frequently contain procedural requirements, approval processes and disciplinary steps that go well beyond what is required under Swiss employment law. Although intended to promote consistency across jurisdictions, they may inadvertently create binding procedural obligations that limit the employer's flexibility. In particular, overly prescriptive disciplinary or performance management procedures may significantly complicate dismissal processes that would otherwise be comparatively straightforward under Swiss law.

There is no statutory requirement that internal policies be drafted in one of Switzerland's official languages or in the employee's native language. However, employers should ensure that employees are able to understand the policies applicable to them. In practice, English-language policies are common, particularly within multinational organisations, provided the relevant employees have sufficient command of English.

Internal policies do not need to be incorporated into the employment contract. In practice, employers often refer to them in the employment agreement and reserve the right to amend them unilaterally from time to time. Such reservation clauses do not, however, permit employers to amend contractual rights and obligations unilaterally beyond the limits of their managerial authority.

As a practical matter, employers are generally well advised to maintain a limited number of locally tailored Swiss policies rather than applying global policies unchanged. Localisation is particularly recommended for policies governing disciplinary procedures, grievance and investigation processes, whistleblowing, remote working, working time, data protection and the use of artificial intelligence.

Parental leave

Switzerland does not currently provide for a general parental leave entitlement that may be freely divided between parents. Instead, federal law provides for separate entitlements to maternity leave, leave for the other parent, adoption leave and, in certain circumstances, care leave. These statutory entitlements are comparatively limited by European standards, although many employers provide more generous benefits voluntarily.

Maternity leave

Employees who give birth are entitled to 14 weeks of maternity leave commencing on the date of birth. During the first eight weeks following childbirth, employees are prohibited from working. Thereafter, and until the end of the 16th week, they may only be employed with their consent. The statutory maternity allowance is, however, generally limited to the first 14 weeks.

During maternity leave, eligible employees receive compensation equal to 80% of their average income immediately before the birth, subject to a statutory maximum of 220 Swiss francs per day. The allowance is financed through the federal loss-of-earnings compensation scheme rather than directly by the employer.

Eligibility generally requires the employee to have been compulsorily insured under the Swiss old age and survivors' insurance scheme for the nine months preceding the birth, to have pursued a gainful activity for at least five months during that period and to have been gainfully employed or otherwise eligible at the time of birth. The applicable insurance period may be reduced where the child is born prematurely.

If the newborn remains in hospital for more than 14 days immediately following the birth, maternity leave and the corresponding allowance may, subject to the statutory conditions, be extended by the duration of the hospital stay, up to a maximum of 56 additional days.

The statutory allowance does not necessarily correspond to the employee's contractual salary. Employers are not generally required to make up the difference, but many employers voluntarily provide full salary continuation, a longer period of paid leave or both. Any enhanced contractual or policy-based benefits should be coordinated carefully with the statutory allowance.

Employees are protected against dismissal throughout pregnancy and for 16 weeks following childbirth. A notice of termination issued by the employer during this protected period is void and must be reissued after the protection has expired. Where notice was validly issued before the protected period commenced, the notice period is suspended and resumes after the protected period has ended.

Leave for the other parent

The employee who is legally recognised as the other parent – generally the father or the mother's wife – is entitled to two weeks' leave, corresponding to 10 working days for a full-time employee. The leave must be taken within six months following the birth and may generally be taken either consecutively or as individual days.

Eligible employees receive compensation equal to 80% of their average pre-birth income, subject to a maximum of 220 Swiss francs per day. As with maternity allowance, the benefit is financed through the federal loss-of-earnings compensation scheme.

Unlike employees on maternity leave, employees taking leave as the other parent do not benefit from a general statutory prohibition against dismissal. An employer may therefore give notice during the leave. However, where the employer gives notice before the employee has taken the full leave entitlement, the notice period is extended by the number of outstanding leave days.

Adoption leave

Gainfully employed persons who take in a child under the age of four for the purpose of adoption are jointly entitled to two weeks of adoption leave during the first year after the child is placed with them. If both adoptive parents are gainfully employed, they may divide the leave between them, but they may not take it simultaneously. No statutory adoption leave is available for the adoption of a stepchild.

The adoption allowance amounts to 80% of the relevant parent's average income immediately before the child was placed with them, subject to a maximum of 220 Swiss francs per day, and is financed through the federal loss-of-earnings compensation scheme.

Employees taking adoption leave do not benefit from the same statutory protection against dismissal as employees during pregnancy and following childbirth.

Leave to care for children

Employees are entitled to paid short-term leave to care for a family member or partner whose health is impaired. The entitlement is limited to the time required for the care and generally to three days per incident. An annual limit of 10 days applies, although this annual cap does not apply to leave taken to care for an employee's children.

Where a minor child's health is seriously impaired by illness or accident, the parents are jointly entitled to up to 14 weeks of care leave. The leave must be taken within an 18-month framework period and may be divided between the parents and taken either continuously or on a day-by-day basis. During the leave, eligible parents receive compensation equal to 80% of their previous average income, subject to a maximum of 220 Swiss francs per day.

An employee entitled to this care leave benefits from special protection against dismissal for as long as the entitlement exists, but for no more than six months from the first day for which a care allowance is claimed.

Employers offering enhanced family leave should specify clearly how contractual salary continuation interacts with statutory allowances, whether benefits apply equally to different forms of parenthood and what happens if the employment relationship ends during or shortly after the leave.

Translation

Swiss law generally does not require employment documents to be drafted or translated into one of Switzerland's official languages or into the employee's native language. The decisive consideration is whether the employee is able to understand the rights and obligations arising from the relevant document. If this is not the case, the employer may face difficulties in relying on the respective contractual provisions or establishing that the employee gave informed consent.

English-language employment documentation is therefore common, particularly within multinational organisations operating in Switzerland. Employers should nevertheless

ensure that the relevant employee has a sufficient command of English. Merely assuming that an employee understands English because it is the company's corporate language may create unnecessary litigation risk if the employee later disputes having understood the relevant contractual provisions or policies.

Accordingly, employers are well advised to ensure that all material employment documents are provided in a language that the employee understands. This recommendation applies in particular to employment contracts, employee handbooks and policies, confidentiality and intellectual property agreements, restrictive covenant agreements, bonus and incentive plans and any other document imposing obligations on the employee.

No specific formalities apply to translations. In multilingual documentation, employers should specify which language version prevails in the event of inconsistencies. In practice, many multinational employers prepare bilingual employment contracts, typically providing that the English version prevails or, alternatively, that the local language version governs.

If a dispute arises before a Swiss court, documents drafted exclusively in a foreign language may need to be translated by a qualified translator for evidentiary purposes. This is, however, a procedural requirement rather than a validity requirement. Documents that have already been translated when executed generally do not require a further certified translation unless requested by the competent court.

Failure to translate employment documents does not give rise to criminal sanctions. However, it may have significant civil law consequences. If an employee could not reasonably understand a contractual provision, the employer may face evidentiary difficulties in establishing that the relevant terms were validly agreed. This is particularly relevant for clauses that deviate from statutory law or impose significant obligations on the employee, such as restrictive covenants, intellectual property assignments and forfeiture provisions.

Employee representation

Employee representation bodies are comparatively uncommon in Switzerland. Where they exist, their rights are generally significantly more limited than those of works councils or employee representative bodies in many neighbouring European jurisdictions. As a result, multinational employers should not assume that European information, consultation or co-determination frameworks automatically apply to their Swiss workforce.

Employee representation is primarily governed by the Federal Act on Information and Consultation of Employees (the Participation Act). Employees working in establishments with at least 50 employees may request the election of an employee representation body. Unlike in many European jurisdictions, however, there is no general obligation for employers to establish such a body unless the statutory requirements are met and employees request one.

Where an employee representation body exists, its statutory rights are primarily limited to information and consultation. In particular, employee representatives have information and consultation rights in areas such as business transfers, collective redundancies, occupational health and safety and certain occupational pension matters. Outside

these statutory situations, Swiss law generally does not grant employee representatives co-determination or veto rights over management decisions.

Trade unions also play a comparatively limited role at company level unless a collective bargaining agreement applies or the employer has voluntarily agreed to broader consultation arrangements.

International employers should exercise particular caution when extending European or global employee representation structures to Switzerland. Group-wide policies, European Works Council agreements and similar arrangements often grant Swiss employee representatives rights that go well beyond those provided under Swiss law. While such contractual arrangements may be desirable from a group governance perspective, they can create binding consultation or approval obligations that would not otherwise exist under Swiss law. Employers should therefore ensure that any voluntary rights granted to Swiss employee representatives are carefully considered and clearly distinguished from mandatory statutory consultation rights.

Accordingly, many multinational employers deliberately limit the application of European Works Council arrangements to the extent legally permissible or expressly distinguish between statutory Swiss consultation rights and additional contractual rights granted under international employee representation frameworks.

Data protection

The processing of employee data is governed primarily by the Federal Act on Data Protection (FADP) and the employment-specific provisions of the CO. The revised FADP entered into force on 1 September 2023 and applies only to personal data relating to natural persons.

Swiss data protection law is broadly aligned with European data protection principles, but it is not identical to the EU General Data Protection Regulation. International employers should therefore avoid assuming that GDPR-compliant policies and processes automatically satisfy all Swiss employment-law requirements.

Requirements for processing

Private employers are not generally required to register with the Federal Data Protection and Information Commissioner (FDPIC) merely because they process employee data. However, they must comply with the applicable principles of lawful, proportionate, transparent and purpose-limited data processing.

Under article 328b CO, an employer may process employee data only to the extent that it concerns the employee's suitability for the employment relationship or is necessary for the performance of the employment contract. This employment-specific limitation is mandatory and cannot be waived to the employee's detriment, even with the employee's consent.

Employers must inform employees appropriately about the collection and processing of their personal data. In practice, this is generally done through an employee privacy notice describing, among other matters:

- the categories of personal data processed;
- the purposes of the processing;
- the recipients or categories of recipients;
- any disclosures abroad;
- applicable retention periods or the criteria used to determine them; and
- the employees' statutory rights.

Consent is not required for all processing of employee data. In many cases, processing is justified because it is necessary for the employment relationship or based on an overriding private or public interest. Where consent is relied upon, however, particular caution is required because the subordinate nature of the employment relationship may call into question whether the employee's consent was genuinely voluntary. Consent cannot legitimise processing that would otherwise violate the mandatory limitations imposed by article 328b CO.

Employers must restrict access to employee data to persons who require it for legitimate business purposes and must implement appropriate technical and organisational measures to protect the data against unauthorised access, loss, alteration or disclosure.

Employers may outsource data processing, including to payroll providers, cloud platforms or group service companies. The employer nevertheless remains responsible for compliance with Swiss data protection law and must ensure contractually that the service provider processes the data only as permitted and maintains appropriate data security.

Employees have a statutory right to request information about the personal data processed concerning them. These requests are increasingly common following dismissals or workplace disputes. The right generally concerns the employee's personal data rather than automatically entitling the employee to copies of every underlying document. A request may also be restricted or refused in certain circumstances, including where it is manifestly unfounded or pursued exclusively for a purpose unrelated to data protection, such as obtaining evidence for prospective civil litigation.

Employee data may not be retained indefinitely. Personal data must be deleted or anonymised once it is no longer required for the purpose for which it was collected, unless statutory retention obligations or overriding legitimate interests justify longer retention. In practice, employers typically retain personnel records for several years following termination of employment in order to comply with statutory limitation periods, tax and social security obligations and to defend potential legal claims.

Sensitive data

The FADP provides enhanced protection for sensitive personal data. This includes data on:

- religious, philosophical, political or trade union-related views or activities;
- health, privacy and racial or ethnic origin;

- genetics;
- biometric data that uniquely identifies a natural person;
- administrative or criminal proceedings and sanctions; and
- social security measures.

Financial information is not, as such, classified as sensitive personal data under the FADP. It nevertheless remains personal data and may be subject to additional contractual, professional and statutory confidentiality obligations.

Processing sensitive personal data is not automatically prohibited. However, the principles of necessity, proportionality, transparency and data security must be applied particularly strictly. Where consent is required, it must generally be explicit.

A data protection impact assessment must be carried out in advance where intended processing is likely to result in a high risk to the employee's personality or fundamental rights. This may be relevant, for example, to extensive processing of sensitive employee data, systematic monitoring, biometric access systems, certain people analytics applications and artificial intelligence tools used in recruitment or employment decisions.

Employers should also consider the statutory requirements governing automated individual decisions. Where an employment decision producing legal effects or similarly significant consequences is made solely by automated processing, the employee may need to be informed and, subject to the statutory conditions, given an opportunity to express their position and request human review.

Cross-border data transfers

Employee data may be transferred abroad without additional safeguards where the destination country provides an adequate level of data protection under Swiss law.

Where the destination country is not recognised as providing an adequate level of protection, a transfer may nevertheless be permissible if appropriate safeguards are implemented. These may include recognised standard contractual clauses, generally supplemented as necessary to reflect Swiss law, binding corporate rules or another statutory exception. Depending on the destination country and the circumstances of the transfer, the employer may also need to carry out a transfer impact assessment.

Transfers to US companies certified under the Swiss–US Data Privacy Framework benefit from an adequacy finding. Transfers to US recipients that are not certified under that framework continue to require another valid transfer mechanism or statutory exception.

There is no general requirement to obtain employee consent or register international data transfers with the FDPIC. Employees must, however, be informed appropriately of intended disclosures abroad, including the relevant destination countries or regions and, where applicable, the safeguards relied upon.

These requirements are particularly relevant to multinational employers operating centralised HR databases, global payroll and benefits platforms, employee hotlines, investigation systems, applicant-tracking tools and cloud-based performance management systems. Employers should ensure that the actual international flow of

employee data corresponds to the disclosures made in their employee privacy notices and to the relevant contractual safeguards.

Employee monitoring

Employee monitoring is subject to particularly strict limitations under Swiss law. Monitoring or control systems designed primarily to monitor employees' behaviour in the workplace are generally prohibited.

Systems introduced for legitimate purposes – such as security, health and safety, operational planning, quality assurance or the measurement of work output – may be permissible, provided that they are proportionate and designed so as not to impair employees' health, dignity and freedom of movement. Employees should generally be informed transparently about the nature and purpose of the monitoring.

Continuous or highly intrusive monitoring is particularly problematic. Depending on how they are used, the following technologies may therefore create significant legal risks:

- spyware or activity-tracking software;
- recording of keystrokes or mouse movements;
- detailed monitoring of applications, websites or communications;
- continuous GPS tracking;
- biometric or emotion-recognition technologies;
- automated analysis of employees' speech, movements or communications; and
- artificial intelligence tools used to assess behaviour or productivity.

The fact that monitoring technology is technically available or commonly used within an international group does not establish that it is permissible in Switzerland. International employers should therefore conduct a separate Swiss law assessment before deploying global employee monitoring, productivity or people analytics tools to Swiss employees, including employees working remotely.

Covert monitoring is generally incompatible with the principles of transparency and good faith and is permissible, if at all, only in exceptional circumstances. The monitoring of private communications is subject to particularly strict restrictions and may also result in criminal liability.

Background checks

Background checks are permissible only to the extent that the information sought is relevant to the candidate's suitability for the particular role or necessary for the prospective employment relationship.

Employers should inform candidates transparently about the checks to be conducted. Where a third party provider is used, the employer must also ensure compliance with the applicable requirements governing outsourcing, transparency and any cross-border disclosure.

Criminal record checks should generally be limited to roles for which prior convictions may be objectively relevant, such as positions involving particular trust, financial responsibility, vulnerable persons or statutory suitability requirements. Blanket criminal record screening of all candidates is unlikely to satisfy the proportionality requirement.

Credit or debt enforcement checks are generally justifiable only where the role involves substantial financial responsibility or where the candidate's financial reliability is objectively relevant. They should not be conducted routinely for positions with no meaningful connection to financial trustworthiness.

Health-related questions and medical examinations must be limited to determining whether the candidate is able to perform the specific role safely and effectively. Questions concerning general health risks, family medical history or potential future illnesses are generally impermissible unless exceptionally justified by the inherent requirements of the role.

Checks of publicly available social media content are also subject to the principles of relevance, purpose limitation and proportionality. The fact that information is publicly accessible does not mean that it may be collected and used without restriction in a recruitment decision.

Electronic signatures

Electronic signatures are permissible in Switzerland. However, only a qualified electronic signature based on a qualified certificate issued by a certification service provider recognised under Swiss law is legally equivalent to a handwritten signature. Swiss electronic signatures are governed by the Federal Act on Electronic Signatures (ZertES). Although the Swiss regime is broadly comparable to the EU eIDAS framework, it is separate. Accordingly, an electronic signature that satisfies the requirements of eIDAS does not automatically satisfy the Swiss written-form requirements unless it is also recognised under ZertES.

Employment contracts themselves are generally not subject to a statutory written form requirement. Nevertheless, many commonly used employment provisions must be agreed in writing to be valid or fully enforceable. These include, in particular, post-contractual non-compete obligations and certain agreements concerning overtime.

Accordingly, an ordinary electronic signature, including many commercially available e-signature solutions, may be sufficient to evidence an agreement but will not necessarily satisfy a statutory written-form requirement. Where Swiss law requires written form, employers should therefore ensure that the document is signed either with a handwritten signature or with a qualified electronic signature that complies with the requirements of ZertES. This should be verified separately, as compliance with the EU eIDAS regime alone is not necessarily sufficient.

This distinction is particularly important for multinational employers using uniform global electronic signature processes. A document may have been validly executed for general evidentiary purposes while individual clauses within it nevertheless fail to satisfy the specific Swiss written form requirement.

Discontinuing employment

Dismissal

Under Swiss law, an employment contract concluded for an indefinite period may generally be terminated by either party without cause (ordinary termination), subject to the applicable contractual or statutory notice period. Unlike many other European jurisdictions, Swiss law does not require the employer to establish a socially justified reason for dismissal.

The statutory notice periods may be extended by agreement but may generally not be reduced below one month, subject to any applicable collective bargaining agreement. Notice of termination becomes effective only upon receipt by the other party. As a result, where notice periods run from the beginning of the following month, the termination notice must be received before the end of the current month for the notice period to commence on the first day of the next month.

Although no reason is required to terminate the employment relationship, employees may request that the employer state the reasons for the dismissal in writing. Swiss law distinguishes between abusive dismissals and dismissals served during protected periods. An abusive dismissal remains legally valid but may expose the employer to compensation of up to six months' salary. By contrast, a dismissal served during a statutory protected period is void or, where notice was given before the protected period commenced, the notice period is suspended until the protected period has ended.

A dismissal may, in particular, be considered abusive where it is based on one of the statutory grounds, including dismissals:

- because of an employee's personality trait (such as age, gender, race or religion), unless that characteristic materially affects the employment relationship;
- because the employee exercised a constitutional right;
- to prevent employment-related claims from arising;
- because the employee asserted claims arising out of the employment relationship in good faith; or
- because the employee performed a mandatory public duty.

This statutory list is not exhaustive, and the courts may recognise additional situations in which a dismissal constitutes an abuse of rights.

Particular caution is required when dismissing employees approaching retirement after many years of service. Although Swiss law does not grant these employees special statutory protection against dismissal, the Federal Supreme Court has consistently held that employers owe them an increased duty of care. Depending on the circumstances, employers should carefully consider whether the employee has been informed of any performance concerns, been given a genuine opportunity to improve, been heard before the decision to terminate was taken and whether reasonable alternatives to dismissal have been explored.

The precise scope of this heightened duty depends on the individual circumstances, including the employee's age, length of service, position, performance and the reasons for the termination. The Federal Supreme Court clarified in recent years that no rigid procedural requirements apply and that each case must be assessed individually. Nevertheless, employers should continue to exercise particular caution before dismissing employees nearing retirement after long service, as failure to comply with the employer's increased duty of care may increase the risk of the dismissal being held abusive.

If there is good cause, either party may terminate the employment relationship with immediate effect (extraordinary termination). Good cause exists where continuation of the employment relationship until expiry of the ordinary notice period can no longer reasonably be expected. If an employer terminates without good cause, the employee may claim damages and compensation of up to six months' salary.

Swiss law provides for statutory severance only in very limited circumstances. Employees who are at least 50 years old and have completed at least 20 years of service are, in principle, entitled to statutory severance of between two and eight months' salary. In practice, however, this entitlement is rarely relevant because occupational pension benefits paid by the employer may generally be offset against the statutory severance.

The parties may terminate the employment relationship at any time by mutual agreement. However, termination agreements must represent a genuine compromise and may not circumvent mandatory employment law or require the employee to waive mandatory statutory rights without receiving an adequate benefit in return. If these requirements are not met, the agreement may be held invalid.

Certain categories of employees benefit from protection against dismissal during statutory protected periods. These include, in particular:

- employees performing compulsory military, civil protection or civilian service;
- employees who are wholly or partially unable to work due to illness or accident through no fault of their own (30, 90 or 180 days, depending on the employee's years of service);
- pregnant employees during pregnancy and for 16 weeks following childbirth;
- employees participating in officially recognised foreign aid service with the employer's consent; and
- employees taking statutory care leave for a seriously ill child, subject to the applicable statutory limits.

If notice is given during one of these protected periods, it is generally void. Where notice was validly given before the protected period commenced, the running of the notice period is suspended until the protected period ends and the employment relationship is extended accordingly.

Mass dismissals

Swiss law requires employers contemplating a collective redundancy to comply with statutory information and consultation obligations. However, unlike in many European jurisdictions, collective redundancies do not require prior governmental approval, nor do

employee representatives have co-determination rights allowing them to prevent or delay the dismissals.

A collective redundancy exists where an employer intends, for reasons unrelated to the individual employees concerned, to terminate within a period of 30 days:

- at least 10 employees in an establishment normally employing more than 20 but fewer than 100 employees;
- at least 10% of the workforce in an establishment normally employing at least 100 but fewer than 300 employees; or
- at least 30 employees in an establishment normally employing 300 or more employees.

Before issuing any notices of termination, the employer must inform the employee representatives or, where no employee representation body exists, the affected employees in writing of the proposed collective redundancy. The information must include, in particular:

- the reasons for the proposed redundancies;
- the number of employees to be dismissed;
- the number of employees normally employed; and
- the period during which the dismissals are to take place.

Employees or their representatives must be given a genuine opportunity to make proposals on how the dismissals may be avoided, their number reduced or their consequences mitigated. Although Swiss law does not prescribe a minimum consultation period, the consultation must be meaningful and completed before dismissal notices are issued.

After the consultation has been completed, the employer must notify the competent cantonal employment authority of the proposed collective redundancy and provide it with the information supplied during the consultation process. A copy of this notification must also be provided to the employee representatives or, where none exist, to the affected employees.

Failure to comply with the statutory consultation procedure may render the dismissals abusive, potentially exposing the employer to compensation of up to two months' salary per affected employee.

Employers normally employing at least 250 employees that intend to dismiss at least 30 employees within 30 days for reasons unrelated to the individual employees concerned must also negotiate a social plan with the employee representatives or, where none exist, with the employees or the competent trade union. If no agreement can be reached, the content of the social plan is determined by an arbitral tribunal.

A social plan is intended to mitigate the consequences of the collective redundancy for the affected employees and commonly includes measures such as severance payments, outplacement assistance, retraining, early retirement arrangements and other support facilitating the employees' transition to new employment.

From an international perspective, the Swiss collective redundancy regime is comparatively employer-friendly. While employers must comply with mandatory

information and consultation obligations, there is no requirement to obtain governmental approval, no works council veto and no obligation to reach agreement with employee representatives before implementing the redundancies. Nevertheless, employers should ensure strict compliance with the statutory consultation procedure, as procedural defects may result in the dismissals being held abusive and give rise to compensation claims.

Transfer of business

Swiss law contains statutory rules governing the transfer of undertakings that are broadly comparable to the principles underlying the EU Acquired Rights Directive (TUPE), although there are important differences in their application and practical consequences. The relevant provisions are contained in article 333 of the CO.

Where a business or a distinct part of a business is transferred to a new employer and retains its identity after the transfer, the employees assigned to the transferred undertaking automatically transfer to the purchaser together with all rights and obligations arising under their employment relationships. This also applies where employees are serving a notice period at the time of the transfer. By contrast, in a share deal, the employing entity remains unchanged and the employment relationships are therefore unaffected. The rules may also apply in the context of outsourcing or insourcing arrangements, provided that the transferred activity constitutes an organised economic unit that retains its identity after the transfer.

Employees may object to the transfer of their employment relationship. If they do so, the employment relationship terminates upon expiry of the applicable statutory notice period, irrespective of any longer contractual notice period. Until then, the purchaser and the employee remain obliged to perform the employment contract. In the context of bankruptcy, composition proceedings or a composition agreement involving an assignment of assets, employment relationships do not transfer automatically but only if their transfer has been agreed with the purchaser.

The transfer does not affect employees' existing contractual rights and obligations. The transferor and the transferee are jointly and severally liable for claims that became due before the transfer and for claims becoming due until the employment relationship could have been terminated by observing the applicable statutory notice period. Where a collective bargaining agreement applies to transferred employees, the transferee must generally continue to comply with its terms for one year following the transfer, unless the agreement expires or is validly terminated earlier.

If redundancies, dismissals or material changes to working conditions are contemplated in connection with the transfer, the employee representatives or, where none exist, the affected employees must be informed and consulted before the relevant decisions are taken. They must be given a genuine opportunity to submit proposals aimed at avoiding or reducing the adverse consequences of the proposed measures. Swiss case law generally considers that employee representatives should be afforded at least 14 days to formulate their proposals. Following completion of the consultation process, employees must also be informed of the reasons for the transfer, the outcome of the consultation (where applicable) and the legal, economic and social consequences of the transaction. Failure to

comply with these consultation obligations may expose the employer to damages claims and other legal consequences.

Although the Swiss transfer of undertakings regime is broadly comparable to the European TUPE framework, it is generally more flexible in practice. Employees have a statutory right to object to the automatic transfer of their employment relationship and, unlike in some European jurisdictions, the transfer itself does not prevent the purchaser from implementing post-closing restructurings, provided that the ordinary rules governing dismissals, collective redundancies and consultation obligations are observed. Furthermore, in restructurings carried out through an asset purchase in insolvency or similar restructuring proceedings, the automatic transfer mechanism does not generally apply, allowing the purchaser greater flexibility in determining which employees are taken over. These features should be carefully considered when structuring cross-border transactions involving Swiss operations.

Special considerations

Garden leave

Garden leave is recognised under Swiss law but differs significantly from the concept found in some common law jurisdictions, particularly the United Kingdom. Under Swiss law, an employer may unilaterally release an employee from the obligation to work during the notice period, provided that the employee continues to receive full contractual remuneration and benefits.

Unlike in the UK, garden leave is not regarded as a separate contractual mechanism designed to protect the employer's business interests independently of post-termination restrictive covenants. It is, in essence, a release from the duty to work during an ongoing employment relationship. Employers should therefore regulate the practical consequences expressly, ideally in the termination letter or a separate garden leave agreement.

First, the employer should clarify whether and to what extent outstanding vacation is deemed to be taken during garden leave. Under Swiss practice, vacation may generally be offset against a period of garden leave only if the employee retains sufficient time to look for new employment. As a rule of thumb, the vacation entitlement should not exceed approximately one-third of the garden leave period. Where the outstanding vacation exceeds that proportion, the excess may have to be compensated financially at the end of the employment relationship.

Second, the employer should specify whether the employee may take up new employment before the contractual termination date. If early commencement is permitted, the parties should also address whether income earned from the new role will be credited against the remuneration still payable by the existing employer. In the absence of clear wording, disputes may arise as to whether the employee is entitled to retain both sources of income.

Third, the employee should expressly be required to make reasonable efforts to seek suitable alternative employment during garden leave and to disclose any new employment

and related earnings. This reflects the employee's duty to mitigate loss and gives the employer a clearer basis for seeking an offset where the employee earns, or deliberately fails to earn, replacement income.

Garden leave should not be treated as a substitute for an enforceable post-termination non-compete covenant. The two instruments serve different purposes and are subject to different legal requirements.

Employee inventions and intellectual property

Swiss statutory law contains specific provisions governing employee inventions and other intellectual property created during the employment relationship. Inventions made in the course of the employee's contractual duties generally belong to the employer by operation of law. By contrast, inventions developed outside the employee's contractual duties belong to the employee unless the employer has validly reserved the right to acquire them under the employment contract and they fall within the employer's field of business.

Although copyright in software created in the course of employment generally vests in the employer by statute, this is not true for all categories of intellectual property. Employers, particularly those operating in technology, life sciences or research-intensive industries, should therefore ensure that their employment agreements contain comprehensive intellectual property assignment provisions extending beyond the statutory minimum.

Whistleblowing

Unlike many European jurisdictions, Switzerland does not have a comprehensive statutory whistleblower protection regime. Although several legislative reform projects have been proposed, none has been adopted to date.

Employees remain subject to their statutory duties of loyalty and confidentiality and are generally expected to raise concerns internally before reporting them externally. Whether a disclosure to public authorities or the media is permissible depends on the circumstances of the individual case and has largely been developed through case law rather than legislation.

Many multinational employers nevertheless maintain whistleblowing procedures in Switzerland as part of their global compliance programmes. Such policies are generally permissible but should be reviewed to ensure that they are appropriately adapted to Swiss employment and data protection law.

Outlook and conclusions

Swiss employment law continues to be characterised by a comparatively liberal and flexible legal framework. Unlike many neighbouring jurisdictions, Switzerland has not seen significant legislative reform of individual employment law in recent years, and no fundamental changes are currently expected. This legal stability, combined with the considerable contractual freedom afforded to employers and employees, remains one of the key attractions of Switzerland as a business location.

At the same time, the legal landscape continues to evolve. Rather than through comprehensive legislative reform, developments are increasingly driven by case law and changing workplace realities. Flexible working arrangements, cross-border employment models, the use of artificial intelligence, workforce mobility and evolving compliance expectations continue to raise novel employment law questions and require employers to review their contractual arrangements and internal policies on a regular basis.

Although Switzerland is not bound by European Union employment legislation, international employers increasingly seek to implement consistent employment standards across jurisdictions. As a result, European regulatory developments – particularly in areas such as data protection, whistleblowing, pay transparency, ESG and corporate governance – continue to influence HR practices in Switzerland, even where no corresponding Swiss legislation exists.

From a practical perspective, the relative flexibility of Swiss employment law should not be mistaken for simplicity. Many statutory provisions are intentionally broad and leave considerable scope for contractual arrangements, while important aspects of employment law continue to be shaped by judicial decisions. Careful drafting of employment agreements, incentive plans, restrictive covenants and termination documentation therefore remains essential to minimise legal risk.

For international businesses, Switzerland continues to offer a predictable and employer-friendly legal environment. However, successful workforce management increasingly requires employers to combine the flexibility offered by Swiss law with robust contractual documentation, well-designed HR processes and close monitoring of both domestic and international legal developments.

Endnotes

1 Federal Supreme Court, 4A_5/2025 of 26 June 2025. ^ Back to section

2 BGE 147 III 139. ^ Back to section

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