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# Breaking New Ground in Switzerland: Work Visa and Labour Law Aspects

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# Breaking New Ground in Switzerland: Work Visa and Labour Law Aspects

## **Abstract**

[Excerpt] The purpose of this memorandum is to provide a general overview of Swiss Labour Law. This document however, is only a summary and does not explore every issue in detail. The Law as stated is at 1 March 2006.

## **Keywords**

Switzerland, labor law, employment, legislation, public policy, immigration, working conditions, employment agreements

## **Disciplines**

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## **Comments**

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# Breaking New Ground in Switzerland

Work Visa and Labour Law Aspects

2006



# **Breaking New Ground in Switzerland**

Work Visa and Labour Law Aspects

## **Baker & McKenzie**

Baker & McKenzie Geneva  
Chemin des Vergers 4  
1208 Geneva, Switzerland  
Tel: +41 22 707 98 00  
Fax: +41 22 707 98 01

Baker & McKenzie Zurich  
Zollikerstrasse 225  
Postal Address: P.O. Box  
8034 Zürich, Switzerland  
Tel: + 41 1 384 14 14  
Fax: +41 1 384 12 84

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# General Introduction

The purpose of this memorandum is to provide a general overview of Swiss Labour Law. This document however, is only a summary and does not explore every issue in detail. The Law as stated is at 1 March 2006.

## 1 Governing Rules

### Scope of the Swiss Labour Law

Under the Swiss Federal Act on International Private Law, if no choice of foreign law is agreed upon by the parties, Swiss Labour Law applies to:

- the employment agreements that are ordinarily performed in Switzerland;
- the employment agreements ordinarily performed in several countries, provided that the employer's business establishment is located in Switzerland.

The choice of a foreign Labour Law to govern an employment relationship otherwise subject to the Swiss Labour Law will be recognised only if the employee resides in a foreign country or if the employer's establishment is located in a foreign country. The parties may choose either the Labour Law of the country of the employee's ordinary residence or that of the country of the employer's business establishment.

Notwithstanding the choice of a foreign Labour Law, Swiss public policy laws such as social security laws, the Federal Labour Statute, etc., always apply to employees working in Switzerland unless an international treaty provides otherwise.

### Labour Relationship Rules

These are contained in the Swiss Code of Obligations of 30 March 1911 (the "CO"), in particular its Title 10, which deals exclusively with the employment contract. Title 10 was totally revised by the law of 1 January 1972 and partially revised on a few occasions.

Title 10 comprises discretionary provisions, mandatory provisions and semi-mandatory provisions.

Discretionary provisions do not apply if the parties have adopted other terms in the individual employment contract. Semi-mandatory provisions may be waived only by contractual terms which place the employee in a more favourable position than the legal ones. These provisions are listed in Article 362 of the CO. Mandatory provisions are compulsory for the parties, so that they cannot be waived by mutual agreement. Mandatory provisions are listed at Article 361 of the CO.

The Federal Labour Statute of 13 March 1964, consists mainly of provisions specifying the measures to be taken to guarantee the health and safety of the employees working in industrial and commercial enterprises, the working hours, the time of rest periods, the protection of women and young people, and internal regulations. The Federal Labour Statute has been fundamentally revised on 20 March 1998 which amendment entered into force on August 1, 2000.

The Federal Act on the equal treatment of women and men was passed on 24 March 1995 and entered into force on 1 July 1996; it applies to all public and private employment relationships.

## The Collective Bargaining Agreements Applicable to the Employers and the Employees, if any

Collective bargaining agreements can include provisions regulating all questions relating to the relationship between employers and employees. At present, the number of collective bargaining agreements is estimated at 1400, covering roughly half of the employers and employees in Switzerland.

If certain conditions are met, the Swiss Federal Council can declare a collective bargaining agreement generally binding and thereby make its provisions applicable to all employment relationships within a specific branch.

### Internal Rules

The internal rules of the company (*“règlement d’entreprise”* *“Betriebsordnung”*) also govern the employment relationship. If these internal rules are adopted unilaterally by the employer, they may contain only provisions covering the measures taken to protect the health and safety of the employees, the disciplinary rules and sanctions. In any event, the employer has to consult with the employees representative or, if there is none, the employees themselves.

However, contractual internal rules adopted by the employer and the employees’ representatives may include provisions relating to other employment matters, with the exception of questions usually regulated in an individual employment contract or a collective bargaining agreement. Internal rules are mandatory for industrial companies.

### Model Contracts

This is a contract enacted by the Swiss Federal Council or the Cantonal competent authority for a specific branch. It applies to all employees and employers of the branch who have not concluded an employment agreement containing provisions to the contrary. At present, the Swiss Federal Council has promulgated six model contracts applicable at the federal level to different branches in the medical and agricultural fields.

### Other Legal Sources

In addition to the sources of law mentioned above, there are numerous federal and cantonal statutory provisions pertaining to specific aspects of the relationship between employer and employee - e.g., social security laws, rules concerning work permits for foreign workers, cantonal laws regulating interim agencies, etc.

Furthermore, certain employment relationships are exclusively subject to particular federal laws. For example, the employment contracts of seafarers performing their activity on Swiss vessels are exclusively governed by the Federal Swiss Maritime Navigation Statute of 23 September 1953.

## 2 Immigration Requirements

### General

A foreigner may only reside and work in Switzerland after having obtained a valid work and residence permit. However, if the work does not exceed 8 days in any three month period, no work permit is required. This exception does not apply to the construction industry where a work permit is required from the very first day of employment.

Since the entry into force of the bilateral treaty between Switzerland and the European Union and the EFTA member states on 1 June 2002, the requirements relating to the

type of work and residence permits available are different for citizens of the 15 member states and the EFTA-countries (together the “EEA”-countries) and non-EEA nationals. The most important difference is that EEA nationals have a right to a work and residence permit if they meet the requirements set out in the bilateral treaty, whereas the grant of a work and residence permit to non EEA nationals is fully discretionary.

## EEA Citizens

EEA nationals have a right to a work permit that allows them to work in Switzerland for a maximum of 90 working days within a one-year period. As from 1 June 2004 a mere notification is sufficient for such type of work permit and no authorization needs to be obtained. For work exceeding 90 days, a right to a work permit only exists if there is a quota available. Therefore, an authorization is still required for these types of work permits. If a permanent employment contract or fixed contract for at least one year is submitted, work and residence permits are issued for five years duration. If the employment contract with a Swiss employer is, however, entered into for a fixed period of less than one year, the employee receives a short-term permit, the duration of which corresponds to the duration of the employment contract.

EEA nationals residing in France, Germany, Austria or Italy, near the Swiss border may obtain a border-commuter permit which allows them to reside in Switzerland during the week as long as they return to their domicile each weekend.

The quotas for European nationals amount to 15,000 residence permits, and 115,500 short-term permits that exceed 90 working days but not 364 calendar days. The quotas for work and residence permits exceeding 90 days will remain in force until 31 May 2007, and may be reintroduced thereafter if immigration into Switzerland exceeds certain thresholds.

EEA nationals can freely move their residence, their employer and their job. Only the taking up of a self-employed activity requires an additional authorization.

## The EU enlargement

With the enlargement of the EU on 1st May 2004 to ten new member states (Poland, Hungary, Czech Republic, Slovenia, Slovakia, Estonia, Lithuania, Latvia, Cyprus and Malta) the existing bilateral agreements between Switzerland and the EU have been extended to the new member states, including the Agreement on the Free Movement of persons which governs immigration between EU and Switzerland.

However, it was necessary to agree on a separate interim agreement in order to fix the transition periods applicable to the nationals of the ten new member states that plan to move to Switzerland.

Pursuant to the transition regime that has been negotiated, restrictions within the employment market (priority for Swiss nationals, rising contingents, control of salary conditions and terms and conditions of employment) can remain in effect until April 30, 2011.

The regulation for the ten new EU countries provides that the following restrictions will be maintained:

- **Immigration restrictions:** the number of permanent residents (up to 5 years) and short term residents (up to 1 year) is restricted. The quota for permanent residents will be increased gradually from 1,300 (2005/6) to 3000 persons (2010/11), and for short-term residents from 12,400 (2005/6) to 29,000 (2010/11).

- National priority: foreign personnel may only be engaged if no candidate with the same qualifications is available on the domestic labour market.
- Prior wage controls: before an employment contract is executed, the cantons must check the wage and employment conditions.
- Restriction for cross-border service providers: cross-border service providers in certain sectors (construction, industrial cleaning, horticulture) as well as short-term resident permits (less than four months) are also subject to labour market restrictions (national priority, prior control of wages and compliance with Swiss qualification requirements).

Furthermore:

- Until 2014 a special protective clause allows Switzerland to restrict resident permits by means of quotas should there be an excessive increase in immigration.
- On the basis of experiences gained in 2009, Parliament will decide whether the Agreement on the Free Movement of Persons is to be continued. A referendum may again be launched against said decision.

The new regulation will only be applicable once the Protocol enters into force on 1st April 2006.

## Non EEA Nationals

Non-EEA nationals may be granted a short-term permit which allows them either to reside and work in Switzerland for a maximum of 120 consecutive days or in several stays of variable length up to an aggregate maximum of 120 calendar days in a given calendar year without taking up residence. The 120 days permit is not subject to a quota.

This permit is very useful for managers or directors of companies who must often travel, but who remain domiciled outside of Switzerland where their families live.

For limited stays of up to one year, short-term residence permits are available which may be extended and renewed up to an aggregate of two years. For stays exceeding one year, year-round residence permits may be granted.

Employers must prove, in respect to Non-EEA nationals, that it was not possible to find another candidate for the same job in either the Swiss or overall European labour markets. This requirement does not apply to executives or qualified specialists coming to Switzerland within the framework of intra-group management transfers in internationally operating enterprises, or who are indispensable for important research projects in enterprises or research institutions, or for the fulfillment of extraordinary assignments. In any event, a work and residence permit can only be obtained if a quota is available.

The quotas for work permits for non-EEA nationals amount to 4,000 annual permits, and to 5,000 short-term permits that exceed 120 but not 364 calendar days.

All applications for a work permit must be made by an employer for his future employee. The permit nevertheless belongs to the employee, who after one year of residency in Switzerland, may, in principle, change employer and even move to another canton.

The procedure for obtaining a work permit usually lasts one or two months from the time the application is filed. Moreover, one or two weeks must be allowed to gather the necessary information, prepare the file and draft the application. Occasionally, a delay of several weeks may occur when additional information is requested by the authorities.

## Work Permits for Spouse and Children of Foreigners

The spouse and children of a Swiss national, as well as the spouse of holder of a permit of at least one year duration and his children who enter Switzerland before the age of 18, can obtain a work permit independently of the quota system. EEA nationals even are allowed to enter Switzerland before the age of 20. The spouse and children of the permit holder are not authorised to come to Switzerland, where the permit is a work permit for less than one year or for 120 days.

## Residence Permit

After 10 years of residency, the residence permit is converted into a C-permit (“Niederlassungsbewilligung,” permis d’établissement”), which gives the holder all rights Swiss nationals enjoy with some limited exceptions such as the right to vote.

The citizens of the United States of America, Canada and of 22 European countries, with which Switzerland has concluded a bilateral treaty of establishment, may obtain a C-permit after only five years of residency. These countries are:

Andorra	Germany	Monaco
Austria	Great Britain	Netherlands
Belgium	Greece	Norway
Canada	Iceland	Portugal
City of Vatican	Ireland	San Marino
Denmark	Italy	Spain
Finland	Liechtenstein	Sweden
France	Luxembourg	USA

## 3 Terms of Employment

### Definition and Form of the Employment Agreement

An employment contract is concluded when an agreement is reached according to which the employee undertakes to work for the employer for a fixed or indefinite period of time and the employer in turn promises to pay the employee a salary either on a time basis, or based on the work performed.

The employment contract can be written, oral and even implied. However the written form is mandatory:

- where the parties wish to waive certain discretionary provisions of the Swiss Code of Obligations and establish other terms in their individual employment contract; and
- for specific employment contracts such as apprenticeship contracts, traveling salesmen contracts, seafarers contracts, etc.

The employment contract may be written in any language freely chosen by the parties. Swiss law does not prescribe the use of the French, Italian or German language.

## 4 Working Conditions

### Working Hours

The maximum working hours permitted by law are 45 hours per week for industrial, technical, office and sales personnel and 50 hours per week for most other employees. In practice, however, a lower number of weekly working hours is fixed in certain branches by collective bargaining agreements or by individual agreements. For young people the maximum working hours allowed by law are 45 hours per week.

### Fixing the Enterprise's Working Hours

The daily work must be performed between 6 a.m. and 8 p.m. The employer can extend daily work until 11 p.m. after having consulted with the employees' representatives or, if there are none, the employees themselves. The maximum working time within the enterprise may not exceed 17 hours. Apart from these limits employers may freely organise the enterprise's working hours.

However, employers running an industrial enterprise are required to establish the enterprise's working hours, send a copy to the competent cantonal authority and post them in a prominent position in the workplace. For industrial enterprises with individualised working hours, the employer must send the cantonal competent authority a copy of the regulations thereon to the competent cantonal authority.

The employer needs a permit to employ staff on night work. An employer can obtain such a permit if he establishes either that the enterprise must meet an emergency (in which event night work will then be allowed only temporarily), or that the enterprise must operate day and night for technical or economical reasons (when night work may then be allowed temporarily or permanently). For certain activities (such as hospitals, restaurants, transportation, the air travel industry), special provisions exist which allow night work on a general basis.

Temporary Night work must at least be compensated by a 25% salary increase. Employees performing permanent or regular night work are entitled to compensate 10% of the night work by time off.

Work between 8 p.m. and 6 a.m. is forbidden for pregnant women in the eight weeks before the birth and young people; although it may be allowed only under very extraordinary and exceptional circumstances.

### Overtime

If extraordinary circumstances (e.g., emergencies, inventory-taking, winding up, etc.) make it necessary, the employer may have overtime work ("*Ueberzeit*") performed which must not exceed 2 hours per day per employee and 140 hours per year, if the maximum working hours per week in the branch is 50. If the maximum working hours per week average 45, the limit on overtime working for employees is 170 hours per year. However, the employee can be compelled to work overtime only if his family situation, state of health and age permit it.

The employer must remunerate overtime work at the normal pay rate plus at least 25%. For certain employees whose ordinary maximum weekly working time is 45 hours, like office personnel, that does not apply for the first 60 hours of overtime if such compensation is excluded by written agreement. With the employee's consent, overtime work may be compensated by extra vacation equal to the number of overtime hours performed rather than compensated by a payment.

## Breaks

The employee is entitled to a daily rest of at least eleven consecutive hours. It can be reduced to eight hours once a week if during two weeks the average daily rest equals 11 hours.

The employer must allow the employees to take breaks of (i) 15 minutes if the working day lasts more than 5 hours 30 minutes, (ii) 30 minutes, if the working day lasts more than 7 hours, and (iii) one hour, if the working day lasts more than 9 hours.

## Salary

### Amount of Salary

As a general rule, the amount or method of determination of the salary is fixed in the individual employment contract. The parties are free to negotiate and fix the remuneration to be paid to the employee. In particular, there are no federal regulations providing for minimum wages at the present time. Nonetheless the following restrictions do apply:

- Minimum wages fixed in collective bargaining agreements applicable to the employee and the employer must be complied with. However, collective bargaining agreements apply only if the employer and the employee have freely submitted to them or if they have been declared mandatory.
- The constitutional requirement, confirmed by and detailed in the Act on the equal treatment of women and men, that there be no discrimination between payment of male and female employees for similar work.
- Cantonal laws may fix minimum wages for foreigners working on the cantonal territory.
- Minimum salary required by authorities for granting work permits to foreigners.

If the amount or the method of calculating salary is not set forth in a collective agreement or an individual employment agreement or a model contract, the salary is fixed according to salaries usually paid in the branch and area in respect of similar work.

### Payment of Salary

The employer must pay the employee's salary on a monthly basis, if the parties have not provided for shorter terms of payment. Longer salary payment terms can only be fixed by collective bargaining agreements or model contracts, but not by individual employment agreements.

The salary is paid in cash and during the employee's working hours. However, the parties can generally agree to the payment of the salary by post or bank transfer.

The employer must remit to the employee a written salary slip ("*décompte de salaire*"; "*Lohnabrechnung*") on which the following minimum information must be given: the gross amount of the salary, the detailed social contributions paid by the employee, and the net pay. If this information does not vary, the employer can give the written salary slip once a year (e.g., at the end of January).

### Benefits in Kind

Benefits in kind, such as housing, private use of a company car, clothing, board and lodging, are considered as an integral part of salary. Thus, their unilateral cancellation by the employer will give rise to the employee's right to a compensatory payment.

Since they are construed as an element of the employment contract, the value of benefits in kind should be included in the base salary, and are subject to social security contributions.

## Bonuses

Bonuses can take various forms, such as a thirteenth month bonus, pre-vacation bonus, a year-end bonus, a skill bonus, a production bonus or a balance sheet bonus. However the law makes a distinction between those which are contractual and those which are purely gratuitous.

Contractual bonuses result principally from the individual employment contract, the terms of a collective bargaining agreement or the terms of a model contract.

Contractual bonuses may also result from an implied agreement between the employer and the employee. If the bonuses are paid regularly and without any reservation the employee could consider in good faith that such bonuses are part of his salary. Therefore, the employer who wishes to be able to stop paying a bonus in a discretionary manner, must inform the employee at the time of the payment of a bonus that it is discretionary, uncertain and its amount variable. Also, bonuses which constitute a high percentage of the overall compensation might be considered salary components to which the employee is entitled. That is, for example, the case if the bonus is taken into account when fixing the insured salary for pension fund or sick pay insurance purposes.

Contractual as well as gratuitous bonuses are considered as additional salary from the social security and fiscal standpoint and are thus subject to social security contributions and taxes.

## Overtime Compensation, (“Ueberstundenkompensation”)

### *Overtime Pay*

Overtime (“*Ueberstunden*”) in the sense of time worked in excess of the working time agreed upon up to the maximum working hours provided for by the Labour Law Statute (45 or 50 hours) must be compensated for by the payment of the regular remuneration plus a 25% increase, unless a provision of the collective bargaining agreement, model contract or individual employment agreement provides otherwise. Such provision requires the written form, i.e. has to be signed by the employee.

### *Compensatory Time Off*

Subject to the consent of the employee, overtime can instead be compensated by extra time off equal to the period of overtime worked, unless an individual employment agreement, collective bargaining agreement or model contract is more favourable to the employee.

### *Particular Contractual and Legal Provisions*

Overtime compensation (i.e., regular remuneration, additional remuneration and time off) can be waived by a written individual employment agreement, a collective bargaining agreement or a model contract.

As an exception, compensation for overtime exceeding 45 hours (or respectively 50 hours) (“*Überzeit*”) cannot be renounced by the employee with the exception of the first 60 hours of such overtime work for certain employees whose maximum weekly working time amounts to 45 hours.



### *Paid Leave of Absence*

The employer must pay the regular salary for a limited period of time if the employee for reasons beyond his control (e.g., sickness, accident, maternity, duty to render military or other public service) is unable to perform his functions, provided that the employment relationship has lasted more than three months or has been concluded to last for more than three months.

In the absence of an individual employment contract, a collective bargaining agreement or a model contract which is more favourable to the employee, the duration of the employer's obligation to pay the salary is limited as follows:

- During the first year of employment this obligation to pay the salary is limited to three weeks of absence.
- After the first year of employment, the period during which the employer has (according to case-law) to pay the salary depends on the Canton. In the Canton of Zurich the period equals the number of years of service the employee is in plus six weeks (i.e. an employee in the 4th year of service is entitled to ten weeks of sick pay). The most commonly used "Bernese Scale" provides for the following periods:

<i>Duration of the Employment relationship</i>	<i>Payment of the salary</i>
From 1 up to 2 years	1 month
From 3 up to 5 years	2 months
From 6 up to 10 years	3 months
From 11 up to 15 years	4 months
From 16 up to 20 years	5 months
Thereafter	6 months

- The employer's obligation finishes if the employment relationship is terminated.

If the employee is legally insured for absences without fault and the insurance policy pays an indemnity of at least 80% of the salary during the legal periods of time, the employer is not compelled to pay the salary even for the missing 20%. This rule also applies if the parties agreed in writing that employer insures its employees, pays half of the insurance premiums and the insurance benefits are equivalent to at least 80% of the salary.

### Maternity Leave

As from 1 July 2005, all female employees and self-employed women who, during the nine months immediately preceding the birth of their children worked at least five months and have been subject to Swiss social security contributions, are eligible for maternity pay from the government maternity insurance fund. The claim for maternity pay starts at the date of birth and ends 14 weeks afterwards or when employment is resumed, whichever is earlier. Claims for maternity pay are not contingent upon the employee's subsequent resumption of work; all that is required is that the employment relationship existed at the date of birth.

The maternity pay corresponds to 80% of the employee's salary, subject to a cap of CHF 172 per day (which corresponds to a maximum annual gross salary of CHF 77,400).

The new law, therefore, addresses the unsatisfactory situation which existed previously, which prohibited work during the first eight postnatal weeks but gave a first-year employee only three weeks maternity pay. The new law, however, is less favourable to employees with longer terms of service since they will receive only 80% (rather than

100%) of their salary. Employees with an annual gross salary in excess of CHF 77,400 will even receive less than 80% of their salary. However, such employees can (and often will) negotiate employment agreements under which employers will be contractually obliged to make payments in excess of the statutory limits.

Employers are therefore advised to review their employment contracts in the light of the new law and take appropriate measures, such as amending terms of employment. Such changes are possible as long as the employer has legitimate, objective reasons for the change and respects the employee's notice period.

## Holidays

### Weekly Day Off

The employer must grant the employee at least one free day per week which must be Sunday, if possible. However, for most enterprises, it is forbidden by the Federal Labour Statute to employ a person on Sunday. Exceptionally, Sunday work can be authorised on a temporary or permanent basis. As a rule, Sunday work is forbidden for young people.

### Additional Time Off

The employer must allow the employee additional time off for special occasions such as the wedding of the employee, funerals, removals, etc.

### Official Holidays

In Switzerland, the official holidays are established by the cantons and therefore are different from one canton to another. In the canton of Geneva, there are 8 official holidays: 1 January, Good Friday, Easter Monday, 1 August (National Day), Ascension, the Monday after Pentecost, *Jeûne Genevois*, Christmas, 31 December. In the Canton of Zurich the official holidays are 1 January, 2 January, Good Friday, Easter Monday, 1 May, Ascension, Monday after Pentecost, 1 August, 25 and 26 December.

Official holidays are mandatory by law for all employees. Working on these dates is subject to authorisation. With the exception of August 1, no salary is due on the holidays unless an employee is employed on a monthly salary basis.

### Paid Vacations

Employees aged less than 20 are entitled to five weeks holiday, and all others are entitled to four weeks holiday per year. If the employee has not worked the whole year, the vacations are fixed in proportion to the duration of the employment relationship.

The employer may reduce the vacation entitlement in the event that the employee has been absent without fault for more than a whole month (or respectively two months for a female employee in case of pregnancy or giving birth). The reduction corresponds to 1/12th of the holidays for each additional whole month of absence.

The employer can decide when the holidays have to be taken, but is bound to take the employee's preference into consideration if the needs of his business allow him to do so.

## Maternity

Pay during maternity leave is treated in exactly the same way as for sickness absence. Women are also protected against dismissal in connection with pregnancy or maternity. Under Swiss law a dismissal of a woman during her pregnancy or within 16 weeks after giving birth is void.

## National Insurance/Social Security Contributions

The Swiss social security system is composed of:

- a Swiss Old Age and Survivors Insurance;
- a Disability Insurance;
- an Unemployment Insurance;
- a Military Service Compensation;
- an Accident Insurance;
- a Compulsory Pension Fund.

### Swiss Old Age and Survivors Insurance

This insurance applies to all persons, Swiss or foreigners, residing and working in Switzerland. The total contribution amounts to 8.4% of the gross salary, including bonuses, living allowances, etc., and is paid in equal shares by the employer and by the employee by pay-roll deductions.

The benefits of this insurance consist of monthly payments paid to men after the age of 65 and to women after the age of 64 and to widows and orphans.

The payments received depend on the amount and duration of contribution to the fund. Although there is no limit to the contribution to be paid, the benefits are presently limited to a maximum of CHF 25,800 for singles and CHF 38,700 for married couples.

### Disability Insurance

The Disability Insurance provides for rehabilitation and pensions to disabled persons until they reach the age when they can benefit from old-age and survivors insurance. As in the Old Age and Survivors Insurance, the contribution of 1.4% is equally shared by the employer and the employee.

### Unemployment Insurance

The total contribution amounts to 2.0% up to an aggregate salary of CHF 106,800 p.a. to be paid equally by the employer and the employee.

### Military Service Compensation

This contribution, amounting to 0.3%, is designed to partially compensate the loss of salaries of individuals having to serve in the Swiss army.

### Accident Insurance

All employees working in Switzerland have to be insured against accidents occurring at or off work. Such an insurance covers the costs of medical treatments and losses of salary.

The contribution varies from 0,1% to 0,5% of the salary, depending on the risks involved and is paid by the employer for the risks of accident during work and by the employee for the risks of accident outside work.

### Family Allowance

This contribution, made by the employer only, is designed to pay birth and monthly allowances for children of employees. The amount depends on the Canton the employee works.

## Compulsory Pension Fund

Since 1985, it has been mandatory for employers to establish or join a pension fund to insure pensions to retired or disabled employees and to dependants of deceased employees. The Pension Fund is compulsory only for the part of salaries between CHF 25,575 and CHF 77,400 per year.

A lot of discretion is left to employers for the organisation of the Pension Fund and the majority of them are insuring more than the compulsory part of the salary. Thus, it is difficult to give a precise figure for the contribution. The average, however, is about 16.8% of the salary, the employer paying at least 50% of it.

## Total of Social Security Contributions

	<i>Paid by employer</i>	<i>Paid by employee</i>
Swiss Old Age and Survivors Insurance	4.20%	4.20%
Disability Insurance	0.70%	0.70%
Unemployment Insurance (up to CHF 106,800)	1.00%	1.00%
Military Service Compensation	0.15%	0.15%
Accident Insurance (estimate)	0.50%	0.50%
Pension Fund (estimate)	8.40%	8.40%
Total	14.95%	14.95%
Family Allowance (in Zurich)	CHF 195	-

## 5 Termination of the Employment Agreement

### Employment Agreements of Definite Duration

Employment contracts concluded for a fixed period of time expire without further notice at the end of such period. If the employment relationship continues thereafter, the employment contract is deemed to be extended for an indefinite period of time. It may therefore be terminated according to the procedure applicable to indefinite term employment agreements.

Employment contracts concluded for more than 10 years may be terminated after the expiry of this 10 year period by either party giving a six months notice effective at the end of a month. This right to terminate the employment contract may not be waived.

## Employment Agreements of Indefinite Duration

### During the Probation Period

The trial period lasts one month, but can be extended up to three months by an individual written employment agreement, a collective bargaining agreement or a model contract. Unless a mutual agreement of the parties provides otherwise, the trial period is extended if the employee is absent without fault in case of illness, accident or duty to render any public service.

During the trial period, the employment contract may be terminated by seven days notice. This notice period may be freely modified, even excluded by the parties, in a written individual employment contract, a collective bargaining agreement or a model contract.

### After the Probation Period

#### *Termination Without Cause*

In principle, each party is free to terminate an indefinite term employment contract if sufficient notice is given to the other, the statutory notice period varies according to the employee's period of employment. This general rule is subject to two exceptions dealt with below (prohibition of termination during certain periods and indemnity for abusive termination).

The statutory notice periods are the following:

<i>Length of employee's service</i>	<i>Periods of notice service</i>
Less than one year	one month to the end of a month
One to nine years	two months to the end of a month
Over nine years	three months to the end of a month

The statutory notice periods may be modified by a written individual employment agreement, a collective bargaining agreement or a model contract. The modified notice period must be equal for both parties. There are, however, two restrictions to these rules:

- a notice period less than one calendar month can be contained only in a collective bargaining agreement and only for the first year of service;
- in case of dismissal for "economic" reasons, the employee can be allowed to terminate the contract by giving a shorter notice provided this right is included in an individual employment agreement, a collective bargaining agreement or a model contract.

The notice period begins to run on the day of the receipt of the notice by the other party. The termination notice can be given orally or in writing, but for reasons of proof, it is usually given by registered letter with a return receipt.

### Reasons for Termination

The party who terminates the employment contract is not obliged to indicate the reasons for termination. However, at the request of the other party, he must state the reasons for termination in writing. The refusal to provide such an explanation will not affect the validity of the termination itself, but the refusal may give rise to a claim for compensation based on abusive termination.

During the notice period, both parties continue to perform their duties. However the employer may waive the employee's obligation to work. In that case, payment of the salary is in lieu of notice. The employment relationship still continues, however, until the end of the notice period.

### Indemnity

The dismissed employee may be entitled to the following indemnities, if all legal requirements are met:

- the notice period indemnity, when the employer decides that the notice will not be performed;
- severance pay in case of long term employment relationship.

The payment of the severance indemnity is subject to two conditions in principle: (1) the employee must be at least 50 years old at the time of termination; (2) the employment relationship must have lasted 20 years or more.

If the previous requirements are met, the employee is entitled to an amount to be fixed by the judge and varying from two months to eight months of salary. This amount will be fixed according to several criteria, such as family situation, age, health, seniority, etc.

The amount of the severance indemnity can be increased or reduced by an individual written agreement, a collective bargaining agreement or a model contract. However, the contractual severance indemnity must not be less than the equivalent of two months of salary.

From the severance indemnity the employer can deduct the contributions paid by the employer to the Pension and Retirement Fund. Since 1 January 1985, employers have been obliged to join a Pension and Retirement Fund, and to pay part of the social contributions. Therefore, the statutory severance pay is of little importance for the majority of the employees, with the exception of well-paid employees.

### Prohibition of Termination in Certain Cases

The employer cannot terminate the employment contract during certain periods, also called "forbidden" or "shelter" periods.

Unless more favourable terms are agreed by the employer and employee, the statutory "shelter" or "forbidden" periods are the following:

- periods of military service or other public service and, provided such service lasted at least 12 days, the four weeks before or after such service;
- the first 30 days of illness or accident during the first year of service; the first 90 days of illness or accident from two up to five years of service; the first 180 days of illness or accident from the sixth year of service;
- during pregnancy and a sixteen week period after giving birth (although recent case law has held that the employer and his employee may agree to terminate the contract during the pregnancy period);
- during any service performed abroad at the request of the federal authorities.

Notices given by the employer during such a "shelter" or "forbidden" period are void.

If the notice of termination is given prior to the beginning of the "shelter" period, but the notice period has not expired before the "shelter" period, the notice period is suspended for the duration of the "shelter" period. The notice period starts to run again at the end of the "shelter" period.

During the “shelter” or “forbidden” periods, the employer remains obliged to pay the salary, however only within the limits provided by the law (see above).

### Abusive Termination

As noted above, the employer and the employee are free to terminate the employment relationship without cause, provided the notice period is complied with. However, the termination must not be “abusive”. Therefore, if the termination is abusive, because it was motivated solely by particular reprehensible reasons, the party terminating the contract can be compelled to pay the other a compensation amounting to a maximum of six months salary.

The termination of an employment contract is deemed “abusive”, if it was in particular motivated by one of the following reasons:

- the other party’s personality trait, such as race, religion, sex, unless such personality trait considerably impairs cooperation within the enterprise.
- the exercise by the other party of a constitutional right, such as the freedom of speech or association, etc.;
- to bar the other party from acquiring future rights under the employment agreement (e.g., if the employer terminates the employment contract of a person employed for 20 years before he reaches the age of 50 to avoid the payment of a severance indemnity);
- the exercise in good faith of rights under the employment agreement (e.g., if the employee claims the payment of an additional 25% salary for overtime performed);
- the exercise by the other party of a public service, such as military service.

Furthermore, there are two special cases where the dismissal of an employee is deemed abusive:

- by reason of affiliation or non-affiliation to a union;
- during the period when the employee is an employees’ representative, unless the employer can prove that the termination is due to just reasons.

Abusive termination cannot give rise to a claim for the employment contract to be maintained, but only to a claim for compensation which may not exceed the equivalent of six months salary. The only exception is a termination that was given in violation of the principle of equal treatment for men and women.

The party who seeks to claim compensation must follow a very strict procedure:

- the termination must be opposed in writing during the notice period;
- the claim for compensation must be filed before the competent court within 180 days after the end of the employment relationship.

### Termination for Cause

Each party is entitled to terminate the employment contract with immediate effect if “important reasons” justify such action. The concept of “important reasons” is construed very narrowly by the courts. An employment contract can be terminated with immediate effect only if the circumstances of the particular case appear to be undeniable for the terminating party to continue the contract until the ordinary period of notice has lapsed. In particular, the terminating party has to react immediately after becoming aware of the facts on which it bases its termination for cause.

If the termination with immediate effect is considered justified by the Court, no indemnities are due.

If the reasons for termination do not appear valid, the following indemnities are due:

- the equivalent of the salary for the notice period;
- an amount for compensation, which may not exceed the equivalent of six months of salary, as in the case of abusive termination.

### Collective Dismissal

In case of collective dismissal, termination can be given only after a consultation with the employees or their representatives and an information of the planned collective dismissal has been sent to the employment office of the canton. A collective dismissal is deemed to be terminations, given within a 30-day period which affect at least 10 employees in enterprises of more than 20 but less than 100 employees, 10 percent of all employees in enterprises employing at least 100 but less than 300 employees and 30 employees in enterprises employing at least 300 employees. Failure to observe the consultation procedure may trigger a penalty payment of up to two months salaries for each employee concerned.

### Residual Obligations in Case of Termination

Irrespective of the reasons for the termination, the employer must give the employee a work certificate.

### Miscellaneous - “Economic” Dismissals

There are no particular federal laws governing economic dismissals. However, in several cantons, the employers may be required by law to inform the cantonal authority prior to economic dismissals. Failure to comply with such law carries a penalty of up to CHF 5,000.

## 6 Employees’ Representatives

The Federal Statute on the Information and Consultation of Employees in the enterprises of December 17, 1993 states that in enterprises with at least 50 employees one fifth of all employees or in enterprises with more than 500 employees, 100 employees can ask for a vote among all employees whether employees representatives shall be elected. Swiss law mandatorily only provides for a consultation procedure in the following three cases:

- health and security at the workplace;
- transfer of enterprise
- collective dismissal.

## 7 Equal Treatment of Women and Men

The Federal Act on the equal treatment of women and men stipulates that employees may not be discriminated against on the ground of sex, family reasons or pregnancy; such prohibitions of discrimination apply to hiring procedures, distribution of work, employment conditions, methods of compensation, continuing education, promotion and dismissal.



The Act also contains a provision against sexual harassment and gives to any employee affected by any discriminatory action the possibility to claim that such action be declared illegal, forbidden and remedied (i.e. his/her damages must be compensated).

In order to facilitate the burden of proof in favour of the employee, the discrimination is presumed in many cases if the concerned person furnishes a prima facie evidence for the existence of such a case of discrimination.

Moreover, organisations which according to their articles of incorporation have the goal to further the equity of men and women or represent the interests of employees, and which have been in existence for at least two years, may in their own name institute proceedings for discrimination if the outcome of the lawsuit affects a large number of employment relationships.

Persons who have their job applications rejected and who feel discriminated against, can request that the potential employer describe in writing the reasons for such a rejection; the explanation will then allow the employee to evaluate whether he actually has a claim against the potential employer for discrimination.

In order to avoid unnecessary lawsuits which may disturb the working climate, the Act stipulates that the Swiss cantons must set up conciliation commissions.





