

# **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**

## 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 / 13<sup>th</sup> 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.

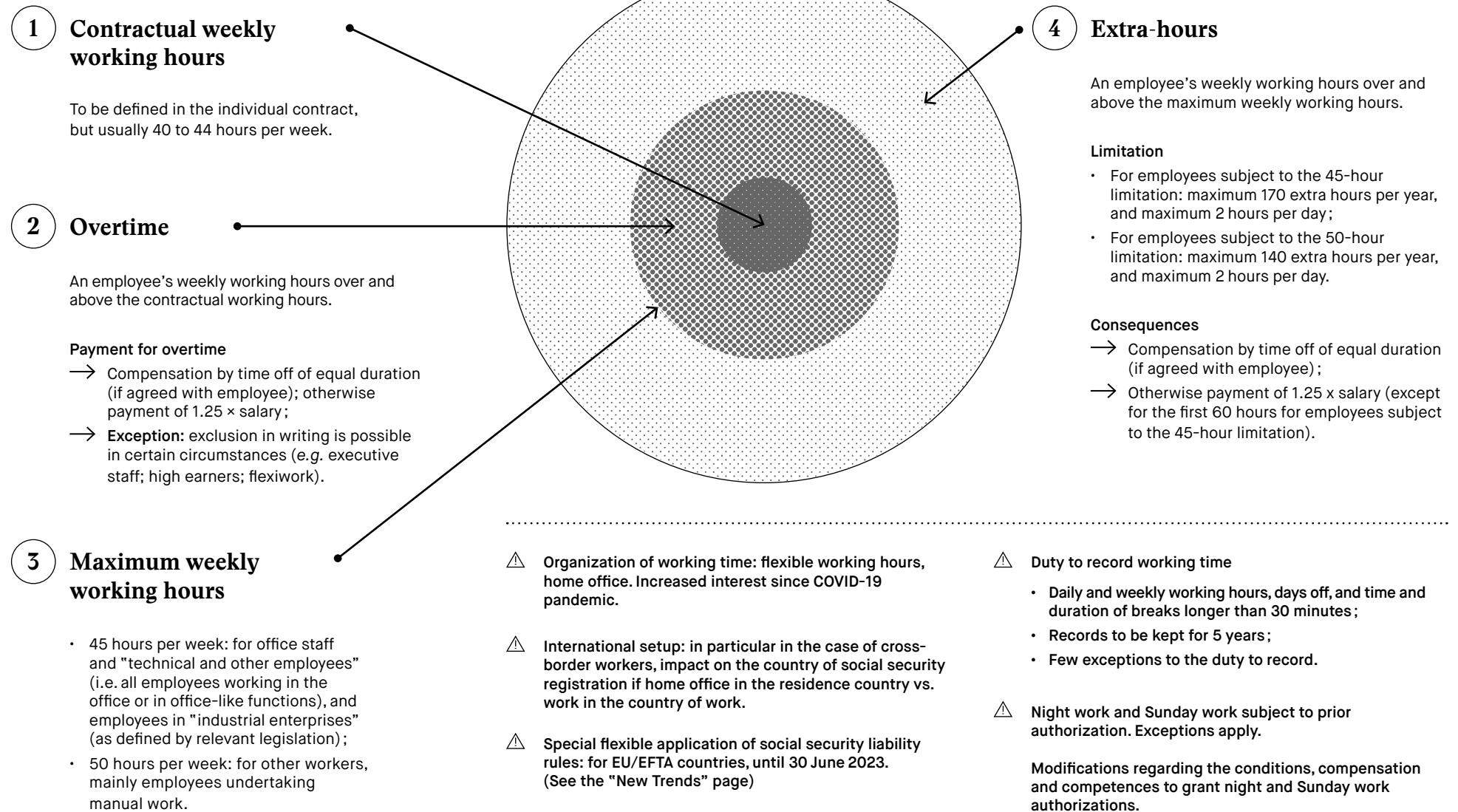
.....  
*Indefinite duration*  
/  
*Definite duration*  
/  
*Bespoke forms to meet  
business needs*  
.....

## Working hours

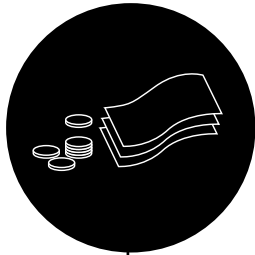
(full-time/part-time, overtime, etc.)

[See further →](#)

# Working Hours



# Remuneration

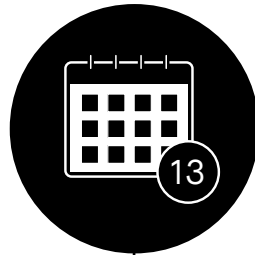


## 1 Salary

Subject to the parties' agreement.

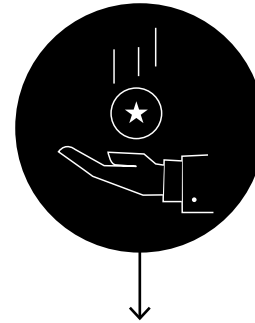
### Exception

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



## 2 13<sup>th</sup> 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 annually (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).

- △ 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

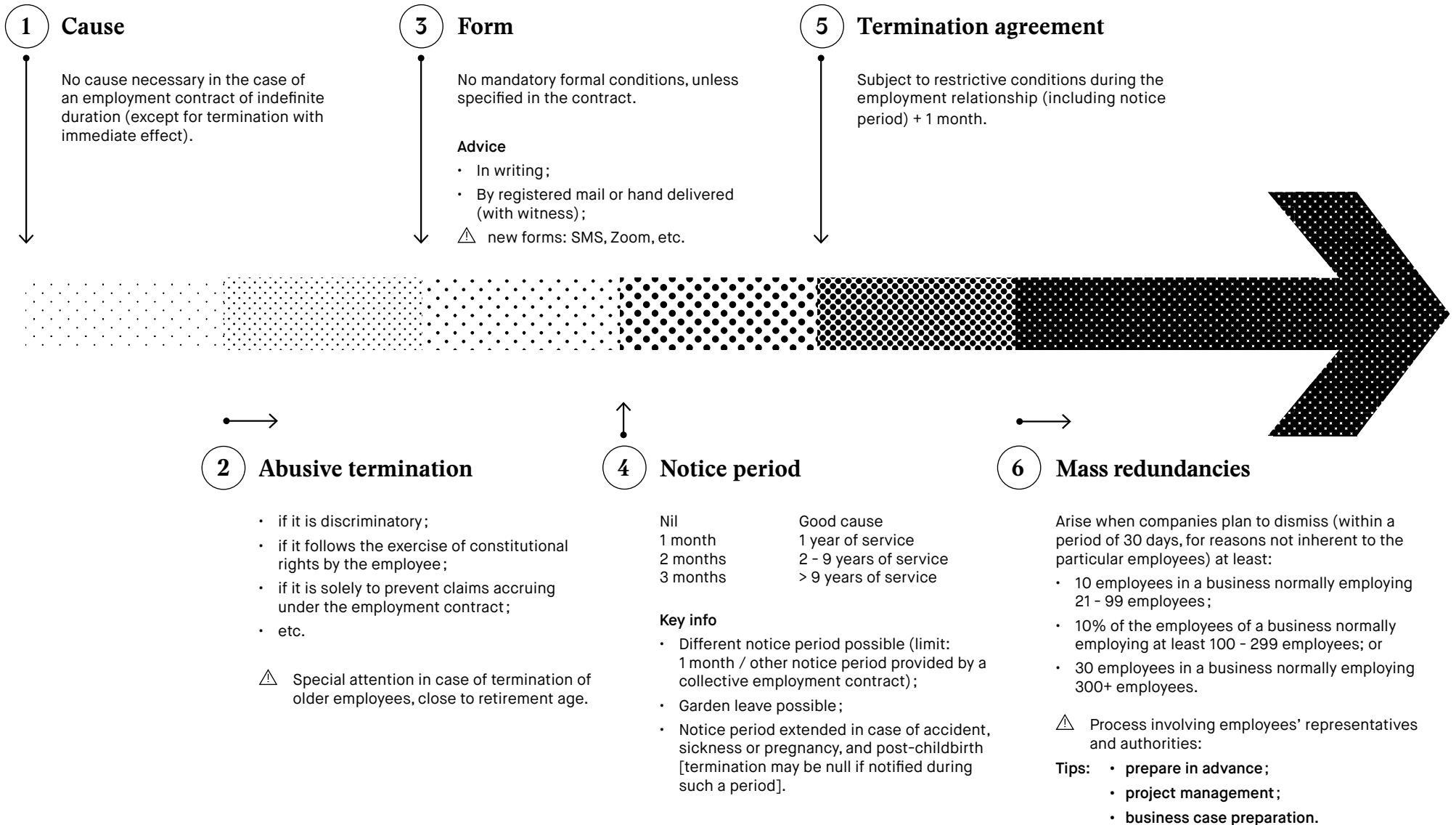
### Examples

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

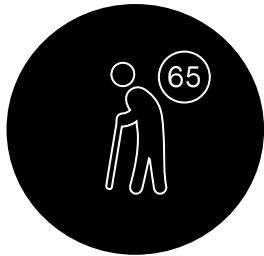
### Possible, but to be specified:

- 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



# New trends



## 1 Retirement age

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



## 2 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")



## 3 New federal act on data protection

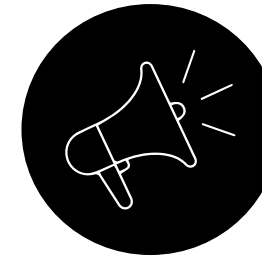
- Due to enter into force in September 2023;
- No transition period → immediately applicable;
- New obligations for employers (in particular: (I) obligation to put into place technical and organisational measures to ensure data protection compliance, (II) establish a registry of data processing activities for companies of at least 250 employees, (III) notify the Federal Commissioner 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).



## 4 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.



## 5 Obligation to disclose open positions

- New professions added to the existing list of professions subject to announcement updated every year by SECO.
- New professions included in the list in 2023



## 6 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).

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*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.

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**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.**

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