A Five-Minute Guide to Swiss Employment Law

Key Elements

Termination

(notice period / good cause)

See further →

In principle, no formal requirements for a valid employment contract

Indefinite duration

Definite duration

Bespoke forms to meet
business needs

No nation

A Specific provagree

Working hours

Holidays

Minimum 4 weeks paid holiday per year (5 weeks for employees under 20).

No national minimum wage

Specific provisions in a collective bargaining agreement (if applicable);

⚠ Five cantons adopted minimum wages (Jura, Neuchâtel, Geneva, Ticino and Basel-City).

Salary / Bonus / 13th Month Salary

See further →

Non-compete and non-solicitation clause

Post-contractual non-compete and non-solicitation clauses are valid and enforceable if all the following conditions are met:

- 1 Agreed in writing;
- 2 The employee must have had access to the employer's clientele or manufacturing/trade secrets:
- 3 Information so obtained might substantially harm the employer;
- 4 Restrictions do not harm the employee's earning prospects (reasonably limited in terms of duration, territory and scope of activity covered).
- △ Some professionals cannot validly enter into non-compete and non-solicitation clauses.

(full-time/part-time, overtime, etc.)

See further →

Working Hours

1 Contractual weekly working hours

To be defined in the individual contract, but usually 40 to 44 hours per week.

(2) Overtime

An employee's weekly working hours over and above the contractual working hours.

Payment for overtime

- Compensation by time off of equal duration (if agreed with employee); otherwise payment of 1.25 × salary;
- → Exception: exclusion in writing is possible in certain circumstances (e.g. executive staff; high earners; flexiwork).
- Maximum weekly working hours
 - 45 hours per week: for office staff and "technical and other employees" (i.e. all employees working in the office or in office-like functions), and employees in "industrial enterprises" (as defined by relevant legislation);
 - 50 hours per week: for other workers, mainly employees undertaking manual work.

Organization of working time: flexible working hours, home office. Increased interest since COVID-19 pandemic.

International setup: in particular in the case of crossborder workers, impact on the country of social security registration if home office in the residence country vs. work in the country of work.

Special flexible application of social security liability rules: for EU/EFTA countries, until 30 June 2023. (See the "New Trends" page) 4) Extra-hours

An employee's weekly working hours over and above the maximum weekly working hours.

Limitation

- For employees subject to the 45-hour limitation: maximum 170 extra hours per year, and maximum 2 hours per day;
- For employees subject to the 50-hour limitation: maximum 140 extra hours per year, and maximum 2 hours per day.

Consequences

- Compensation by time off of equal duration (if agreed with employee);
- → Otherwise payment of 1.25 x salary (except for the first 60 hours for employees subject to the 45-hour limitation).
- ⚠ Duty to record working time
 - Daily and weekly working hours, days off, and time and duration of breaks longer than 30 minutes;
 - · Records to be kept for 5 years;
 - · Few exceptions to the duty to record.

Might work and Sunday work subject to prior authorization. Exceptions apply.

Modifications regarding the conditions, compensation and competences to grant night and Sunday work authorizations.

Remuneration



Subject to the parties' agreement.

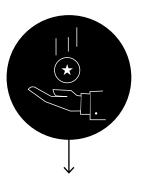
Exception

- Collective bargaining agreement which sets minimum salary;
- · Minimum wages in five cantons;
- Standard employment contracts setting forth minimum wages.



2 13th month

Optional, but if provided by contract, becomes a salary unconditionally due.



(3) Bonus (or equivalent)

Salary

If the bonus is considered as variable salary, it must be paid.

Conditions

- Amount of the bonus is clearly determined, or is at least objectively ascertainable (formula);
- Employer pays the bonus without restriction in the same amount for at least 3 years (or at least 10 years, if subject to restrictions);
- The bonus is not deemed a mere accessory to the salary: not applicable in case of very high income, i.e. beyond around a threshold updated anually (beyond around 374'000 CHF).

Gratification

If the criteria above are not met, the bonus may be considered a gratification. This is a special compensation granted by the employer in particular circumstances. It is paid according to the employer's decision ("discretionary") and to the terms and conditions set out in the contract (to be carefully drafted).

 \triangle Distinctions must be made between agreed bonus and gratification.

According to new case law, it is not sufficient to use individual (subjective) criteria in a gratification formula to avoid a requalification as agreed bonus and the obligation of the employer to pay it.



4 Incentive plan

Examples

Stock Option Plan / Plan for acquisition of shares / Restrictive Stock Units (RSUs).

Possible, but to be specified:

- Salary or gratification (see criteria at (3));
- · Eligible employees;
- Plan substrate: sources of security allowing employee profit-sharing;
- Plan price (exercise price of option);
- Defined terms and conditions: the aim is to provide attractive remuneration without being excessive in relation to the performance of both the company and the employee;
- Terms governing the right to exercise options and to dispose of options/shares;
- · Granting entity (in a group of companies).
- ⚠ Taxation: withholding plan.

Termination

1 Cause

No cause necessary in the case of an employment contract of indefinite duration (except for termination with immediate effect). **3** Form

No mandatory formal conditions, unless specified in the contract.

Advice

- In writing;
- By registered mail or hand delivered (with witness);
- new forms: SMS, Zoom, etc.

5 Termination agreement

Subject to restrictive conditions during the employment relationship (including notice period) + 1 month.



 \longrightarrow

Abusive termination

- · if it is discriminatory;
- if it follows the exercise of constitutional rights by the employee;
- if it is solely to prevent claims accruing under the employment contract;
- · etc.

Special attention in case of termination of older employees, close to retirement age.



Notice period

Nil Good cause
1 month 1 year of service
2 months 2 - 9 years of service
3 months > 9 years of service

Key info

- Different notice period possible (limit: 1 month / other notice period provided by a collective employment contract);
- · Garden leave possible;
- Notice period extended in case of accident, sickness or pregnancy, and post-childbirth [termination may be null if notified during such a period].



Mass redundancies

Arise when companies plan to dismiss (within a period of 30 days, for reasons not inherent to the particular employees) at least:

- 10 employees in a business normally employing 21 - 99 employees;
- 10% of the employees of a business normally employing at least 100 - 299 employees; or
- 30 employees in a business normally employing 300+ employees.

Process involving employees' representatives and authorities:

Tips: • prepare in advance;

- · project management;
- · business case preparation.

New trends



- Retirement age
- · Retirement age for women increased to 65 years old from 01.01.2024



- Adoption leave
- · From 01.01.2023
- · In case of adoption of children < 4 years old
- · 2 weeks within 1 year deadline
- · Salary covered by insurance indemnities ("OAPG")



- New federal act on data protection
- · Due to enter into force in September 2023;
- · No transition period → immediately applicable;
- New obligations for employers (in particular: (I) obligation to put into place technical and organisational measures to ensure data protection compliance, (II) establish a registry of data processing activities for companies of at least 250 employees, (III) notify the Federal Commissionner and the employee in case of breach of data security. (IV) inform in case of data processing and indicate the name of state(s) in case of crossborder data transfer, (V) duty to perform an impact assessment if the processing of data creates a high risk, inform in case of automated individual decision).



- Social security liability rules
- Possibility, after June 30, 2023, that the social security liability rules are adjusted or interpreted so that a level of remote working > 25% carried out in the country of residence does not change the competence or the subjection rules. Ongoing discussions on a European level.

⚠ Impact on employment agreement/applicable law of country of residence.



- **Obligation to** disclose open positions
- · New professions added to the existing list of professions subject to annoucement updated every year by SECO.
- · New professions included in the list in 2023



New limited company law

Ordinance on excessive remuneration in public companies listed on the stock exchange: abrogated, topic addressed in the new applicable limited company law (Art. 732 ff SCO since 01.01.2023).

Laurence Crittin



laurence.crittin@mangeat.ch T +41 22 319 22 00

The content of this document does not constitute any legal advice and may not be relied upon as such. Should you seek advice with regard to your specific circumstances, please contact us. Laurence Crittin is a Counsel at MANGEAT. Her main practice areas are Employment Law, Immigration Law, Data Protection and General Contractual Law.

Laurence Crittin worked as a Senior Associate in reputable business law firms in Geneva, Zurich and Sion where she specialised in employment law, while still practicing her other areas of interest. She also gained valuable experience as a Legal Counsel for a major luxury goods company.

Laurence benefits from extensive experience in a wide range of industry sectors (in particular banking, finance, luxury goods, commerce, healthcare / medical devices), both on the international and domestic levels.

She regularly advises and represents before courts companies and individuals in her areas of expertise. She managed cases in relation to terminations of employment, mass dismissals, restructuring of group of companies (including due diligence processes), non-competition and non-solicitation clauses, immigration law, work permits, cross-border workers, private placement services and hiring of services, and social charges. She also advised on companies' personnel policies, employment agreements, HR practices (including data protection related issues).

Laurence is passionate about people and helping them finding pragmatic solutions in line with their business objectives and has experience in advising on cross-functional matters.

MANGEAT Attorneys at Law LLC is a dynamic law firm helping clients to achieve their ambitions in today's complex and fast-changing world.

Our ambition is to be at the forefront of the legal profession: by always thinking ahead, and by offering to clients a seamless collaboration with a wide range of talents.

Mangeat Attorneys at Law LLC

Passage des Lions 6 P.O. Box 1211 Geneva 3 — Switzerland

Tel. — +41 22 319 22 00 Fax — +41 22 319 22 01 Web — www.mangeat.ch



