Worker Representation (Switzerland)

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A Practice Note explaining the various types of worker representation and collective bargaining in Switzerland. The Note sets out when a type of worker representation (such as trade unions, works councils, social committees, employee representatives, and collective bargaining agreements) is mandatory (or optional or prohibited), and the powers, structure, and any special protection provided to its members.

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In territories where worker representation is mandatory or prevalent, when looking to undertake actions that impact its employees, an employer may be required to inform, consult, and potentially obtain the agreement of, the applicable worker representatives. In addition, where applicable, a **collective bargaining agreement** (CBA) (and similar agreements) can enhance the rights and benefits of employees.

The types of worker representation vary by territory (for example, **trade unions**, works councils, employee representatives, social committees, and so on), as do the rights of employees to collective representation and an employer's obligations towards the worker representatives.

Failing to comply with the employer's obligations, or poorly managing relations with worker representatives, can result in (amongst other things) an antagonistic and obstructive relationship between the employer and worker representatives, collective action, and legal sanctions.

This Practice Note provides guidance on the different types of worker representation and collective bargaining in Switzerland. It explains:

- When a type of worker representation or collective bargaining is required, optional, or prohibited.
- The role and powers of the type of worker representation (for example, whether it is to be informed, consulted, or has decision making powers).
- When the type of worker representation is to be involved in potential changes to the business, and the extent it can be involved in issues affecting employees.

Worker Representation Overview

Dialogue and negotiation are particularly important in Switzerland, which is reflected in the general attitude with respect to maintaining social peace in employer-employee relationships. Against this background, Swiss law provides employees a general right to information, other special rights (such as specific information, consultation, and co-decision), and, in some instances, the right to form an employee representative body (ERB) (see *Works Councils (Employee Representative Body)*).

Employees and employers can also form associations, which enjoy certain constitutional protections. Trade unions are a type of employee association (see *Trade Unions*).

Trade unions play more of a role in negotiations, rather than calling for industrial actions like strikes (see *Industrial Action*). These negotiations may occur in, for example:

- Disputes between the employer and one or more employees.

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- Court proceedings and non-court processes, such as negotiations in the context of collective dismissals.
- CBA negotiations.
- Political arenas regarding debates around proposed legislation.

In practice, ERBs also negotiate on behalf of employees, especially in sectors where trade unions are not very strong.

Employee Representative Bodies

In Switzerland, an ERB is the primary type of worker representation in a business. ERBs occupy a similar role to that of works councils in the **EU** (see *Works Councils (Employee Representative Body)*).

The primary law that applies to employee representation is the *Federal Act on the Information and Participation of Employees in Businesses* (*Mitwirkungsgesetz*) (Participation Act). Switzerland adopted the Participation Act as part of legislation that aimed to prevent economic isolation from Europe after Switzerland voted against joining the **European Economic Area** in 1992 (*Message on the programme following the rejection of the EEA Agreement of 24 February 1993, FF 1993 I 757*). The Participation Act:

- Specifies the circumstances under which employees have the right to form an ERB (see *Establishing a Works Council*).
- Contains information about general and special participation rights, which exist regardless of whether an ERB is in place (see *Role and Powers of a Works Council*).

Collective Bargaining Agreements

Switzerland emphasises the conclusion of sector-based CBAs on the premise that the sector's active players (such as employers, employer associations, and unions) are in the best position to know how to address the parties' needs. CBAs can be voluntary (meaning the employer decides to enter the CBA) or mandatory (meaning the competent authorities extend a CBA automatically to all employers in the sector). That said, there are many economic sectors in which no CBA applies (see *Collective Bargaining Agreements*).

Trade Unions

Trade Union Recognition

Trade unions are a type of employee association. Swiss law refers to employee associations generally but, in practice, this means trade unions. Article 28 of the *Federal Constitution of the Swiss Confederation* (*Bundesverfassung der Schweizerischen Eidgenossenschaft*) (Constitution) gives employees the right to join together to protect their interests, to form associations (such as trade unions), and to join or not join such associations. Therefore, trade unions are allowed but are not mandatory. Article 28 also provides employers a similar right regarding joining associations to protect their interests.

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Switzerland is party to a number of regional and international instruments that further cement employees' rights regarding trade unions. The **European Convention on Human Rights** (ECHR) directly applies in Switzerland and provides for freedom of assembly and association, including the right to form and join trade unions (Article 11, paragraph 1, ECHR).

Similar guarantees are found in the *International Labour Organization* (ILO) *Convention No 98 on the Right to Organise and Collective Bargaining Convention* (ILO Convention No 98) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

However, Switzerland does not consider these texts directly applicable due to their general nature. (*ILO: Interim Report - Report No 335, November 2004*; *Message on Switzerland's accession to the two 1966 International Covenants on Human Rights and an amendment to the Federal Law on the Organization of the Judiciary of 30 January 1991, FF 1991 I 1129, 1141 to 1142*.)

ILO Convention No 98 protects workers against acts of anti-union discrimination in their employment, including acts such as prohibiting, terminating, or otherwise prejudicing employees for participating in trade unions (Article 1, paragraphs 1 and 2, ILO Convention No 98). The ICESCR also protects the right to form and join trade unions (Article 8, ICESCR).

Structure of Trade Unions

Federations

While there are independent trade unions, Switzerland has two major federations of trade unions, under which many individual trade unions are federated:

- The *Swiss Trade Union Federation* (*Union syndicale Suisse/Schweizerischer Gewerkschaftsbund*) (USS/SGB).
- The *Travail.Suisse*.

The USS is comprised of 20 federated trade unions and represents approximately 370,000 members (see *USS: Who are we?*). It has three main bodies:

- Congress (*Le Congrés*), or the supreme governing body, which meets every four years and elects the president and vice presidents.
- The Assembly of Delegates (*L'Assemblée des délégué-e-s*), or the supreme governing body between meetings of Congress, which elects:
    - the *Committee* (*Le Comité*);
    - the Audit Committee; and
    - the *Central Secretariat* (*Secrétariat central*).
- The Committee, or the executive body, which includes members from:

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- the *federated trade unions* (*fédérations affiliées*);
- the *cantonal trade unions* (*unions cantonales*), which are in addition to the federated trade unions; and
- the USS's five statutory commissions, including the *Feminist Commission* (*Commission féministe*), *Youth Commission* (*Commission de la jeunesse*), Migration Commission (*Commission des migrations*), *Queer Commission* (*Commission LGBT*), and *Pensioners Commission* (*Commission des retraité-e-s*).

Travail.suisse is comprised of 10 *federated trade unions* and represents approximately 130,000 members (see *Travail.Suisse: About Us*). It also has three main bodies:

- Congress.
- The Assembly of Delegates.
- The *Committee*, which includes the *Youth Commission* (*Commission de la jeunesse*) and Pensioners Commission (*Commission des retraité-e-s*).

Individual Trade Unions

An individual trade union is an association with a statutory purpose of protecting employees. It is formed in the same manner as other Swiss associations (that is, by drafting written articles of association, indicating the association's purpose, resources, and structure, as per Article 60 of the *Swiss Civil Code* (CC)).

Some Swiss trade unions are sector-based, such as for public sector and transport employees, while others cover multiple sectors of the economy. Multiple trade unions can cover the same sector, meaning employees of one employer may be represented by different trade unions.

Individual trade unions are funded by members' dues. A CBA can require an employer to withhold "professional contributions" from employees' salaries and pay them to the competent union (see *Effect of a Collective Bargaining Agreement*). In some instances, a trade union reimburses member employees for these amounts.

Role and Powers of Trade Unions

Trade unions are employee associations that represent employees' interests according to their articles of association. Trade unions can be active in one or multiple sectors.

Trade unions can provide specific benefits to members, particularly legal advice and representation in workplace disputes. They can intervene on behalf of and represent individual employees or groups of employees.

As the association representing employees, trade unions are also involved in negotiating and administering CBAs (see *Collective Bargaining Agreements*). According to the *Swiss Federal Supreme Court* (*Bundesgericht Tribunal Fédéral* or BGE), the constitutional right for trade unions to exist implies a right to negotiate on behalf of employees and enter into CBAs, provided the trade union can be considered a "social partner." (ATF 143 I 403 consideration 6.1; ATF 140 I 257 consideration 5.1.)

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A social partner implies being "sufficiently" representative and acting in a loyal manner (for example, ready to respect all conditions set forth in a CBA). These conditions should be examined on a case-by-case basis. Regardless, there is no need for the employer or other social partners to agree that the trade union should be recognised as a social partner.

Trade unions can intervene in other matters when specifically provided for in law, such as those involving standard employment agreements and proceedings in front of *cantonal labour authorities* (see *Cantonal Labour Authorities for Collective Disputes*). Swiss law does not require trade unions to be involved in potential business transfers where there could be a transfer of employees. The employer only needs to consult the employees or the ERB, if applicable (see *Works Councils (Employee Representative Body)*).

Further, for a strike to be valid in Switzerland, at least one employee association with the capacity to enter into a CBA must support it (see *Industrial Action*).

Rights and Protections of Trade Union Members

In addition to the constitutional right to join or not join an employee association, the *Swiss Code of Obligations* (*Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht)*) (CO) provides that terminating an employee because they carried out trade union activities in a lawful manner is considered wrongful, or unlawful, termination (Article 336, paragraph 2(a), CO; see *Trade Union Recognition*). Examples of trade union activities include:

- Providing information to other employees about the role or need for a trade union.
- Advocating for a trade union in the workplace.

In such cases, the termination of employment is valid, but a court can order the employer to pay damages of up to six months' gross salary if it finds that an employee was terminated because of their trade union activities (Article 336a, paragraph 2, CO).

Moreover, ILO Convention No 98 protects workers against acts of anti-union discrimination in their employment, including acts such as prohibiting, terminating, or otherwise prejudicing employees for participating in trade unions (Article 1, paragraphs 1 and 2, ILO Convention No 98). However, Swiss authorities do not currently consider this directly actionable, so there is no direct consequence under this provision.

In this context, the USS filed a complaint with the *ILO Committee of Experts on the Application of Conventions and Recommendations* (CEACR), alleging that Swiss legislation does not comply with international labour standards, particularly ILO Convention No 98 which Switzerland ratified. The USS claimed that Swiss legislation fails to deter anti-union discrimination because it only requires nominal compensation—approximately three, but at most six, months' gross salary—and does not provide for reinstatement of trade union officials or representatives. (*ILO, Case No 2265*.)

In its reply, the Swiss government stated that it does not consider ILO Convention No 98 directly applicable, and that Switzerland's obligations under ILO Convention No 98 were implemented via Swiss legislation, including the Constitution (*ILO, Case No 2265, Interim Report - Report No 335, November 2004).*

In its recommendations, CEACR concluded that Swiss law should provide additional protections to trade union representatives, including the possibility of reinstatement. Switzerland has not yet proposed changes to its laws to reflect this recommendation. The complaint was filed on 14 May 2003, and the case remains open.

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Industrial Action

Article 28 of the Constitution permits strikes but only if negotiations between the employer and the employee association fail. The Supreme Court defined the cumulative conditions under which a strike can occur:

- The subject of the strike must relate to the employment relationship, meaning something that the CBA could govern (such as minimum wage) but is not covered by an existing CBA.
- At least one employee association that is permitted to enter into a CBA (in practice, this means a trade union) must support the strike.
- The strike must respect the social peace, meaning the subject of the strike cannot be the object of a CBA currently in force. Breach of a CBA that is in force should be remedied according to the Code of Obligations and the terms of the CBA (see *Effect of a Collective Bargaining Agreement*).
- The strike must be proportional, meaning the last resort after negotiations fail.

(*Federal Supreme Court, First Civil Chamber, 28 May 1998 (ATF 124 III 245, consideration 4c*).)

Additionally, strikes can be forbidden:

- In certain critical sectors, such as emergency services.
- During collective proceedings, in certain instances (see *Cantonal Labour Authorities for Collective Disputes*).

Works Councils (Employee Representative Body)

In Switzerland, ERBs occupy a similar role as works councils in the EU. That is, the ERB consists of employees elected by the workforce, it represents all the workforce, and it acts as an interface between the employer's management and the workforce. In particular, it allows for the exercise of participation rights (see *Role and Powers of a Works Council*).

Establishing a Works Council

If there are at least 50 employees within an employer, employees have the right to form an ERB (Article 3, Participation Act), subject to the following process:

- One-fifth of the employees (or 100 employees for employers with more than 500 employees) must request to vote on forming an ERB.
- In a private vote, the majority of employees participating in the vote must approve of forming an ERB.

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- If the majority of voting employees approve of forming an ERB, an election must be held to elect the ERB.

(Article 5, paragraphs 1 and 2, Participation Act.)

The employer and employees jointly organise ERB elections. The election must be free, but there are very few specific rules concerning ERB elections. (Articles 5, paragraph 3, and 6, Participation Act.)

Structure of a Works Council

The employer and employees jointly determine how many representatives an ERB includes, but there must be at least three representatives (Article 7, Participation Act). In practice, the number varies based on the employer's size and structure. Typically, there are at most seven or nine representatives.

The Participation Act does not contain other specific details regarding the structure of an ERB, but its members should be representative of the different categories of employees active in the undertaking.

Role and Powers of a Works Council

ERBs represent the employees of an enterprise that has decided to have an ERB. The ERB must represent their common interests regarding the employer (Article 8, Participation Act).

The Participation Act gives ERBs general and special participation rights. Other laws also give ERBs specific rights, such as the *Federal Act on Gender Equality, 151.1* (Gender Equality Act, GEA) (see *The Gender Equality Act*).

General Participation Rights

General participation rights refer to an existing ERB's overall participation rights. The Participation Act outlines these rights as follows:

- The ERB has a right to be fully informed, in good time, of all matters that it needs to be aware of to properly carry out its duties. This includes, for example, decisions that will affect the employees, such as internal directives and major changes to the business. "In good time" is relative and depends on the importance of the matter and whether it is time sensitive. For example, if the ERB wants to intervene, it would need to be informed by a certain date to intervene.

- The employer must inform the ERB at least once a year of the consequences of the course of business for employment and the workforce.

(Article 9, Participation Act.)

In undertakings without an ERB, the employees have this right to information (Article 4, Participation Act).

Special Participation Rights

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Special participation rights refer to rights specifically provided for in laws other than the Participation Act (that is, the Participation Act describes the existence of special participation rights, but the specific rights are set out in other special laws). These rights apply to ERBs, or employees collectively when there is no ERB. (Article 10, Participation Act.)

There are three types of special participation rights, including the right to:

- Information, meaning the right to receive information.
- Consultation, meaning the right to provide suggestions. The ERB, or the employees directly when there is no ERB, should be informed prior to a decision. The consultation process should last long enough for the ERB to have time to provide suggestions. In practice, this is often at least ten working days but may be longer. The ERB should also be provided with the information needed to make suggestions, such as information about a company's finances if the company claims to be carrying out mass redundancies for financial reasons.

  The employer need not accept the ERB's suggestions. They must only seriously consider the suggestions. For instance, an ERB can object to a transfer or a mass redundancy and propose alternatives. However, the employer can proceed with the transfer or mass redundancy, provided there is no obligation to co-decide on a social plan.

  When consultation is required, the employer often has an initial townhall style meeting to announce the proposed changes (such as mass redundancy or transfer of an undertaking) and a deadline for providing suggestions. The employer then holds a final townhall style meeting after the consultation period to announce the decision. To demonstrate that the employer seriously considered the suggestions, the decision should not be announced immediately after the consultation period.
- Co-decide in negotiations, meaning the right to participate in decision-making.

The following laws include certain special participation rights:

- The *Federal Act on Accident Insurance, 832.20* (UVG) gives an ERB the right to consultation regarding measures concerning prevention of workplace accidents and illness (Article 82, paragraph 2, UVG).
- The *Federal Act on Work in Industry, Trade, and Commerce, 822.11* (Labour Act, ArG) gives an ERB the right to consultation regarding health and safety matters (Article 48, paragraph 1(a) to (c), ArG).
- The CO gives an ERB the right to:
  - information regarding the transfer of an undertaking, if the employer does not envision any measures affecting employees as a result of the transfer (Article 333a, paragraph 1, CO);
  - consultation regarding the transfer of an undertaking, if the employer envisions measures affecting employees as a result of the transfer (Article 333a, paragraph 2, CO);
  - consultation regarding mass redundancies, including regarding a non-mandatory social plan (Articles 335d to 335g, CO); and
  - co-decide on a mandatory social plan. This right applies to mass redundancies where the employer normally employs at least 250 employees and intends to make at least 30 employees redundant within 30 calendar

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days for reasons that are not connected to their persons (meaning business-related reasons rather than due to the employee's conduct or performance). If a CBA is in place, social plan negotiations in the context of mass redundancies are held with the employee association party to the CBA, such as the trade union (Articles 335h to 335i, CO).

In general, ERBs (or employees directly where there is no ERB) have these rights under the CO and trade unions do not have specific rights in such situations, but the ERB (or employees) can invite them to assist. However, when a CBA applies, the employer must negotiate with the employer associations that are party to said CBA in the event of a planned mass redundancy (Article 335i, paragraph 3(a), CO).

- The *Federal Act on Occupational Retirement, Survivors', and Disability Insurance, 831.40* (Occupational Pension Act, BVG) gives an ERB the right to co-decide regarding the initial affiliation with a pension foundation as well as termination of a contract with a pension foundation and new affiliation (Article 11, paragraphs 2 and 3bis, BVG).

  If no agreement is reached, meaning there is no co-decision, a neutral arbitrator makes the decision. The arbitrator is appointed by mutual agreement (between the ERB and employer) or, failing that, by the supervisory authority (Article 11, paragraph 3ter, BVG). The canton designates the supervisory authority, which is responsible for supervising pension funds and pension-related institutions in that canton (Article 61, paragraph 1, BVG).

Works Council Regulation

ERBs can be permanent or ad hoc. For instance, an ad hoc ERB can be formed when negotiating mass redundancies and solely for that purpose (see *Special Participation Rights*).

Collaboration between the ERB and employers is based on the principle of good faith (Article 11, paragraph 1, Participation Act).

Members of the ERB must maintain secrecy on matters related to the company's operations that they become aware of in the course of their position in the ERB, with respect to persons outside the enterprise who are not authorised to represent the employees' interests (Article 14, paragraph 1, Participation Act).

Disputes regarding the application of the Participation Act are submitted to the authorities competent to hear employment-related disputes, subject to any jurisdiction granted to contractual conciliation and arbitration bodies (Article 15, paragraph 1, Participation Act).

ERBs are not linked to trade unions. However, trade unions can initiate legal proceedings to address Participation Act violations (Article 15, paragraph 2, Participation Act). They can also assist ERBs, if the ERB wishes. For instance, an ERB can request the trade union's presence during negotiations with the employer.

Rights and Protections of Works Council Members

General Rights and Protections

Under the Participation Act, an employer cannot prevent an ERB member from exercising their mandate and must not discriminate against an ERB member, during or after their term, due to their role as an employee representative. This protection also applies to candidates for ERB membership. (Article 12, Participation Act.)

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ERB members can exercise their mandate during work hours, provided the mandate requires it and their professional activities allow for it (Article 13, Participation Act). Generally, it is expected that employers give ERB members paid time to exercise their mandate during work hours and a place to do so.

Specific Protection Against Termination

The CO provides ERB members some protection against termination. An employer can generally terminate an employee, without just cause, simply by providing the required notice (see *Practice Note, Individual Employee Termination (Switzerland)*). However, terminating an employee, without just cause, while the employee is an elected member of the ERB is wrongful (Article 336, paragraph 2(b), CO). In such cases, the termination of employment is valid, but the employer may have to pay damages of up to six months' gross salary.

CEACR recommended that Swiss law provide additional protections to ERB members. Switzerland has not yet proposed changes to its laws to reflect this recommendation. For a discussion of *ILO, Case No 2265*, see *Rights and Protections of Trade Union Members*.

Industrial Action

In Switzerland, there are no specific rules regarding industrial action in the context of ERBs. The existence of an ERB does not impact industrial action rules.

For more information on industrial action, see *Industrial Action*.

Group or International Works Councils

In undertakings with at least 50 employees, the employees decide whether to have an ERB. However, group-level and international ERBs do not exist in Switzerland. That is, ERBs only operate at the local employer-level.

Social Committees

There are no specific laws regarding social committees in Switzerland.

Employee Representatives

In Switzerland, there is no standalone concept or mechanism of employee representatives outside the types of employee representation and collective bargaining discussed in this Note.

Collective Bargaining Agreements

A CBA is a contract between employers, or employer associations, and employee associations. A CBA sets forth clauses that govern the employment relationship between employers and individual employees, for example, clauses concerning the creation of the employment relationship, its nature, and its termination. (Articles 356 to 358, CO.)

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A CBA is not the same as a standard employment agreement (see *Standard Employment Agreement*).

Parties to a Collective Bargaining Agreement

CBAs are concluded between employers, or employer associations, and employee associations (in practice, this means trade unions). Trade unions can enter into CBAs with an individual employer, multiple employers, or one or more employer associations (meaning an association founded under Swiss law, whose statutory purpose is to protect employers' interests). In some instances, employees of an employer bound by a CBA can also voluntarily adhere to the CBA (see *Scope of a Collective Bargaining Agreement*).

Employers can voluntarily adhere to a CBA. This approach may have advantages for employers, especially if they can choose the trade union with which they will negotiate. The CBA may contain rules governing such accession, and any unreasonable conditions related to any accession (like large monetary contributions) may be declared void or limited to an admissible level by a court. Further, clauses and agreements intended to set contributions in favour of one contracting party are always void. (Article 356b, paragraph 2, CO.)

In some instances, the federal or cantonal authorities give direct binding effect to a CBA, meaning the CBA is mandatory in certain sectors (such as restaurants and hotels, domestic employees, and so on).

For more information on the scope of binding CBAs, see *Scope of a Collective Bargaining Agreement*.

Scope of a Collective Bargaining Agreement

A CBA can apply voluntarily or based on an extension decision that gives the CBA binding effect.

Voluntary CBA

From an employer's perspective, a CBA applies to the employers who entered into it and employers who are members of a signatory employer association (known as a voluntary CBA). Employers can also decide to adhere to an existing CBA, provided the existing parties to the CBA agree and subject to any applicable rules in the CBA concerning such ascension (Article 356b, paragraphs 2 and 3, CO).

Concerning which employees are covered by a CBA, if the CBA contains an "equality" clause (as is often the case), employers bound by the CBA must apply it to all employees, regardless of whether the employees are members of the signatory trade union. Otherwise, the CBA applies only to employees who either:

- Are a member of the employee association (that is, a trade union) party to the CBA.
- Voluntarily adhere to the CBA. Only employees employed by an employer already coming under the scope of a CBA can voluntarily adhere to it.

(Article 356b, paragraph 1, CO.)

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Extension Decision

An extension decision occurs when the competent federal or cantonal authorities give binding effect to a CBA. The decision is taken on request from the parties to the CBA (meaning employee associations, employer associations, and employers). (*Articles 1, paragraph 1, and 8, Federal Act Extending the Scope of the Collective Labour Agreement, 221.215.311* (LECCT).)

In the case of an extension decision, the CBA's scope extends to all employers and employees in the covered economic sector, branch, or profession, regardless of whether they are party to, or adhere to, the CBA. This means the CBA applies regardless of whether:

- The employer is party to the CBA or a member of a signatory employer association.
- The impacted employees are represented by a trade union or otherwise represented.

A CBA can be extended:

- On the cantonal-level, meaning extended to a canton.
- Federally across multiple cantons or all of Switzerland.

The extension decision can apply to the whole CBA or only certain clauses, such as minimum wage provisions (Article 1, paragraph 2, LECCT).

Effect of a Collective Bargaining Agreement

The conclusion of a CBA must be in writing. Any amendments and termination by mutual agreement, the accession of a new contracting party, and notice to terminate must also be in writing. (Article 356c, paragraph 1, CO.)

Effect on the Employment Relationship

When a CBA exists, because the employer is voluntarily party to one or because an extension decision applies, the CBA's provisions are binding on the participating parties and may not be derogated (Article 357, paragraph 1, CO).

If a provision of an individual employment agreement is contrary to the applicable CBA, the CBA's terms prevail unless the contrary provision benefits the employee (Article 357, paragraph 2, CO). However, mandatory public law takes precedence over a CBA (Article 358, CO).

For example, CBAs often address minimum wage, vacation days, and working hours. Swiss statutory employment law specifies provisions from which a CBA can deviate. However, CBAs cannot deviate from mandatory provisions of statutory employment law, such as overtime, advances, and so on. (Articles 361 and 362, CO.) When a local minimum wage law applies, the minimum wage under the law prevails over any minimum wage in the CBA.

A CBA can also specify required employer and employee contributions (meaning a percentage of salary, withheld and paid in a similar manner as social security contributions) for its implementation and, in some instances, contributions for continued training.

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Other Effects

When a CBA is in place, social plan negotiations in the context of mass redundancies are held with the employee association party to the CBA, such as the trade union (Article 335i, paragraph 3(a), CO). The contracting parties to a CBA also have a duty to maintain the social peace and refrain from industrial actions regarding matters the CBA covers (Article 357a, paragraph 2, CO; see *Industrial Action*).

Enforcement

The parties to the CBA, meaning the employer or employer associations and employee associations, must comply with the applicable CBA (Article 357a, CO).

CBAs between employer and employee associations can provide that each contracting party has a joint civil claim to require employers and employees bound by the CBA to comply with certain aspects of the CBA, such as:

- Formation, nature, and termination of employment relationships.
- Payment of contributions to equalisation funds or other institutions in connection with the employment relationship.
- Monitoring and providing security.
- Contractual penalties with respect to formation, nature, and termination of employment relationships as well as payment of certain contributions.

(Article 357b, paragraph, 1, CO.)

CBAs can also require that disputes be submitted to a special arbitration tribunal. However, if the CBA contains such an arbitration clause, this clause cannot be part of an extension decision. (Article 1, paragraph 3, LECCT; see *Scope of a Collective Bargaining Agreement*.)

Further, employees can generally invoke rights contained in a CBA in individual legal proceedings.

Standard Employment Agreement

Absent an applicable CBA, the competent authorities can unilaterally draw up a standard employment agreement that applies to certain sectors. Standard employment agreements are issued by:

- The cantonal authorities for agreements involving one canton.
- The *Federal Council* (*Bundesrat*) for agreements extending across multiple cantons.

(Article 359a, paragraph 1, CO.)

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Like CBAs, standard employment agreements contain clauses governing the conclusion, nature, and termination of employer-employee relationships and directly apply to the employment relationships they cover (Articles 359 and 360f, CO).

This means, in the economic sector covered by a standard employment agreement, an employment agreement can only deviate from the standard employment agreement if the deviation favours the employee. For example, the minimum wage provision of an employment agreement can only deviate from the minimum wage provided for in a standard employment agreement if the deviation favours the employee.

Trade unions have the right to apply for a declaratory judgment as to whether an employer is in compliance with such a standard employment agreement (Article 360e, CO).

Tripartite Commissions

A tripartite commission is made up of state representatives and an equal number of representatives from employers' and employees' associations (Article 360b, CO).

Tripartite commissions monitor the labour market. In the event of any deemed abuse of employment practices, the commission commonly contacts the employers directly. However, if the matter is not resolved, on application, a tripartite commission can enact a standard employment agreement setting forth a minimum wage when "the wages that are customary for a geographical area, occupation[,] or industry are repeatedly and unfairly undercut within a particular occupation or economic sector." (Articles 360a and 360b, CO.) As is the case for all standard employment agreements, this minimum wage applies across a specific sector.

Cantonal Labour Authorities for Collective Disputes

In some instances, employees, ERBs, and trade unions can submit a matter to the cantonal labour authority specifically responsible for collective disputes. This authority typically acts as a conciliation authority or arbitration tribunal.

For example, in the *Canton of Geneva*, employees, ERBs, and trade unions can introduce conciliation proceedings in front of the *Chamber of Collective Labour Relations* (*Saisir la chambre des relations collectives de travail*) (CRCT) regarding employment disputes concerning at least six employees (*Articles 1, paragraph 1(a), and 8, Law Concerning the Chamber of Collective Labour Relations* (LCRCT); *Articles 1, paragraph 1(a) and (b), and 2, paragraph 1, Regulation Implementing the LCRCT* (RCRCT)). During such conciliation proceedings, the parties must refrain from certain actions, including strikes (Article 12, LCRCT).

The CRCT also acts as the arbitration tribunal when the law provides for one, such as for decisions on a mandatory social plan in the context of mass redundancies when the parties fail to reach an agreement (Article 10, LCRCT; Articles 7 to 12, RCRCT; Article 335f, CO).

The CRCT can also encourage:

- Conclusion of a CBA (Article 1, paragraph 1(b), LCRCT; Article 16, RCRCT; Article 356, CO).
- Enactment of standard employment agreements (Article 1, paragraph 1(c), LCRCT; Articles 17 and 18, RCRCT; Articles 350 to 360a, CO).

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The Gender Equality Act

The GEA provides additional employee representation rights, which apply to:

- ERBs (see *ERBs*).
- Organisations (see *Organisations*).

ERBs

Under the GEA, ERBs can conduct the audit of the equal pay analysis that is mandatory for employers with 100 or more employees at the start of the calendar year (Articles 13a and 13d, paragraph 1(b), GEA; see *Swiss Confederation: Equal Pay Analysis with Logib*). The employer and ERB must agree on the procedure for the audit and its reporting to management (Article 13f, GEA).

Organisations

Organisations have certain rights under the GEA if they have both:

- Existed for at least two years calendar years.
- A statutory purpose of promoting gender equality or safeguarding employees' interests.

(Article 7, GEA.)

Organisations can, in their own names, have a finding of discrimination declared in proceedings if the probable outcome of the proceedings will affect a considerable number of jobs (Article 7, GEA).

They can also conduct the audit of the equal pay analysis that is mandatory for employers with 100 or more employees at the start of the calendar year (Articles 13a and 13d, paragraph 1(b), GEA). The employer and organisation must agree on the procedure for the audit and its reporting to management (Article 13f, GEA).

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