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General labour market

Hiring

Vacancies for jobs where the unemployment rate reaches at least 5% are subject to a job registration requirement. Vacancies for such jobs must be reported to the regional employment office and must not be advertised elsewhere for five days. The registration can be done online. The idea is to ensure jobseekers registered with the regional employment office are informed first about vacancies and to better utilise the potential of the domestic workforce. The regional employment office may propose suitable candidates and the employer is required to give feedback.

The list of relevant jobs is updated annually. For 2025, the list is again longer than in the preceding year. While approximately 3% of the workforce worked in jobs that were subject to the job registration requirement in 2024, that quota increased to approximately 6.5% in 2024.[1] The unemployment rate remains at a low level. Finding qualified staff to fill vacancies is a major concern among Swiss businesses.

Minimum wages

There is no general national minimum wage in Switzerland. However, minimum wage requirements may result from collective bargaining agreements, standard employment agreements or from cantonal regulations. The authorities may declare a collective bargaining agreement generally applicable and binding in the relevant industry of a certain region. In sectors where there are no generally binding collective employment agreements, the competent authorities can enact fixed-term standard employment contracts with binding minimum wages in the event of repeated and improper undercutting of wages. The number of employment relationships subject to collective bargaining agreements, whether generally binding, is ever increasing. Also, the number of standard employment agreements containing minimum wage requirements tends to increase; their geographical reach, however, is heavily concentrated in the Cantons facing pressure on salaries due to the large number of cross-border commuters and service providers, namely the Canton of Ticino, bordering Italy, and the Canton of Geneva, bordering France.

A proposal to introduce a national minimum wage of CHF 22 per hour was rejected by a large majority of voters in a referendum held in 2014. However, the Swiss Confederation, as Switzerland is officially termed, consists of 26 Cantons enjoying large autonomy. Some Cantons have since moved to introduce minimum

wages applicable in their territories. The first Canton was Neuchâtel. Upon challenge on constitutional grounds, the Swiss Federal Supreme Court confirmed in 2017 that the Cantons were competent to introduce minimum wage requirements in pursuit of socio-political aims, provided the minimum was set by reference to social security or social welfare minimum standards at relatively low levels (BGE 143 I 403). Other Cantons have followed the example of Neuchâtel and also introduced Cantonal minimum wages, namely the Canton of Jura (2018), the Canton of Geneva (2020) and the Canton of Ticino (2021). The Canton of Basel City, after a referendum held in 2021, was the first Canton in Switzerland's German speaking area to introduce a Cantonal minimum wage, which came into effect on 1 July 2022. As the prospects of finding a political majority in other Cantons are bleak, the promotors of minimum wages have moved to the communal level in left-leaning urban areas to promote statutory minimum wages.

Proposals to introduce minimum wages at communal level have received voters' assent in the City of Zurich and in Winterthur, both communities in the Canton of Zurich, by large majorities of roughly 70% and 65%, respectively. Trade associations challenged the decisions on the grounds that, under the law of the Canton of Zurich, communities lacked legislative competence regarding the matter. After the first instances dismissed the challenges in both cases, the Administrative Court of the Canton of Zurich ruled otherwise and quashed communal legislation on minimum wage requirements (AN.2024.00001 and AN.2024.00002 of 29 November 2024). Appeals are now pending in the Swiss Federal Supreme Court.

Labour market and competition law

According to an uncontroversial view, competition law does not prohibit collective bargaining agreements. However, that does not mean the labour market is off limits for competition watchdogs. In 2024, the Swiss Competition Commission published a report on its preliminary investigation into allegedly anti-competitive arrangements among employers.[2] The arrangements included, in particular, the sharing of information on salaries, some of which the Commission considered potentially problematic under competition law. As per its own statements, the report is a first attempt to sketch the contours of competition law relating to the labour market in Switzerland. The Competition Commission announced to monitor the market, consult with stakeholders from employer organisations, employee organisations and authorities and establish best practice rules to inform the public what arrangements on the labour market the Competition Commissions considers unproblematic and what arrangements it considers problematic and intends to prosecute under competition law.

Free movement of persons for EU nationals

Some 20 years ago, on 1 June 2002, the EU–Swiss agreement on the free movement of persons entered into force. Since then, several eastern European states have joined the EU and the EU–Swiss agreement was extended accordingly. The most recent joiner of the EU was Croatia. After expiry of a transitory period, Croatian nationals enjoyed the same right of free movement in Switzerland as other EU citizens in 2022. Due to a significant increase in the number of Croatian nationals that immigrated to Switzerland, following a decision by the Swiss government, quotas for Croatian nationals were re-introduced for the years 2023 and 2024 for the year, as permitted by the relevant treaty. Since the restrictions cannot be applied for more than two consecutive years, Croatian nationals again benefit from free movement since 1 January 2025.

Brexit: Citizens' Rights Agreement and Convention on Social Security Coordination

On 31 January 2020, the United Kingdom (UK) left the EU and after a transitory period expiring on 31 December 2020, UK citizens in Switzerland and Swiss citizens in the UK can no longer benefit from the EU–Swiss agreement on the free movement of persons. However, the Swiss–UK Citizens' Rights Agreement protects the rights of UK citizens in Switzerland and Swiss citizens in the UK as acquired by 31 December 2020. UK citizens with no acquired rights who wish to start working in Switzerland after 1 January 2021 require a work permit. The Swiss government has reserved special quotas for UK citizens.

As part of the EU–Swiss agreement on the free movement of persons, the EU rules on the coordination of social security[3] apply also between Switzerland and EU Member States. After Brexit, these rules are no longer applicable as between Switzerland and the UK, except as provided for in the Citizens' Rights Agreement. Switzerland and the UK have agreed on similar coordination rules in the Convention on Social Security Coordination. The Convention was provisionally applied from 1 November 2021 and, after completion of the ratification process, formally came into force on 1 October 2023. Among other things, the Convention provides that UK employers that employ employees who are subject to the Swiss social security regime must administer and pay social security contributions like Swiss employers and *vice versa*, even if they have no establishment in the competent State (Article 18(1) of the Convention on Social Security Coordination). The employer and employee may agree that the employee shall fulfil the employer's obligations on its behalf without prejudice to the employer's underlying obligations.[4]

Business protection and restrictive covenants

During the employment relationship, the employee must carry out the work assigned to him or her with due care and loyally safeguard the employer's legitimate interests (Article 321a of the Swiss Code of Obligations; CO). The employee must not perform any paid work for third parties in breach of the duty of loyalty, in particular, if such work is in competition with the employer. The employee must not exploit or disclose confidential information obtained while in the employer's service, such as manufacturing or trade secrets. The employee remains bound by the duty of confidentiality even after the end of the employment relationship to the extent required to safeguard the employer's legitimate interests.

Post-termination non-compete undertakings are subject to specific rules. An employee with capacity to act may agree in writing on a post-termination non-compete undertaking. The undertaking is binding only where the employment relationship allows the employee to gain insight into the employer's clientele or business secrets and where the use of such knowledge may cause the employer substantial harm. The undertaking must be appropriately restricted with regard to its geographical reach, duration and scope so that it does not unfairly compromise the employee's future economic activity. The court may, at its discretion, reduce an excessive non-compete undertaking, taking due account of all circumstances. The validity of the undertaking does not depend on any special consideration or the employer's commitment to pay a waiting allowance; however, special consideration will be considered when assessing whether or not the undertaking is excessive. The non-compete undertaking will lapse once the employer demonstrably no longer has a substantial interest in maintaining it. It also lapses if the employer terminates the employment relationship without the employee having given any good cause to do so, or if the employee terminates it for good cause attributable to the employer. By default, the only remedy for violation of a post-termination non-compete undertaking is a claim for damages. Injunctive relief is available only if specifically agreed in writing and if the employer's interest in preventing the competing activity prevails the employee's interests. In balancing the interests, the judge will have to consider, among other things, the potential damage and the employee's conduct. Since damage is hard to prove and the hurdles for injunctive relief difficult to overcome, the deterrent of choice is an agreement on a contractual penalty, which also requires written form. The court has discretion to reduce an excessive penalty and will typically do so if it reduces an excessive non-compete undertaking to an acceptable level.

A recent case dealt with by the Swiss Federal Supreme Court illustrates that the duty of confidentiality cannot place restrictions on the employee that would be prohibited under the rules regarding post-termination non-compete undertakings and that general industry knowledge cannot be protected (4A_364/2022 of 12.05.2023). The dispute emerged between a software engineer and his employer. The employment contract provided that the employer was the exclusive owner of all intellectual property, know-how, business secrets and other characteristics of projects (specifications, plans) and software developments (documentation, source code, etc.) created by the employee alone or together with others

and that the employee must not use for his own benefit or for the benefit of any third party, or disclose, any such confidential information during his employment or thereafter. The contract also provided for a post-termination non-compete undertaking. Furthermore, it provided for a contractual penalty in case of violation of the intellectual property clause, the confidentiality undertaking or the non-compete undertaking. The employee resigned because of the employer's default on salary payments. The default constituted good cause for the employee's resignation, was attributable to the employer and, consequently, the post-termination non-compete undertaking lapsed by operation of law. The employer, however, after the employee had taken up a job with a competitor, asserted a contractual penalty against the employee for alleged violation of the confidentiality undertaking. The claim failed. The broad notion of business secrets contented by the employer would have had the effect of preventing the (former) employee from engaging in any activity in the IT industry after termination of the employment relationship. The court confirmed that one must distinguish between genuine business secrets, i.e. technical, organisational or financial information that the employer wants to keep secret on the one hand and knowledge that can be acquired in any firm in the relevant industry on the other hand. The employer was unable to specify what business secrets the employee had violated, there were no indicia the employee had used business secrets of his (former) employer in his new job, and the court found the employer's concern was more about the employee's use of his experience and specialist knowledge of a specific programming language, know-how he could have acquired anywhere in the industry. Absent specific contentions what business secrets the employee allegedly violated, the claim was bound to fail.

The case is a reminder to employers that there are limitations on post-termination restrictions that can be imposed on employees and that employees cannot be prevented from using general industry knowledge elsewhere. As mentioned above, a post-termination non-compete covenant will lapse by operation of law if the employee terminates the employment relationship for good cause attributable to the employer (Article 340c(2) CO). In this context, good cause is any event or circumstance for which the other party is responsible and that, according to reasonable commercial considerations, could trigger the first party to terminate the employment relationship; it is not required that the employment agreement has been violated (BGE 130 III 353 E. 2.2.1). It will not suffice, though, that the other party is responsible for such event or circumstance, but there must be a causal link between the event or circumstance and the termination of the employment relationship. While no immediate reaction is required, waiting too long may be construed as a waiver to rely on the relevant event or circumstance. Also, inconsistent behaviour against good faith may prevent a party from relying on a good cause for termination. A recent judgment illustrates these points (4A_426/2023 of 3 January 2024). According to the facts of the case, the employee had agreed on a post-termination non-compete undertaking for the duration of two years. In consideration for the employee's compliance with the non-compete undertaking, the employer had agreed to pay the employee a waiting allowance equivalent to half the employee's last salary for the duration of the post-termination non-compete undertaking. In November 2020, after more than 10 years in service, the employee gave notice of termination. He contended that he resigned because the employer had failed to pay him a bonus that was owed to him for the year 2019 since spring 2020. He brought an action against his former employer seeking payment of outstanding bonuses and a declaration that the post-termination non-compete undertaking had lapsed. The court held that the employee was indeed entitled to the bonuses. However, the court also found that there was no plausible justification why the employee had waited about half a year after he knew the employer would not pay the bonus for 2019. Consequently, the court denied a causal link between the employer's failure to pay the bonus and the employee's resignation. Moreover, the employee had accepted without reservation the employer's payment of the waiting allowance. By doing so, the employee had implicitly accepted the validity of the post-termination non-compete undertaking. In these circumstances, it was inconsistent and against good faith for the employee to contend the non-compete undertaking was not binding on him. Eventually, the court found that the post-termination non-compete undertaking had not lapsed as a result of the employee's resignation.

Protection against dismissal at an inopportune juncture

Employees enjoy only limited protection from dismissal under Swiss law. In principle, either party may terminate an employment agreement for any reason or no reason by giving the other party notice of termination in compliance with the applicable notice period. However, the legal protection from dismissal at an inopportune juncture may render a notice of termination given by the employer ineffective or postpone the termination date. The protection from dismissal at an inopportune juncture applies after the probation period:

- while the employee performs Swiss compulsory military or civil defence service or Swiss alternative civilian service and, provided such service lasts for more than 11 days, during the four weeks preceding and following the relevant service;
- while the employee through no fault of his own is partially or entirely prevented from working by illness or accident for up to 30 days in the first year of service, 90 days in the second to fifth year of service, and 180 days in the sixth and subsequent years of service;
- during the pregnancy of an employee and the 16 weeks following delivery; and
- while the employee is participating with the employer's consent in an aid project abroad ordered by the competent federal authority.

In the context of amendments to social security benefits, the protections have been amended. Since mid-2021, two additional reasons for protection from dismissal apply:

- Care leave: An amendment of the Federal Act on Compensation for Loss of Earnings introduced social security benefits for up to 98 days (14 weeks) within a 180-day timeframe for persons who care for a child whose health is seriously impaired by illness or accident. Provided the employee is entitled to this benefit, the employee is also entitled to care leave of up to 14 weeks to be taken within a frame time of 18 months. In this context, the protection from dismissal at an inopportune juncture applies for as long as the employee is entitled to care leave, but not for longer than six months from the start of the time frame.
- Extended maternity leave: Maternity benefits are normally limited to a maximum of 98 days (14 weeks). Following another amendment of the Federal Act on Compensation for Loss of Earnings, the entitlement to maternity benefits may be increased by up to 56 days if the newborn baby is required to stay in hospital immediately following birth, the stay in hospital lasts for at least two weeks, and the mother had planned to resume work after maternity leave. The employee's entitlement to maternity leave, as well as the protection from dismissal, is extended for the duration of the extended entitlement to maternity benefits.

Since 1 January 2024, the following additional reasons for protection from dismissal apply:

- Additional maternity leave in case of the other parent's demise: If the other parent dies within six months after birth of the child, the mother is entitled to two weeks' leave in addition to the regular 14-week maternity leave. That additional maternity leave may be taken within six months since the other parent's demise. The mother is entitled to corresponding benefits from the loss of earnings insurance. The mother is protected from dismissal from the beginning of the leave and until the leave entitlement is exhausted, but not beyond the date that is three months after 16 weeks after giving birth. The Federal Act on Compensation for Loss of Earnings provides for corresponding benefits.
- Leave of other parent in case of the mother's demise: If the mother dies on the day of delivery or within 14 weeks thereafter, the other parent is entitled to 14 weeks' leave. If the newborn child is hospitalised, the leave entitlement is extended accordingly, but not for more than eight weeks. During that leave, the employee is protected from dismissal. The Federal Act on Compensation for Loss of Earnings provides for corresponding benefits.

In practice, the protection from dismissal in case of incapacity to work due to illness or accident is of paramount relevance. That protection was not introduced because the employee might be prevented from searching for another job, but because it would seem highly unlikely that a new employer would hire the employee considering the uncertainty over the duration and degree of the employee's incapacity. In recent years, a heated debate in legal writing concerned the question whether the protection also applies if the employee's incapacity is limited to the specific workplace. A recent judgment confirmed that it does not (1C_595/2023 of 26 March 2024). The case concerned an instructor of the Swiss Army who, according to medical certificates, suffered from an anxiety and depressive disorder triggered by difficulties at the workplace. While being incapacitated at his primary workplace, he was able to work significant hours for an association and he was fully capable to perform his duties as chairman of the community council. In these circumstances, the employee was denied protection from dismissal.

Protection from abusive dismissal

Apart from protection from dismissal at an inopportune juncture, employees are also protected from abusive dismissal. Even if a dismissal is considered abusive, it will effectively terminate the employment. Abusive dismissal may result in a claim for punitive compensation equivalent to up to six months' salary if, upon the employee's objection, the parties cannot agree to continue their employment relationship. The statute contains a list of circumstances in which a notice of termination qualifies as abusive (Article 336 CO). Among other things, notice of termination is considered abusive when given by one party on account of an attribute pertaining to the person of the other party, unless such attribute relates to the employment relationship or substantially impairs cooperation within the business, or because the other party asserts claims under the employment relationship in good faith. However, the Swiss Federal Supreme Court has ruled that the statutory list of abusive grounds is not exhaustive (BGE 125 III 70 E. 2 p. 72) and, thus, allegations of abusive dismissal are quite frequent. Courts had ample opportunity to decide individual situations and quite frequently found that the allegation of abusive dismissal was unfounded. For example, the Swiss Federal Supreme Court confirmed that it did not amount to abusive dismissal where the employer lost confidence in the employee after the employee refused to cooperate in an investigation into allegations of sexual harassment (4A_216/2019 of 29.08.2019), or where the employer terminated the employment because of an impairment of the employee's performance due to an illness that has not resulted from the employer's violation of his duty of care (4A_293/2019 of 22.10.2019), or where notice was given because the employee did no longer satisfy the evolving requirements of the job (4A_347/2019 of 28.02.2020).

A dismissal may qualify as abusive not only because of its reason but also because of the manner in which the party giving notice makes use of its right to terminate the employment relationship. Among other things, a blatant violation of contractual obligations, in particular, a severe violation of personality rights, in the context of a dismissal may result in its qualification as abusive. However, for such qualification, it is not sufficient that the employer behaved merely inappropriately or indecently (BGE 132 III 115). Against the background of this court practice, allegations of abusive dismissal based on the circumstances of the dismissal are quite frequent but rarely justified. Recently, the Swiss Federal Supreme Court had the opportunity to cut back expectations (4A_186/2022 of 22.08.2022). It overturned the lower court's ruling, which had found that the dismissal of a long-term employee and CEO of a hotel had been abusive, not because of the reason for dismissal – namely a legitimate reduction of the workforce at top management level – but because of the circumstances of his dismissal. The employer served notice of termination after it had proposed a termination agreement and set only a very short time limit to accept, which the employee did not. It put the employee on garden leave and communicated his departure internally and externally. The employee's business telephone was blocked, he was denied access to the office and there was no proper farewell. The employee asserted and the lower court accepted that the circumstances infringed on the

personality rights and reputation of the employee because of the appearance that there were undisclosed problems and the employee was unbearable and had to be dismissed. The Swiss Federal Supreme Court was of a different view. It acknowledged that in today's world it was not unusual to put top managers on garden leave after serving notice of termination in the context of a restructuring. Also, there was a compelling ground to inform the entire staff that the CEO would no longer be present after he had been put on garden leave. The communication to the public did not mention the employee's immediate departure and was drafted in a neutral or slightly positive language. The very short time limit to accept the proposed termination agreement might have been relevant when assessing its validity had it actually been accepted. However, the employer was not obliged to offer a termination agreement prior to giving notice and so the short time limit was irrelevant with a view to assessing whether or not the dismissal was abusive. Also, the blocking of the business telephone, the employee's exclusion from the office or the absence of a proper farewell ceremony were not sufficient to qualify the dismissal as abusive. The Swiss Federal Supreme Court's ruling lends welcome support for the defence against frequent lines of argument from employees.

Another recent case where the Swiss Federal Supreme Court overturned the lower instances judgment and found no abusive dismissal related to the dismissal of a bank employee against whom allegations of sexual harassment had been raised (4A_368/2023 of 19.01.2024). Prior to dismissing the employee, the employer had conducted an internal investigation, reviewed e-mails, conducted interviews, and had given the employee an opportunity to comment. The employer concluded that the findings corroborated the allegations and dismissed the employee with notice. The employee contended his dismissal was abusive and claimed punitive compensation. The court stressed the parties' freedom to terminate an employment relationship. Where an employee was dismissed based on suspected misconduct, such dismissal qualified as abusive only if the decision was taken inconsiderately and without reasonable basis. A dismissal based on allegations brought by other employees may qualify as abusive if the employer did not properly investigate the allegations or if the findings did not corroborate the allegations. It was, however, permissible to dismiss an employee based on suspected misconduct; the employer was not required to prove that the allegations were true. Importantly, the court noted that, in the course of an employer's internal investigation, an employee is not entitled to the same rights as in criminal proceedings (contrary to what the court had seemed to suggest in a previous ruling, 4A_694/2015 of 04.05.2016). It was not sufficient to qualify the dismissal as abusive that the employee had not been informed of the purpose of the meeting prior to his being interviewed and that he had not been granted the opportunity to bring along a trusted person, even though that right had been contemplated in the company's policy. The court found that the employer had sufficiently investigated the allegations and had a reasonable basis to conclude that the allegations had been corroborated. The employer had not dismissed the employee inconsiderately and without reasonable grounds. Therefore, the court concluded the dismissal was not abusive.

In a number of judgments, the Swiss Federal Supreme Court dealt with claims for abusive dismissal from elderly employees who had served many years for the same employer. In a leading case, the court held that an employer who had dismissed an employee after 44 years in service without complaint and only a few months before reaching retirement age, without compelling grounds and without having attempted to find a socially more acceptable solution, had violated his duty of care owing towards the employee and had acted abusively (BGE 132 III 115). The employee was awarded the statutory maximum punitive compensation for abusive dismissal, i.e. the equivalent of six months' salary. In a later judgment, the court held that the increased duty of care owing towards elderly employees with a long service meant that, when considering the employee's dismissal and prior to giving notice, the employer must inform the employee of his intention, discuss the contemplated dismissal with the employee and look for alternatives to his dismissal (4A_384/2014 of 12.11.2014). In a more recent judgment, the Swiss Federal Supreme Court stated that, contrary to the somewhat apodictic reasoning in 4A_384/2014, the employer's duty of care was to be determined on a case-by-case basis considering all circumstances of the individual case and that was not different where an elderly employee is involved (4A_44/2021 of 02.06.2021). The lower court had found

that the employee's dismissal was abusive because the employee had not been informed and heard prior to his dismissal and the employer did not look for an alternative solution. The employee was 60 years old and had worked for 37 years with the employer, a company of which he had been a director, CEO and minority shareholder. The Swiss Federal Supreme Court overturned the lower court's decision and held that the employer's interest in his freedom to terminate the employment weighed particularly heavy in the case of an employee with broad decision-making powers and great responsibility, such as a CEO. Moreover, it was not sufficient for qualifying the employee's dismissal as abusive that the employer did not inform the employee of his intention and did not look for alternatives to the dismissal. Even if the employer had not complied with all of his duties, this would not necessarily mean the dismissal was abusive. In another recent judgment, the Swiss Federal Supreme Court also overturned the lower instance's ruling and held the employee's dismissal only 10 months prior to reaching retirement was not abusive (4A_390/2021 of 01.02.2022). The employee had been dismissed because she was unfit for work and had been on extended sick leave with no information on when she might return to work. The court found that, once the protection from dismissal at an inopportune juncture had expired, the employer could legitimately terminate the employment relationship. In circumstances where the employee had been on sick leave for six months and it was not clear if and when she might return to work and her job needed permanent reorganisation, a dismissal is not abusive. Also, the employer was not required to discuss alternative solutions where the employee was not at all capable to work. The legal situation is very different if the employer is responsible for the employee's incapacity.

In the context of the employment relationship, the employer must respect and protect the employee's personality rights, have due regard for his or her health and ensure that proper moral standards are maintained (Article 328(1) CO). Among other things, the employer must take appropriate measures to protect his employees from psychological harassment or mobbing. If the employer fails to protect an employee from mobbing and that employee becomes incapacitated because of the mobbing, the employer cannot legitimately dismiss this employee on the grounds of incapacity. It would be against good faith to let an employer invoke his own fault, namely the failure to take effective measures against mobbing, in order to justify the employee's dismissal. Thus, where an employee is dismissed because of his or her incapacity resulting from the employer's failure to protect the employee's health, the dismissal will be considered abusive. A case decided by the Swiss Federal Supreme Court illustrates the issue (4A_215/2022 of 23.08.2022). An employee was subject to discriminatory and racist behaviour to a colleague. He complained and it was agreed that the employee could work in a different workplace. Soon thereafter, however, the various workplaces were merged due to a reorganisation and the employee was again subject to the colleague's assaults. Nevertheless, the employer took no measures to protect the employee's personality and health. As a result of the mobbing, the employee suffered from depression and became incapacitated. The employer knew the employee's depression was linked to his workplace but decided to dismiss him. The Swiss Federal Supreme Court confirmed the lower instance's judgment finding the dismissal was abusive and awarding punitive compensation equivalent to five months' salary.

A dismissal on the grounds of an illness caused by a difficult situation at the workplace will not always qualify as abusive, as is illustrated by a recent leading case. The Swiss Federal Supreme Court overturned a judgment from the lower court that had found the employee's dismissal due to incapacity to be abusive (BGE 150 III 78, 4A_396/2022 of 07.11.2023). A cook became incapacitated due to illness after the arrival of a new *Chef de cuisine*. He felt restrained in his liberty to cook as he pleased and perceived the work ambience as cold. Medical certificates confirmed mental and physical exhaustion related to a conflict with his direct superior. The employee was dismissed after expiry of the maximum protection period. The lower instance found the employee's illness had been caused by the situation at the workplace and the employer had failed to take measures to resolve the conflict between the employee and his superior, which resulted in a finding of abusive dismissal. The Swiss Federal Supreme Court found otherwise and stated that, in principle, it was legitimate to terminate an employment relationship on the grounds

of the employee's incapacity following expiry of the maximum protection period. A dismissal on the grounds of the employee's incapacity could qualify as abusive in extreme cases only, where the evidence demonstrated unequivocally that the employer had directly caused the employee's illness, for example by not taking required measures to protect the employee's personality rights. Where the situation was not as severe, as was often the case in case of incapacity due to psychological illnesses, the dismissal did not qualify as abusive. An employer could not be required to take all conceivable measures to resolve a conflict with a new superior and an incapacity resulting from such conflict would not normally be considered severe enough to make a finding of abusive dismissal. This judgment gives comfort to employers who had perceived an ever-increasing burden of judge-made duties in recent years.

Additional protections apply in the context of anti-gender discrimination provisions. We will turn to these in the next section.

Discrimination protection/gender equality

Some 40 years ago, in a referendum held on 14 June 1981, the Swiss people accepted an amendment to the constitution of the Swiss Confederation providing for equal rights of men and women and for their right to equal pay for work of equal value. The amendment also provides that the law shall ensure equality of men and women, both in law and in practice. On 1 July 1996, the Gender Equality Act came into force. Among other things, it prohibits discrimination on the basis of gender at work. Still, the most recent figures from the Swiss Federal Statistical Office show that the *median* full-time equivalent salary of women is roughly 12% below that of men, the *average* full-time equivalent salary of women is almost 20% lower than that of men, and roughly 45% of that gender pay gap remains unexplained.[5] The share of women working part-time is much higher than that of men. Also, women are less frequently employed in higher ranks and clearly underrepresented in the highest salary bracket. Gender equality is a promise yet to be fulfilled. New legislation aims at promoting pay equality and gender equality at the workplace, in practice.

Following an amendment of the Gender Equality Act that entered into force in 2020, employers employing 100 or more employees were required to carry out an internal equal pay analysis by 1 July 2021. The analysis must be verified within one year by an independent body, such as an audit firm or an employee representation. Employers must inform their employees in writing of the result of the analysis no later than one year after it has been verified, so they have time to take corrective measures before communicating the result. Listed companies must publish the result as part of their annual report. The analysis must be repeated every four years, until compliance with equal pay rules is demonstrated. The rules on equal pay analysis will expire mid-2032 due to a sunset clause.

As of 2021, Swiss company law was amended to nudge certain listed companies to promote women to the board and to executive board level. These companies will be required to comply with certain minimum gender representation benchmarks or explain in their remuneration report why this is not the case and the measures that are being taken to increase the representation of the underrepresented gender (Article 734f CO). The expected minimum representation of each gender is 30% at board level and 20% at executive board level. The reporting requirement applies to listed Swiss companies that exceed, in two consecutive years, two out of the following three thresholds, namely (1) a balance sheet total of CHF 20 million, (2) a turnover of CHF 40 million, and (3) 250 full-time equivalents on average during the year. Reporting will be required at the latest as from the financial year that begins in 2026 with respect to the board level and in 2031 with respect to the executive board level.

Employees, whether male or female, must not be discriminated against based on their sex, whether directly or indirectly, including on the basis of their marital status, their family situation or, in the case of female employees, of pregnancy (Article 3(1) of the Gender Equality Act). The ban on discrimination based on sex extends, in particular, to hiring, allocation of duties and responsibilities, working conditions, remuneration, education and training, promotion and dismissal (Article 3(2) of the Gender Equality Act).

It may be noteworthy that the Swiss civil register still requires a person to be registered as either male or female; there is no other option. However, since 1 January 2022, any person who is firmly convinced that they are not of the gender entered in their respect in the civil register may declare to the civil registrar that they wish to have the entry changed and may select one or more new first names (Article 30b(1) and (2) of the Swiss Civil Code).

In a leading case, the Swiss Federal Supreme Court found that the sexual orientation of the person was not a protected characteristic under the Gender Equality Act (BGE 145 II 153, 8C_594/2018 of 05.04.2019). The claimant who had applied for a job with the army asserted that he had not been hired because he was gay and claimed compensation for discriminatory non-hiring based on the Gender Equality Act. The claim was dismissed because the asserted discrimination did not relate to the applicant being male or female. Had the employee been dismissed on the grounds of his sexual orientation, this would in all likelihood have qualified as abusive since notice would have been given on the grounds of an attribute pertaining to the employee's personality not relating to the employment relationship and not substantially impairing cooperation within the business (Article 336(1)(a) CO). Since there is no other basis for a claim for discriminatory non-hiring, the employee had tried to rely on the Gender Equality Act, and failed.

If the person claiming discrimination on the basis of sex with regard to the allocation of duties and responsibilities, the terms of employment, remuneration, education and training, promotion or dismissal can substantiate *prima facie* evidence, discrimination will be presumed and the burden of proof shifts on the counterparty to bring full proof that there is no discrimination (Article 6 of the Gender Equality Act). A discriminatory dismissal is in principle treated the same way as an abusive dismissal, but if the employee is dismissed without good cause following a complaint of discrimination, he or she may even request to be reinstated in the job instead of claiming punitive compensation. In a case decided by the Swiss Federal Supreme Court in May 2020 (4A_59/2019 of 12.05.2020), an employee had been dismissed right upon her return from maternity leave. The employer had consistently praised her performance, her superior had believed that she was not capable of having children and was surprised when she announced her pregnancy. That was sufficient *prima facie* evidence to shift the burden of proof on the employer who then would have had to prove that there were legitimate reasons for termination and that the employee would have been dismissed even if she had not become a mother. The employer failed to prove that and, hence, the dismissal was qualified discriminatory. The employee was awarded punitive compensation equivalent to three months' salary.

Providing *prima facie* evidence of discrimination on the basis of sex is not the only hurdle a discrimination claim must take. In a case decided by the Swiss Federal Supreme Court in July 2021 (4A_636/2020 of 20.07.2021), a female employee's claim for equal pay failed although her gross annual salary was by CHF 70,000 lower than that of her male predecessor. There is no discrimination regarding remuneration if the difference in the salary is objectively justified and not motivated by reference to the employee's gender. When justifying differences in the salary, the employer must demonstrate that he pursues an objective goal that meets a genuine business need, and that the difference in treatment promotes that goal and is proportionate. The employer demonstrated that there were significant differences in the tasks and responsibilities of the employee and her predecessor. While her predecessor had to start his newly created position from scratch and had to develop processes on a strategic level, the employee's task was an operative one. The court acknowledged that the characteristics of a position may depend on the level of development of the business and may change over time. The employee had contested only that there were relevant differences between her responsibilities and those of her predecessor, but failed to contest that, if the court nevertheless accepted that there were relevant differences, the difference in remuneration was justified and proportionate. Since the court found that there were relevant differences in the positions of the employee and her predecessor, but the employee had not claimed that despite these differences the pay gap was still not justified, the claim failed.

Leave entitlements

In recent times, several leave entitlements have been introduced or amended. An entitlement to a 14-week maternity leave was introduced on federal level in 2005. Since mid-2021, maternity leave may be extended by up to 56 days if the newborn child stays in hospital for an extended time after birth and the mother is entitled to extended maternity benefits from the loss of earnings insurance (Article 329f(2) CO). Since 1 January 2024, an employee is entitled to an additional two weeks of maternity leave in case of the other parent's demise within six month of the child's birth (Article 329f(3) CO). While, in practice, maternity leave must be taken in one block, the additional two weeks may be taken on a weekly or day-by-day basis within six months of the other parent's demise.

In principle, the employee is entitled to maternity benefits from the loss of earnings insurance during maternity leave. However, the entitlement ends, and cannot resume thereafter, if the employee returns to work. This rule also applied when a member of the Swiss parliament resumed her work (BGE 148 V 253). The rule was considered inappropriate as it could hinder new mothers from exercising their political mandate as a member of a parliament, even where they could not delegate their mandate to a substitute. Effective 1 July 2024, a special rule will allow members of parliament at federal, cantonal and communal levels to resume their mandate without losing their entitlement to maternity benefits, provided substitution is not an option.

Since 2021, fathers are entitled to a two-week paternity leave to be taken within six months of the child's birth (Article 329g CO). During paternity leave, the employee is typically entitled to loss of earnings compensation of 80% of the salary up to a capped amount. Unlike mothers who are protected from dismissal during pregnancy and 16 weeks after delivery (and in some cases beyond), fathers are not so protected during paternity leave. However, their notice period is extended by the number of days of untaken paternity leave. This rule aims to allow the employee to actually take paternity leave. As of 1 January 2024, the terminology has been amended and *paternity leave* is now the *leave of the other parent*. This considers the possibility that the other parent may be female after same-sex marriage has been legally permissible since mid-2022.

Additionally, since 2021, employees are entitled to paid leave as required to care for a family member or the employee's companion suffering from a health impairment (Article 329h CO). The leave entitlement is limited to the time required for caring but limited to three days per incident and 10 days per year. If required to care for a sick child, the employee is entitled to leave in excess of 10 days per year (Article 36(3) and (4) of the Employment Act), but the entitlement to continued salary payments will then have to be assessed based on Article 324a/b CO.

In mid-2021, an entitlement was introduced granting leave of up to 14 weeks within 18 months to care for a child whose health is severely impaired by an illness or accident (Article 329i CO). Where both parents are in employment, each parent is entitled to care leave of a maximum of seven weeks, unless they agree on a different split. The leave entitlement is dependent on the employee's entitlement to benefits from the loss of earnings insurance.

In 2023, adoption leave was introduced (Article 329j CO). Upon placement of a child under the age of four years for adoption, the prospective parent and employee is entitled to two weeks of adoption leave to be taken within the first year of placement, provided the employee is entitled to adoption benefits from the loss of earnings insurance.

In June 2023, voters in the Canton of Geneva voted in favour of a cantonal initiative to introduce a parental benefits scheme extending benefits to 24 weeks for both parents in aggregate. However, Cantons have no competence to legislate on actual leave entitlements of employees. Based on federal law, employers are normally required to grant mothers a maximum of 16 weeks maternity leave and two weeks for the other parent. This could lead to the situation that employees in Geneva would theoretically be entitled to parental benefits from the cantonal scheme but have no right to actually take leave for the full period of

their entitlement. Promotors of parental leave are therefore also active on the federal level. Four Cantons have filed initiatives on the subject with the federal parliament. Initiatives of the Cantons Valais and Ticino request that a parental leave of at least 20 weeks be introduced, whereof at least 14 weeks is maternity leave and at least four weeks is paternity leave; the remaining leave entitlement could be allocated flexibly. An initiative of the Canton of Jura requests that the federal parliament legislates on parental leave without specifying key terms. Finally, an initiative of the Canton of Geneva requests that Cantons be authorised to pass legislation on parental leave entitlements also in matters of private law, which, in principle, falls within the exclusive competence of the federal parliament.

Employees are entitled to paid holidays of at least four weeks per year of service or to five weeks if they are under the age of 20 years. During the holidays, the employer must pay the employee the full salary and fair compensation for any lost benefits in kind. In other words, the employee must not be worse off with respect to the salary during holidays than if he or she had worked. During the employment relationship, holiday entitlement must not be replaced by monetary payments or other benefits (Article 329d CO). In respect of irregular employment, the Swiss Federal Supreme Court acknowledged the difficulties this rule may cause and defined the requirements under which it is permissible to pay the salary relating to the holiday entitlement by way of a supplement to the salary for hours worked (BGE 116 II 515). The first requirement is that there is an objective need to pay the salary relating to the holidays by way of a salary supplement because of practical difficulties in case of irregular employment. Secondly, the salary supplement must be clearly specified in percentage or money terms if the employment contract is made in writing. Thirdly, the salary supplement relating to holidays must also be specified in each salary slip. Where these requirements are not satisfied, the employer risks paying twice for holidays. In a later leading case, the Swiss Federal Supreme Court referred to these requirements and called into question whether this practice should still be permitted going forward, considering that there are hardly ever any insurmountable difficulties to calculate and pay the salary relating to the holidays as and when holidays are actually taken (BGE 129 III 493). However, the question did not have to be answered. Recent judgments confirm the practice has not changed in principle, but its scope is limited.

In a judgment of 30 March 2022 (4A_31/2021), the Swiss Federal Supreme Court found that it had been permissible to pay the salary relating to the holidays by way of a salary supplement in circumstances where the employment was irregular. An analysis of the 56 available salary slips showed that the difference in the salary from one month to the other exceeded 10% in 35 cases. This was sufficient evidence to demonstrate an irregular employment and the court found that the salary relating to holidays had been validly paid as a supplement to the normal salary. Remarkably, the fact that the employee had been employed full-time did not prevent a finding of irregular employment, as the court had expressly held in an earlier decision in the same matter (4A_619/2019 of 15.04.2020). More importantly still, the lower court had expressly found that there were no insurmountable difficulties to calculate the salary due during the holidays. In its most recent leading case (BGE 149 III 202, 4A_357/2022 of 30.01.2023), the Swiss Federal Supreme Court changed course and clarified that a variation from one month to the other in the salary earned is not sufficient justification for paying holiday pay by way of a salary supplement, but it was a variation in working time that was relevant. In case of full-time employment with the same employer, practical difficulties were not a good justification for paying holiday pay as a salary supplement, and, thus, the practice was not permissible.

Employee privacy

In the context of the employment relationship, the employer must respect and protect the employee's personality rights. The employee's personality rights encompass the right to privacy and data protection. Processing data outside legal boundaries and without justification violates the employee's personality rights and may give rise to claims for damages and compensation for moral damage. The processing of employee data by the employer is subject to special rules.

According to Article 328b CO, the employer may handle data concerning the employee only to the extent that such data concerns the employee's suitability for the job or are necessary for the performance of the employment contract; furthermore, the employer must comply with the provisions of the Data Protection Act. The parties to an employment agreement cannot contract out of these limitations to the disadvantage of the employee (Article 362 CO). There has been controversy over whether these rules should be interpreted as an outright ban on any processing of employee data by the employer that is not strictly necessary for assessing the employee's suitability for the job or for the performance of the employment contract, or whether the employer's data processing for other purposes was capable of being justified by the reasons set out in the Data Protection Act, including consent of the data subject, a prevailing private or public interest, and legal requirements (Article 13(1) of the Data Protection Act). Court practice was unsteady. For example, the Zurich Supreme Court stated in a judgment rendered in 2018 that it was its constant practice to not interpret Article 328b CO as an outright ban on data processing outside the scope specified therein, but to consider possible justifications for the data processing based on the Data Protection Act (LA180002 of 20 March 2018). In later judgments, the same court ruled that Article 328b CO was a special norm that prevailed over the Data Protection Act and that the employer's processing of employee data that is not sufficiently linked to the employment was not capable of being justified, even if such data processing would be justified if only the Data Protection Act applied (LA180019 of 15 March 2019; LA180031 of 20 March 2019). Two recent judgments of federal courts support the more liberal view.

The first judgment was rendered by the Swiss Federal Administrative Court in the context of a claim for damages and compensation for moral damage brought by an employee against EMPA, the Swiss Federal Laboratories for Materials Science and Technology (A-2479/2020 of 26.03.2021). The employee asserted that EMPA had violated her personality rights by responding to inquiries by a newspaper and sending out an e-mail to the entire staff, approximately 1,000 persons, informing them of her sick leave, the appointment of a new head of department and a pending internal investigation targeting, among others, the employee. The court found that the newspaper could not identify the employee based on the information given to it by EMPA. Thus, this information did not infringe on the employee's personality rights. With respect to the message to the entire staff, the court found that it was neither required for the performance of the employment agreement nor relating to the employee's suitability for the job and, thus, fell outside the scope of permissible data processing pursuant to Article 328b CO, which was applicable by analogy in this public law-governed employment relationship. The court assessed whether the information to the entire staff could be justified in accordance with the Data Protection Act. It found that, in the specific circumstances of the case, the public interest in disclosing the relevant information prevailed the employee's interest in keeping the information confidential. EMPA's notification was factual, truthful, proportionate, and conscionable. Consequently, the employee's claims were dismissed. Although this case concerned an employment relationship governed by public law, it is still instructive for private law employment relationships with regard to the principle that data processing outside the scope permissible according to Article 328b CO is capable of being justified in accordance with the justifications set out in the Data Protection Act.

According to a judgment from the Swiss Federal Supreme Court (4A_518/2020 of 25.08.2021), the employer's data processing is presumed legal where it is directly related to the formation or performance of the employment agreement. Still, the employer must comply with the general principles of the Data Protection Act, including the principles of good faith and proportionality. Where the employer processes employee data otherwise than for assessing the employee's suitability for the job or the performance of the employment agreement, then such data processing is presumed illegal; however, it may be justified by one of the justifications set out in the Data Protection Act. According to the facts of the case, the employer, without the (former) employee's consent, restored the data on the employee's business mobile phone via the employee's personal iCloud account several months after it had given the employee an opportunity to delete private data from the mobile phone before its return. Moreover, the employer searched the

employee's e-mails and WhatsApp messages, including private messages, purportedly in order to secure evidence for defending an anticipated claim for overtime compensation. The court confirmed the prior instance's ruling that, even if securing evidence in anticipation of litigation with the employee might fall within the scope of data processing contemplated in Article 328b CO, the employer's interest in searching the employee's mobile phone did not prevail the employee's interest in privacy. The employer's data processing was not proportionate since it would have had less intrusive means of defending the employee's claim by relying on other evidence. Apparently, the employer also spread to third parties intimate details learned by accessing private messages. The violation of the employee's privacy was considered so grave that the court confirmed an award for moral damage of CHF 5,000.

On 1 September 2023, a totally revised Data Protection Act entered into force. However, the revisions have no impact on the issue discussed above.

Platform economy

The platform economy, in general, and Uber, in particular, have led to a significant amount of legal writing and litigation. In two judgments of 16 February 2023, the Swiss Federal Supreme Court confirmed that typical Uber drivers contracted by Uber B.V. (with respect to the UberX, UberBlack and UberVan service) and Rasier Operations B.V. (with respect to the UberPop service) qualify as dependent employees rather than self-employed for the purpose of social security law (BGE 149 V 59, 9C_70/2022 and 9C_76/2022; 9C_71/2022 and 9C_75/2022). No assessment of the individual circumstances is required, except where the relevant Uber driver in turn employs employees or conducts business through a legal entity. The Uber entities were required to give the social security authorities information about the remuneration paid to the Uber drivers in order to assess Uber's liability for social security contributions. Since then, Uber has changed its terms and conditions and requested that the status of its drivers under these new terms and conditions be assessed afresh. The competent compensation office did not see sufficient grounds for a new assessment. However, eventually, the Swiss Federal Supreme Court confirmed that the social security status must be assessed anew considering the changes in Uber's terms and conditions (9C_85/2024 of 29 May 2024).

The issues go beyond the question of whether the relationship between Uber and Uber drivers qualifies as an employment relationship and whether Uber is liable for social security contributions, as is apparent from the issues involving restaurant delivery services, such as UberEats. The Geneva authorities qualified the UberEats service as a staff leasing arrangement. Staff leasing agencies are subject to licensing requirements and supervision and may be subject to a generally binding collective bargaining agreement covering the staff leasing sector. On appeal, the Swiss Federal Supreme Court held that the couriers of UberEats are indeed its employees, but there is no staff leasing arrangement since UberEats did not assign substantial rights of instruction to the restaurants and the couriers were not integrated into the restaurant's organisation (BGE 148 II 426, 2C_575/2020 of 30.05.2022). Thereafter, UberEats changed its business model. UberEats drivers were required to enter into an employment agreement with a newly established company, Chaskis SA. However, the employees were essentially managed by the UberEats app. The Geneva authorities qualified that set-up as staff leasing arrangement and ordered Chaskis SA to cease its operations until it had obtained a staff leasing licence. Chaskis SA denied providing staff leasing services, but eventually the Swiss Federal Supreme Court confirmed the authorities' view (2C_46/2024 of 5 February 2025).

The Federal Postal Services Commission (PostCom) also targeted UberEats (or more precisely Uber Portier B.V. as the operator) as well as eat.ch GmbH and made orders that they are subject to a registration requirement as a provider of postal services.[6] Such providers of postal services are subject to PostCom's supervision for compliance with the usual terms of employment of the sector, including minimum pay requirements. Moreover, they are obliged to enter into negotiations with trade unions on a collective

bargaining agreement. Upon appeal, the Swiss Federal Administrative Court quashed PostCom's orders (A-4350/2022 and A-4721/2021, both of 3 January 2024): a pizza is not mail.

COVID-19 pandemic fallout

The Swiss Federal Supreme Court had the opportunity to clarify the controversial issue of whether or not government-imposed closures of businesses to fight the COVID-19 pandemic fell within the sphere of risks of the employer and therefore the employer was required to continue salary payments in circumstances where work could not be performed due to the imposed closure (BGE 150 III 22, 4A_53/2023 of 30.08.2023). The case related to three teachers of a private school who had resigned, were under notice and therefore not eligible for short-time work indemnities. Schools had to be closed for a certain period during the pandemic. The court found that a business closure to fight the COVID-19 pandemic was an objective cause that did not fall within the employer's sphere of risks for the purposes of assessing whether or not the employer was in default to accept the employee's labour. Consequently, the court ruled that the employer was, in principle, not required to continue salary payments where no work could be performed because of a required closure of the school. However, the case was sent back to the prior instance to assess whether distance teaching could have been arranged.

In fall 2021, Swiss, an airline, required its flying personnel to submit a certificate confirming their vaccination against COVID-19. About 150 employees were eventually dismissed because they refused to submit the requested certificate. Some of them challenged their dismissal as abusive and requested punitive compensation. In two recently published cases, the Bülach Labour Court, a court of first instance, dismissed the claims brought by a flight attendant and a pilot (AN230001-C and AN230004-C, respectively, both of 5 July 2024). The court balanced the personality rights and operational requirements of the airline. It considered that, during the pandemic, personnel planning had been particularly complex in a cross-border context with diverse and frequently changing requirements for travellers in the various destinations. Moreover, it considered that the risk of contagion was elevated on board of an aircraft and there was a need to protect the personnel as well as passengers. The court also considered that by requiring all staff members to vaccinate, the employer ensured equal treatment, which served to prevent discord among staff members. It also considered that the employer had offered several alternatives, including a suspension of the employment relationship, a transfer to ground service, outplacement services or generous pension arrangements in case of early retirement, none of which had been accepted by the employees. The court concluded that in these circumstances the dismissal was not abusive. It is likely that the issue will be reviewed by higher courts.

Proceedings and enforcement

When it comes to enforcing rights under employment law, procedural rules have an eminent role to play.

As of 1 January 2025, an amendment to the Swiss Code of Civil Procedure (CCP) came into force. So far, courts typically required claimants to advance the full amount of expected court fees. Even if the claimant won the case and, pursuant to the loser pays rule, the court fees were allocated to the defendant, the advance payment was not returned to the claimant, but he was awarded a compensatory claim against the defendant. As a result, the claimant had to bear the credit risk with respect to the defendant's share of court fees. These rules were perceived as an unjustified hurdle for access to justice. According to the revised provisions of the CCP, courts may require the claimant to advance not more than half of the anticipated court fees. Moreover, advances on court fees will be returned to the claimant to the extent the court fees are not allocated to the claimant. It remains to be seen whether these changes will result in more litigation relating to higher value claims. For lower value employment claims with an amount in dispute of up to CHF 30,000 the rules have not changed: no court fees will be levied at cantonal level.

Recent judgments from the Swiss Federal Supreme Court provide welcome clarifications on some controversial issues.

Punitive compensation for abusive dismissal is available only if the employee has complied with certain formal requirements. Firstly, the employee must object in writing to the notice of termination by the end of the employment relationship. Only if the parties cannot agree to continue their employment relationship following such objection may the employee seek punitive compensation equivalent to up to six months' salary. Secondly, the employee must commence proceedings within 180 days of termination, or the claim will be forfeited. It is on the employee to contend and, if contested, prove the basis for the claim. In a recent case dealt with by the Swiss Federal Supreme Court (4A_412/2022 of 11.05.2023), none of the parties had in good time made any submission on whether or not the employee had timely objected in writing to his dismissal. The lower court found that the allegation of a timely written objection had been implied in the employee's pleadings and the employer had failed to contest that implied allegation. The Swiss Federal Supreme Court found otherwise and stated that such allegation could not be implied, but the employee would have been required to expressly contend that he had timely objected in writing to his dismissal. The claim for punitive compensation was thus dismissed.

The employee may at any time require from the employer a reference letter concerning the nature and duration of the employment relationship, the quality of work and conduct of the employee. In principle, it is at the discretion of the employer how to formulate the reference, provided it complies with legal requirements that it must be complete, truthful and benevolent. Where the employer does not comply with the employee's request for a reference letter, the question arises whether the employee, when seeking to enforce that right, can request a specific wording of the reference letter. Some authors are of the opinion that the employee can only request that a reference letter be issued. If, once issued, the employee is unhappy with the contents, he could still bring proceedings for a rectification of the reference. Others are of the opinion that the employee may request a specific wording from the outset. In a recent judgment, the Swiss Federal Supreme Court dismissed the employer's argumentation that the employee was not entitled to propose a specific wording when seeking to enforce his entitlement to a reference letter (4A_50/2023 of 05.02.2024). The court considered that the employer had failed to run this argumentation in the lower courts and therefore should not be heard with it on appeal. It would have been for the employer to contest in detail the contents of the employee's proposal and explain its concerns in its statement of defence in the first instance. However, the employer had failed to do so.

Even a final judgment is not always satisfied without further ado. Where an employee has obtained a final monetary award against his employer for a gross amount, subject to social security contributions and possibly tax, the question arises whether the award qualifies as a definitive title for purposes of debt collection proceedings, i.e. proceedings to enforce monetary claims. In the past, some courts have denied the qualification as a definitive title where the award mentioned only a gross amount, but not the net amount (after deduction of social security contributions and withholding tax), thus allowing more room for objections and making enforcement more burdensome. In a recent judgment, the Swiss Federal Supreme Court confirmed that an award for a gross amount qualifies as a definitive title (BGE 149 III 258, 5A_816/2022 of 29.03.2023). In debt collection proceedings, the judge will allow enforcement into the debtor's assets up to the gross amount to the extent the employer does not prove, by documentary evidence, his obligation to deduct and pay social security contributions (and withholding taxes). It is, however, not necessary for the employer to prove actual payment of such social security contributions (and taxes) to the relevant authorities.

Endnotes

1 Media release of 28 November 2024 from the Federal Department of Economic Affairs, Education and Research: *Mehr meldepflichtige Berufsarten für das Jahr 2025*.

2 *Recht und Politik des Wettbewerbs* (RWP), 2024/4 p. 1101 *et seq.*, *Lohnabsprachen*.

3 In particular, Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 on the coordination of social security systems.

4 Similar to an Employer–Employee Agreement in accordance with Article 21 of Regulation (EC) No. 987/2009.

5 Swiss Federal Statistical Office (*Bundesamt für Statistik*), *Lohnunterschied zwischen Frauen und Männern – Lohnunterschied zwischen Frauen und Männern im Verhältnis zu monatlichen Bruttolohn der Männer, privater Sektor – In Prozent*, ind-d-00.17.00.01.02.01; *Bundesamt für Statistik, Legislaturindikator: Lohnunterschied nach Geschlecht*, 5 November 2024.

6 Order 14/2021 of 7 October 2021 of the Federal Postal Services Commission (eat.ch GmbH) and Order 13/2022 of 25 August 2022 (Uber Portier B.V.).

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