



**Global Employment
Compass
Switzerland**

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1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers	Volunteers
Employment laws and regulations	Yes	No	No
Employees' compensation/ remuneration requirements	Yes	No	No
Minimum wage requirements	Yes	No	No
Mandatory provident fund/retirement benefit fund contributions	Yes	No	No
Immigration requirements including the right to work in your country	Yes	No	No
Personal Data (Privacy) laws and regulations	Yes	Yes	Yes
Anti-discrimination laws and regulations	Yes	No	No

Kindly note that a contract signed with an independent contractor may, depending on the circumstances, be requalified as an employment contract, which would give rise to additional obligations from the employer, in particular the payment of a minimum wage, the deduction of the tax at source and social security contributions, and their remittance to the relevant institutions.

When characteristic elements of an employment contract (performance of work, a relationship of subordination, an element of duration and remuneration) are apparent from the contractual relationship, such requalification is more likely. To mitigate these risks, we recommend that independent contractors register with the *Fédération des entreprises romandes* – FER-CIAM as independents and ensure that the elements constituting an employment contract do not emerge from the contractual relationship with an independent contractor, especially the subordination relationship.



2. Legal requirements/rights/ practices for different categories of workers

a. Employees

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Definition of an employee

According to Swiss law, an employee is anyone who performs work in a subordinate position, for a fixed or indefinite period, without assuming any economic risk.

1 Contracts of Employment

What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?

Fixed-term, maximum duration, part-time and zero hours contracts are available. Additionally, a range of atypical contracts exist. These include agency workers, temporary workers, home workers and apprentices.

What are the key terms of employment contracts?

Generally, employment contracts often include:

- Parties;
- Position/function;
- Place of work;
- Term;
- Compensation;
- Working hours;
- Confidentiality clauses;





- Clauses relating to intellectual property rights;
- Commission clauses (frequently used for sales staff) where variable pay is linked to a percentage of actual sales generated by an employee;
- Clauses concerning daily sickness allowance insurance;
- Clauses on vacation days; and
- Clauses on the probationary period.

Contracts for senior executives also commonly include provisions for:

- Bonuses;
- Share plans;
- Non-compete; and
- Company car or expenses to cover the cost of using their own car for business.

Some contractual provisions, such as for example clauses regarding notice periods, non-compete, have to be agreed in writing. This means that employment contracts with such clauses need to be signed either wet-ink or with a so-called qualified electronic signature.

Is it acceptable to have a probation period for employees? If yes, for how long?

The probationary period is the initial period of an employment relationship during which the employment contract can be terminated with 7 days' notice. For new staff it is one month under statutory law, yet up to 3 months upon written agreement. The probationary period may be waived in writing by individual agreement, under a standard employment contract or collective employment agreement.

The maximum duration of a probationary period is 3 months. Absences due to sickness, accident or performance of a non-voluntary legal obligation (e.g. Swiss military service) extend the probationary period for an equivalent duration.

Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?

Fixed term contracts are permissible but are not recommended. A maximum duration contract is preferable.

- **A fixed term contract** is one where the expiry date is agreed in advance by the parties and the contract ends automatically on the agreed date without the need for termination. The duration of a fixed term contract must be clearly determined. Generally, there is no set maximum duration. Once the probation period has expired, a fixed term contract cannot be terminated under any circumstances until the termination date or by immediate termination for good cause. Employees on fixed-term contracts are not protected against termination in the event of illness or accident i.e. the employment contract will terminate on expiry of the agreed term, even if the employee is unable to work.
- **A maximum duration contract** combines the features of both fixed-term and indefinite duration contracts, and can be terminated throughout its duration (subject to compliance with the legal or contractual notice period), but in all cases ends at the term agreed by the parties. The employee is, however, protected against termination at an inopportune juncture for





example in the event of illness, accident or pregnancy. Either party can terminate the contract if needed.

There is no limit on successive fixed term contracts, but if such contracts are not justified by an objective cause and do not comply with mandatory law (i.e. where a number of fixed term contracts are juxtaposed in order to circumvent the relevant laws), the avoided provisions will nevertheless be applicable e.g. in relation to notice periods, termination and probation periods. Illegal chain contracts would in that instance be treated as a single employment contract of an indefinite duration and a new fixed-term contract would not then trigger a new probation period. As a rule of thumb, one or two additional fixed terms are usually permissible, provided the extension of the employment by a fixed term is justified by an objective cause (e.g. seasonal appointments or where the employee wishes only to be bound for a short period).

There are no particular formalities for a fixed term contract. That said, it is recommended to avoid fixed term contracts and use maximum duration contracts instead. Indeed, the employer may not unilaterally terminate a fixed-term contract before the end date, unlike the maximum duration contract, which can be terminated unilaterally at any time subject to the notice period.

Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?

An employment contract can be oral or written. The validity of the contract does not require any particular form although a written contract is generally advisable to prevent misunderstandings. Where the employment contract has been concluded for an indefinite period or for more than one month, the employer must provide certain key points of the employment relationship in writing (wet-ink or qualified electronic signature) within one month from the beginning of the employment relationship.

A written agreement is compulsory if certain (non-mandatory) legal entitlements are to be amended, for example alterations to termination notice periods or overtime pay. Mandatory entitlements cannot be varied. This means that employment contracts with such clauses need to be signed either wet-ink or with a qualified electronic signature.

There is no legal obligation to provide the contract of employment in the local language. However, in all cases the employer should ensure that the contract is in a language that the employee can understand.

Do employees have to be issued with a written employment contract before they start work?

No. There is no obligation to receive the employment contract before the start of employment. However, it is not common practice to send the employment contract afterwards.

Can you provide a simple template of the contracts mentioned above?

There is no universal template in Switzerland. The contract should be prepared based on the particular circumstances of the appointment.

Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?

No, this request is at the employer's discretion and is usually not allowed except in the banking field and some other sectors. That said, there may be special rules for administrative jobs or employees who work with children or vulnerable persons.





Can employers request references from former employers for new hires?

Yes, they can and generally do. Requesting references is a widespread and important practice in Switzerland for employers. However, this is possible only with the employee's consent. Indeed, processing of the employee's personal data is only possible with the employee's consent. The employer may not, in principle, spontaneously contact the applicant's former employers to ask for references on the job applicant.

Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?

Swiss law provides that in organizations with at least 50 employees, the employees are entitled to elect an employee representative body, which consists of at least three persons and represents the interests of the employees against the employer.

The employee representative body has a right of information and is entitled to special participation in certain matters provided for in a number of legal provisions, such as:

- questions of labor safety;
- protection of employees;
- mass dismissals;
- business transfers; and
- affiliation with a pension plan.

To be recognized as employees' or employers' associations representing members of the same profession, such associations must:

- have juridical personality;
- be independent;
- have as their main subject and goal the shaping and negotiating of working terms and conditions; and
- provide for voluntary membership.

Associations meeting these requirements may conclude collective employment contracts.

Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?

Yes, it is common to have collective agreements with trade unions and these apply to approximately 50% of the Swiss workforce. However, it is not common for non-profit organizations.

These are agreements whereby several employers or employers' associations and employees' associations negotiate and agree to provisions concerning the conclusion, content and termination of individual employment relationships of the participating employers and employees. Provisions of collective employment agreements may not deviate from compulsory law, unless to the benefit of the employees and where permitted by the law.

In relation to collective employment agreements, the following must be in writing to be valid:





- the conclusion (i.e. the agreement between the parties which must be mutual);
- amendment;
- cancellation by mutual agreement;
- the joining of a new contracting party; and
- notice of termination.

2 Conditions of employment

What is the minimum age requirement for employment?

Kindly see the table below.

Age	Authorised activities	Maximum daily and weekly working time	Particularities
From 15 to 18 years old	General employment of young people released from compulsory schooling	<p>Daily working hours: must not exceed that of other employees in the company; maximum nine hours per day.</p> <ul style="list-style-type: none"> – Up to the age of 16: up to a maximum of 8 p.m. – The night before a course at a vocational school: no later than 8 p.m. – At least 12 hours' rest per day – Maximum working week: 45 to 50 hours depending on the circumstances 	In the event of release from compulsory school before the age of 15: possibility of starting an apprenticeship from the age of 14 with an authorisation from the cantonal authorities.
As of 13 years old	Light work (e.g. holiday jobs, vocational training, small jobs)	<p>During school periods:</p> <ul style="list-style-type: none"> – Three hours per day, nine hours per week <p>During the holidays and career guidance courses:</p> <ul style="list-style-type: none"> – Eight hours a day, 40 hours a week, between 6 a.m. and 6 p.m. – Maximum during half of the school holidays – Duration of a career guidance: a maximum of two weeks 	Employment must not have a negative impact on the health, safety and development of young people, nor on their school attendance and performance.
From 0 to 15 years old	Artistic, cultural, sporting and advertising	<p>Up to the age of 13: three hours a day, nine hours a week.</p> <p>Young people over 13 subject to compulsory schooling:</p> <ul style="list-style-type: none"> – During school periods: three hours per day, nine hours per week – During the holidays: eight hours a day, 40 hours a week, between 6 a.m. and 6 p.m. and maximum during half of the school holidays 	Employment must not have a negative impact on the health, safety and development of young people, nor on their school attendance and performance.





** The prohibitions and restrictions on employment for the following activities must nevertheless be respected in all cases: dangerous work; serving customers in cabarets, nightclubs, dance halls, discotheques, and bars; serving customers in hotels, restaurants and cafés; employment in film companies, circuses and entertainment companies.*

Other conditions apply.

What type of work may a child undertake? For example, are there any specific restrictions?

Please see table [above](#).

Wages

What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?

There is no general statutory minimum wage in Switzerland. However, 5 Cantons have adopted a statutory minimum wage: Geneva, Jura, Basel-City, Ticino and Neuchatel.

In addition, some collective labor agreements and standard contracts contain minimum wage requirements.

Some collective or standard employment contracts may stipulate a minimum wage. Further, minimum wages may apply to foreign employees sent to Switzerland on time-limited assignments by their foreign employers.

Subject to complying with any applicable minimum, the employer shall pay the employee the wages that have been agreed, or that are customary.

Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?

Under the law of obligations, there is no general right to a salary increase. However, the right to a salary increase may be provided for in the contract or in any applicable collective bargaining agreement. If an employee meets these contractual conditions, they are entitled to the corresponding salary increase.

When are wages due? For example, is there any obligation to pay wages weekly, or monthly?

Wages must be paid to the employee at the end of each month, unless otherwise stipulated in a standard employment contract or collective agreement (art. 323 al. 1 CO).

Are employers obliged to provide employees with paid leave on public holidays?

10 days of national and local public holidays.

Are employers obliged to provide employees with annual leave?

In addition to public holidays, employees are entitled to at least 4 weeks' paid holiday per year (5 weeks for employees under the age of 20).

It is common to offer more than the minimum holiday entitlement. Some companies grant additional holiday entitlement to employees over the age of 50.

At least two consecutive weeks of holiday must be granted during a year of service. The employer determines the timing of holidays taking due account of the employee's wishes to the extent they are compatible with the interests of the business.





Are employees entitled to receive their usual salary during their annual leave?

Yes.

Is there a requirement to pay overtime? How is overtime compensated?

Overtime must be paid, unless the employee waives payment of overtime in writing and in advance.

There is a difference between overtime (hours worked between the time specified in the employment contract and 45 hours) and overtime work (hours worked in excess of 45 hours).

These hours must be compensated at 125% or by equivalent time off. Overtime and overtime work differ in that compensation for overtime can be excluded by written contract, while compensation for overtime work can't. However, labor law does provide for a restriction for clerical, technical and other employees, including sales staff in large retail establishments: the legal obligation to compensate overtime work applies here only if the limit of 60 hours of overtime per year is exceeded.

Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?

No.

Are employees entitled to an end-of-year payment?

Not according to the law. It's up to the employer.

Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?

At the end of an employment relationship, the employer typically pays (i) the salary for the notice period, (ii) overtime worked and (iii) untaken holidays.

During the probationary period, which is considered to be the first month of the employment relationship, either party may terminate the employment relationship with seven days' notice at any time. The probationary period may be prolonged, shortened or waived by written individual, standard or collective employment contract, but is limited to a maximum of three months.

After the probationary period, the ordinary notice period varies according to the number of service years, as follows:

- first year of service – 1 month
- second to ninth year of service – 2 months
- more than 9 years of service – 3 months.

The notice period may be altered by a written individual, standard or collective employment contract. Notice can only be reduced to less than one month if agreed through a collective employment contract and only for the first year of service.

At the end of an employment relationship, the employer typically pays (i) the salary for the notice period, (ii) overtime worked and (iii) untaken holidays.

Working hours





What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?

Working time, also known as working hours set in the employment agreement (typically between 40 and 45 hours per week), is the time during which the employee is at the employer's disposal. Working time is generally laid down in the employment contract, and is clearly defined by the Federal Labor Act.

Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?

The cantons determine 8 days of public holidays (in addition to the Swiss National Day on the 1st of August). Therefore, the holidays differ from one canton to another (9 public holidays in Geneva).

Regarding the leaves that the employees are entitled to according to the Swiss Code of Obligations, kindly find them hereafter:

- **Maternity leave:** Women cannot work in the 8 weeks after the birth of the child. At the end of the 8-week period and until 16 weeks after birth, breastfeeding mothers can only work if they consent. A breastfeeding mother who consents to work may take time off as necessary for breastfeeding.

Legislation provides for compulsory maternity insurance, which covers 80% of the average income (at the time of going on maternity leave) for 14 weeks after delivery. There is a legal cap for the insured income.

- **Paternity leave:** The entitlement for paternity leave is 10 days that may be taken within six months from the birth of the child, either as single or consecutive days. Paternity leave is paid by the State at a rate of 80% of the normal salary in 14 daily allowances (includes daily allowances for 2 weekends in addition to the 10 working days that can be taken as time off). There is a legal cap for the insured income.
- **Parental leave:** No statutory right. Sometimes dealt with in employer's policies.
- **Adoption leave:** Employees are entitled to adoption leave of 10 days if they are adopting a child under the age of four. Adoption leave must be taken within one year of welcoming the child. The leave can be taken in weeks (including weekends) or days (10 days). The adoptive parents will be able to choose which one of them will benefit from the leave; they also have the possibility of sharing it between them, but without being able to take it simultaneously.
- **Leave to care for family members:** An employee is entitled to paid leave for the time he or she spends caring for a family member or life partner with health problems; however, the leave is limited to no more than 3 days per event and no more than 10 days per year.
- **Leave to care for a child whose health is seriously impaired by illness or accident:** a child's health is seriously impaired when (i) they have undergone a major change in their physical or mental state, (ii) the evolution or outcome of this change is difficult to predict, or can be expected to lead to lasting or increasing impairment to health or to death, (iii) increased parental involvement is necessary, and (iv) at least one of the parents stops working to look after the child.





This leave can be taken in blocks of weeks, or days. It lasts for a maximum of 14 weeks, which are compensated by 98 daily allowances. The number of days of leave depends on the employment rate.

Do part time employees receive any particular protection on the basis of their part-time status?

No. Part-time employees generally have the same rights as full-time employees.

Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?

No. Part-time employees generally have the same rights as full-time employees.

Social security

What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?

1st pillar:

Social security, in particular AVS/AI/APG (10.6%) and unemployment insurance (2.2%) to be paid half by the employee and half by the employer.

2nd pillar:

Employees aged over 17, insured to the 1st pillar and receiving an annual salary of more than CHF 22'050.- shall be insured under the 2nd pillar. To this end, all employers with employees subject to compulsory insurance (1st pillar) must be affiliated to a pension fund listed in the occupational benefits register.

Contributions are divided equally between the employer and the employee and the employee's contribution shall be deducted by the employer from their gross salary in order to pay it to the pension fund. The employer has an obligation to transfer both their own contribution and the employees' to the pension fund no later than the end of the first month following the calendar year or insurance year for which the contributions are due.

Pro-rated contributions are required for part-time employees.

In total, the rate of the employer's contributions on a Swiss salary is of about 15%.

Are employers obliged to provide health insurance to their employees?

No. But they can participate to pay a portion of the insurance.

Are employees entitled to unemployment insurance/benefits following the end of employment?

An employee is entitled to unemployment benefit where they:

- are domiciled in Switzerland
- has completed compulsory schooling, has not yet reached retirement age or is not receiving a pension
- has paid unemployment insurance contributions for at least 12 months in the 2 years prior to registration





- was unable to contribute for various reasons. Examples: they were a student, they were ill, they had an accident, etc. All the reasons are listed in this section of the Unemployment Insurance Act (art. 14)
- is looking for work and able to work, e.g. they have secured childcare
- has suffered a loss of work that can be taken into account, but at least 2 consecutive days lost
- has fulfilled the employer's unemployment insurance obligations.

Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?

If the employee is prevented from working (due to illness, accident, compliance with legal obligations, or exercise of a public office) through no fault of their own, the employer must pay the employee's normal wage for a certain period of time, provided that the employment relationship has existed for more than three months, or was concluded for more than three months.

Sick pay is payable for three weeks during the employee's first year of employment. This period is extended in line with the length of employment and the circumstances of the employment.

In practice, the employer often offers insurance for loss of income in case of sickness, which will cover 80% of the salary for 730 days.

Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?

Please see [above](#).

Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?

Please see [above](#).

Are employers liable for absence due to work-place injuries?

By law, employers must take all necessary measures to protect employees' health. In the event of an accident, penalties may be imposed.

Are employees entitled to retirement benefits from the employer? If yes, what benefits?

Yes, but not from the employer. Benefits are paid by the State and the pension fund. The first pillar (old-age, survivors' and invalidity insurance) is compulsory for all, including the self-employed or people without paid employment – for example parents of either sex who take care of the household or the children. The second pillar (pension scheme) is obligatory only for salaried workers. The third pillar (individual provision to meet further needs) is optional, but unlike other forms of savings it offers certain tax benefits.

The first and second pillars are mandatory.

The state social insurance (first pillar and second pillar) provides old-age, survivors' and invalidity benefits. The benefits from the first pillar are complemented by the benefits from the second pillar (pension scheme).





The first two pillars together should amount to at least 60% of the beneficiary's last gross salary and allow pensioners to maintain the standard of living to which they are accustomed.

Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?

In Switzerland, there is no law specifically protecting whistleblowers. Hence, employers have no such obligations. That said, whistleblowers are protected by the general provisions on wrongful termination.

3 Safe and supportive work environment

Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)

The employer must:

- Take all necessary measures to protect workers' personal safety;
- Set up its facilities and regulate work processes in such a way as to protect workers as far as possible from health hazards and overwork;
- Ensure that workers are not obliged to consume alcoholic beverages or other psychotropic substances in the course of their professional activities;
- Involve workers in health protection measures;
- Provide ergonomic and hygienic working conditions;
- Ensure health is not damaged by physical, chemical or biological influences;
- Ensure excessive or excessively repetitive effort is avoided;
- Organize work in an appropriate manner;
- Ensure that the effectiveness of hygiene measures is not compromised. The employer will check them at appropriate intervals (art. 3 al. 1 OLT3);
- Adapt measures to new working conditions in the event of modifications to buildings, parts of buildings, installations and technical equipment or work processes, or in the event of the use of new products in the company (art. 3 al. 3 OLT3);
- Ensure that all workers employed by the company, including those from third-party companies, are sufficiently and adequately informed and instructed about the risks to which they are exposed in the course of their work, as well as the hygiene measures to be taken to prevent them. This instruction must be given on starting work and whenever working conditions change, and repeated if necessary (art. 5, para. 1 OLT3);
- Ensure that workers observe hygiene measures (art. 5, para. 2 OLT3).

The above is not an exhaustive list.

Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)

No. However, this is recommended to protect the employer against employees' claims.





Is there a requirement to provide employees with training designed to combat discrimination and harassment?

No. However, this is recommended to protect the employer against employees' claims.

Is there a requirement to have a data protection policy?

No.

Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?

No.

4 Tax

Which taxes are mandatory for employers to pay and deduct on behalf of their employees?

Tax at source.

There are two categories of persons taxed at source: those domiciled or resident in Switzerland for tax purposes, and those domiciled abroad.

In Geneva, the following **resident** taxpayers are subject to withholding tax:

- foreign employees who do not hold a C permit (settlement permit)
- B permit holders (residence permit);
- L permit holders (short-term residence permit);
- N and F permit holders (asylum seekers and provisionally admitted refugees);
- Ci permit holders (family members of international civil servants or international civil servants or mission employees);
- undocumented migrants (undeclared workers);
- minor children under 18 years of age on December 31, regardless of nationality.

The following taxpayers are, on instruction of the cantonal tax authorities (AFC), exempted from withholding tax and correlatively taxed according to the ordinary procedure (tax return):

- taxpayers who have been naturalized or have obtained a C permit;
- taxpayers who have married a Swiss resident;
- Swiss nationality or with a C permit;
- taxpayers paid directly by an employer domiciled abroad (with some exceptions).

Regarding the taxpayers domiciled abroad (non-residents), the salaried taxpayers domiciled abroad and designated below are subject to withholding tax:

- cross-border commuters, regardless of nationality or age;





- holders of short-term residence permits for foreigners working in Switzerland without taking up residence (120-day permit);
- employees domiciled abroad and working in international traffic (ship, airplane (aircraft), road transport), if the permanent establishment of their employer is located in Switzerland;
- persons who receive a benefit (bonus, indemnity, etc.) as a result of a previous activity in Switzerland;
- former employees in receipt of an employee profit-sharing domiciled abroad;
- persons without a residence permit who are gainfully employed.

Kindly note that the tax at source regulations vary depending on the 26 cantons.

Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?

If the employee is taxed at source, the employer has to deduct the withholding tax from their salary. The employee would have nothing else to do. The employee may, however, request an ordinary declaration if they have, for example, real estate or other deductions to their advantage.

In the case of employees subject to ordinary taxation, such as those with a C permit, it is the employee who must take care of everything: declaration, statement of account, etc.

5 Remote work

Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?

No, but it is recommended.

Are employers required to provide any form of physical working space for employees working in your country?

No, unless necessary for the execution of the tasks.

Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.

- Employers have a duty to protect the health of their employees and to implement the necessary measures when employees work from home.
- Electronic monitoring and control systems designed to monitor employees' behavior in the course of their work are not permitted on company premises or in employees' homes. As a result, presence at a private workstation cannot be continuously monitored. For example, it is not possible to film a teleworker to monitor the individual's behavior at home.
- The rules governing working hours and rest periods remain applicable regardless of the place of work, provided that the employee works in Switzerland (in principle maximum of 45 hours a week, even if the employee works remotely).
- In principle, employers are required to provide their employees with the devices and equipment they need. When employees themselves, in agreement with the employer,





provide equipment to carry out their work, the employer must compensate them appropriately. However, the Swiss Code of Obligations (CO) allows the parties to agree a different arrangement.

Depending on the activity, the employer must determine the extent to which the employee can have access to sensitive data and documents from home, and how confidential documents are to be handled.

Matters relating to social insurance and tax payments remain unchanged. That said, kindly note that there are technicalities regarding employees who work from a home abroad. Depending on the circumstances and the rate of activity abroad, this may give rise to questions regarding social insurance and tax liability. We recommend checking social security, tax obligations and bilateral conventions in the country where the employee works.

6 What to do when things go wrong

Dispute resolution

Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?

The filing of the claim with the Court is, barring exceptions, preceded by an attempt at conciliation. Conciliation involves filing a request with the conciliation authority, which will attempt to reach an agreement between the parties. If conciliation is unsuccessful, the claimant may proceed with filing the claim. In certain cases, the parties may waive the conciliation procedure by mutual agreement, for example in patrimonial disputes with a litigation value of over CHF 100,000. In other cases, the claimant may unilaterally decide to waive the conciliation procedure, in particular when the defendant's domicile or registered office is abroad, when the defendant's place of residence is unknown, or in disputes covered by the Equality Act of March 24, 1995.

Resignation

What grounds do employees have for resignation?

A contract may be terminated by either party without cause, but with notice. However, in certain cases, a termination given by the employee may be considered as wrongful (both the employer and the employee are protected against wrongful termination).

Notice of termination is wrongful where given by the employee:

- based on an employer's personal characteristics;
- because the employer exercised a constitutional right (such as trade union activity);
- to solely frustrate the formation of claims of the employee arising out of the employment relationship;
- because the employer asserts, in good faith, claims arising from the employment relationship; or
- because the other party is performing Swiss compulsory military or civil defense service or Swiss alternative civilian service or a non-voluntary legal obligation.

A party who terminates the employment relationship unlawfully must pay compensation to the other party. The court determines the compensation taking due account of all the circumstances, though it must not exceed an amount equivalent to six months' employee salary.





Further, the employee (as well as the employer) may terminate the employment relationship with immediate effect at any time for good cause. In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.

Termination

What grounds do employers have for the termination of employment contracts?

A contract may be terminated by either party without cause, but with notice. However, such a termination given by the employer may be considered as wrongful.

Examples of 'wrongful dismissals' for which an employer may be liable to pay up to six months' salary in punitive damages include those:

- based on an employee's personal characteristics
- made because the employee exercises a constitutional right (such as trade union activity)
- made to solely frustrate the formation of claims of the employee arising out of the employment relationship;
- made because the employee asserts, in good faith, claims arising from the employment relationship; or
- made because the other party is performing Swiss compulsory military or civil defense service or Swiss alternative civilian service or a non-voluntary legal obligation.

A contract may be terminated without notice:

- if the terminating party has a valid and legitimate reason namely if the terminating party cannot reasonably and in good faith be expected to continue the employment relationship;
- in the event of insolvency of the employer if the employment fails to provide security for the employee's claims under the employment contract.

If an employer dismisses an employee without notice in the absence of a valid reason or with insufficient notice, the employee may be entitled to the wages they would have earned during the statutory or contractual notice period in addition to a penalty payment of up to 6 months' salary.

How do employers have to document the termination of an employment contract?

Employers are generally free to dismiss employees, providing that the correct notice is given and it is not an 'wrongful dismissal', without the need to provide warnings or offer additional training.

Where the employer proposes to implement 'mass dismissals' for reasons unrelated to the individual employees (typically in a redundancy situation), a certain procedure must be followed if a certain number of employees are given notice within 30 days. The employer must first consult with the employee representative body or all employees providing certain information and also notify the Cantonal Labour Office in writing.

The above procedure is required when the dismissals affect:

- at least 10 employees in businesses with more than 20 and fewer than 100 employees;





- at least 10% of all employees in businesses with more than 100 and fewer than 300 employees; and
- at least 30 employees in businesses with at least 300 employees.

In addition, the employer is required to negotiate and agree on a social plan if (1) it usually employs at least 250 employees; and (2) it is intended to make at least 30 employees redundant within 30 days for reasons that have no connection with them personally. If the negotiating parties are not able to agree on a social plan, an arbitration tribunal will be appointed, which issues the social plan in the form of a binding arbitration award.

What is the responsibility of employers for damages incurred by an employee's actions within his/her work?

An employer is liable for the damage caused by its employees or ancillary staff in the performance of their work unless the employer can provide that it took all due care to avoid a damage of this type or that the damage would have occurred even if all due care had been taken.





b. Independent contractors/consultants*

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Definition of an independent contractor/consultant

A consultant is a person who undertakes to conduct certain business or provide certain services in accordance with the terms of the contract, without any relationship of subordination to the other party.

**The term consultant will be used to also refer to independent contractors, or any other term that would mean a person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.*

1 Contracts

What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

As Swiss contract law is based on contractual freedom (barring exceptions), a contract can be stipulated according to the needs of the parties and is quite flexible, for example, a fixed-term consultant contract, a free consultant contract, an onerous consultant contract or which ends after reaching a result, etc. If the NGO is subject to Swiss law, the rules of the Code of Obligations will apply, in the sense that there would not be a specific contract for an NGO.

What are the main elements of consultant agreements?

- Parties;
- A service (this means that the consultant must render certain services, and that the services must be rendered with a view of achieving a certain result);
- Even if, in practice, the consultant is remunerated, this is not a main element of a consultant agreement.

Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?

Yes, it is possible, but unnecessary as most consultant contracts can be terminated at any time, without notice, except for a commercial agency contract.





Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?

Yes, but beware of the risk of requalification as an employment contract (as it is more usual to have fixed-term employment than consultant contracts), which would raise questions about payment of social security contributions, tax liabilities and work permits.

Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?

No. Independent contractor/consultant agreements do not need to be in writing and have no signatory requirements.

Do all types of independent contractors/consultants have to be under contract in order to be able to work?

Yes, but not necessarily written.

Can you provide a simple template of the agreements mentioned above?

There is no universal template in Switzerland. The agreement should be prepared based on the particular circumstances of the appointment.

Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?

No.

2 Conditions of work for consultants

Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?

No, but the contracting party must ensure that the consultant has the capacity to discern and the capacity to act.

Does a consultant/independent contractor need to obtain a license or any other permission in order to work?

It depends on the role of the consultant and if the services provided are regulated. Also, in order to be allowed to work in Switzerland as a non-Swiss citizen, a work permit is required.

Payment

Are there any minimum pay requirements for consultants/independent contractors?

No, unless the profession of the consultant is regulated.

Are there any exceptions in minimum wages for young persons or people with disabilities?

No.





Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?

No.

Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?

No.

Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?

No.

Are consultants entitled to an end-of-year payment?

No.

Are consultants entitled to a final payment when the contract is terminated?

No, except for the "compensation for clientele" of an agent in an Agency contract.

Working hours

Are consultants entitled to any type of leave, whether paid or unpaid?

No.

Social security

Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?

No.

Are independent contractors/consultants entitled to unemployment insurance/benefits after termination of their independent contractor/consultancy agreement from the end user engager?

No.

Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid

No.

Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid

No.

Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?

No.





Are employers obliged to cover work-place injuries for independent contractors/consultants?

No.

Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?

No.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

The obligations imposed on an employer towards its employees do not apply in the case of a consultant. Nevertheless, the consultant contract could be requalified as an employment contract. If that is the case, the regime that applies to employees would apply to the “consultant”.

4 Remote work

Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?

No.

5 What to do when things go wrong

Resignation

Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?

No, the consultant contract may be revoked or terminated at any time by either party, without ground. However, a party doing so at an inopportune juncture must compensate the other for any resultant damage.

Termination of agreement

What grounds do end user engagers have for the termination of consultant agreements?

Kindly see the question [above](#).

What is the responsibility of the end user engagers for damages incurred by a consultant’s actions within his/her work?

A person who delegates the performance of an obligation to an auxiliary is liable to the other party for any damage the auxiliary causes in carrying out such tasks, even if their delegation was entirely authorized. That said, the consultant must qualify as an auxiliary under Swiss law, which requires certain conditions. Generally, this refers to any person who performs an obligation or exercises the right of another person, with the latter’s consent.





c. Volunteers

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Definition of a volunteer

There is no definition of volunteers under Swiss law.

1 Contracts

Are organizations required to sign any form of agreement with volunteers?

No, not necessarily. Some organizations prefer signing a contract with volunteers in order to define the mutual commitments of the organization and the volunteer, as well as to set out the volunteer's activities. However, this is not compulsory.

2 Conditions of employment

Is there a minimum age requirement for volunteers?

No, but they must have the capacity to make a civil commitment according to the Swiss code of Obligations.

What type of volunteering work may a child undertake? Are there any restrictions around this?

No restrictions, as long as their interests/integrity is respected.

Payments and reimbursement

Are organizations allowed to pay stipends to volunteers?

Yes, there is no legal prohibition on doing so, but it is not recommended as there would then be a risk that the work would not be classed as volunteering anymore as volunteering is not supposed to be remunerated. If stipends are paid on a regular basis in the same way as a salary, they can raise questions about the qualification of the contract. Indeed, the contract could be requalified as an employment contract, which would entail the payment of a minimum wage, social security contributions and taxes.

Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).

Yes, for all expenses, provided it is not a disguised salary.





Working hours

Are there any obligations around how many hours volunteers can work?

No.

Are volunteers entitled to any type of leave?

No.

Social security

Are organizations obliged to pay any social security contributions on behalf of their volunteers?

No.

Are organizations obliged to provide health insurance to volunteers?

No.

Are organizations liable for absences of volunteers due to work-place injuries?

If the organization caused the damage to the volunteer, it will be liable.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

The obligations imposed on an employer towards its employees do not apply in the case of a volunteer.

4 Tax

Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?

See question [above](#).

5 What to do when things go wrong

What grounds do organizations have for the termination of volunteer agreements/arrangements?

They can terminate a volunteer agreement without ground.

What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?

A person who delegates the performance of an obligation to an auxiliary is liable to the other party for any damage the auxiliary causes in carrying out such tasks, even if their delegation was entirely authorized. That said, the volunteer must qualify as an auxiliary under Swiss law, which requires certain conditions. Generally, this refers to any person who performs an obligation or exercises the right of another person, with the latter's consent.





d. Non-citizen employees and consultants, including refugees and others forcibly displaced

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1 Status and the right to work

Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)

No.

Are employers obliged to secure work permits for their employees or consultants?

For employees, yes.

Is it always necessary to obtain a work permit?

Yes, a work permit is required for any non-Swiss citizen who wishes to work in Switzerland.

Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?

Any gainful activity must be authorized or announced in advance to the immigration authorities, depending on the status of the person concerned:

Status	Type of permit	Applicable regime
Recognised refugees	B	Announcement
Provisionally admitted refugees	F	Announcement
Other foreign nationals admitted provisionally	F	Announcement
Holders of a permit for humanitarian reasons	B	Authorisation
Persons to be protected	S	Authorisation
Asylum seekers	N	Authorisation





2 Contracts

Are employment contracts or consultant agreements for non-citizens different to those for citizens?

No.

3 Conditions of employment

Does national law regulate the quotas for the number of non-citizens within one organization?

No, but Switzerland imposes quotas on the issuance of permits to foreign nationals from non-EU or EFTA countries.

Are employers obliged to report about employed non-citizens?

Yes. They would need to obtain a work permit from the immigration authority, and report about employed non-citizens to the tax authority and social insurances.

Are there any other differences in conditions of employment for non-citizens and citizens?

Yes. Foreign nationals may only be admitted for gainful employment if it can be demonstrated that there are no workers in Switzerland, or nationals of a country with which an agreement on the free movement of persons has been concluded (EU/EFTA) who meet the required profile. That said, there are (very) limited exceptions for this condition.

Are there any specific employment terms that apply to citizens but not apply to non-citizens?

No.

4 Safe and supportive work environment

Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.

No.

Does the employer have additional obligations for non-citizens?

No.

5 What to do when things go wrong?

Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.

The process of termination of an employment contract is the same for citizens and non-citizens.

Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.

The process of resignation of an employment contract is the same for citizens and non-citizens.





Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?

Yes.





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