



GUIDE TO GOING GLOBAL EMPLOYMENT

Switzerland



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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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SWITZERLAND



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Not a member of the European Union (EU), but member of the European Free Trade Association (EFTA). Swiss Francs (CHF). German, French, and Italian.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity can generally engage employees in Switzerland, subject to business and corporate tax planning considerations, and provided the employee can validly work in Switzerland.

Social charges vary according to canton and the employer's chosen pension fund scheme. Employer's contributions must be paid in addition to the gross salary, at approximately 12 to 20 percent of the gross salary. Employee's contributions must be deducted from the employee's gross salary, at approximately 10 to 17 percent of the gross salary. The employer must deduct each employee's tax at the source, where applicable.

PRE-HIRE CHECKS

Required

Immigration compliance. Criminal and credit reference checks for specific roles (eg, attorneys-at-law, bank executives).

Permissible

Criminal and credit reference checks are only permissible if they are relevant to the proposed work and are subject to proportionality requirements. Reference and education checks are common and permissible with the applicant's consent.

IMMIGRATION

For all non-Swiss nationals, a work permit is required, but EU/EFTA citizens may generally start working as soon as the request is filed. Work permits are generally easily granted for EU/EFTA nationals. The current immigration

system takes into account the global economic interests of Switzerland as well as the integration of immigrants in Switzerland. In certain circumstances and conditions, priority is granted to unemployed workers in Switzerland: employers have the obligation to notify vacant positions to regional placement centers for certain professions where the national unemployment rate is at least 5 percent.

HIRING OPTIONS

Employee

Indefinite, fixed-term, with a maximum duration, full-time or part-time.

Independent contractor

Independent contractors can be engaged with such status only if they can organize their time and duties themselves and effectively bear the economic risk related to their activity. Engagement may be subject to misclassification exposure.

Agency worker

Generally, agency workers must be formally employed by specifically authorized companies. If an extended collective employment agreement applies to the receiving company's employees, agency workers will also benefit from its provisions regarding salary and work duration.

EMPLOYMENT CONTRACTS & POLICIES

Requirements

The employee should at least receive, within the first month of employment, written indication regarding the names of the parties, the starting date, the position, the salary and possible additional salary elements, and the weekly work duration.

Mandatory legal provisions must be observed, as well as collective labor agreements whose scope has been extended by the state to all employers in a specific industry – which is the case, for instance, in the construction industry, the furniture industry, the hospitality and restaurant sectors, private security services and retail.

Probationary periods

Permissible. Up to 3 months (ie, the statutory limit).

Policies

So-called "industrial companies" (ie, factories manufacturing and processing goods and enterprises using machines and/or automatic processes) must have a written health and safety policy and, where necessary, a disciplinary measures policy. These are optional for other companies. It is common to have expense-reimbursement policies. Specific grievance policies are highly recommended.

Third-party approval

An industrial company's mandatory health and safety policy must be reviewed by the Cantonal Labor Authority.

LANGUAGE REQUIREMENTS

No statutory requirements.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All, except that top managers are not subject to a specific maximum work duration.

Working hours

There is a limit of 45 hours per week for most workers (ie, workers employed in industrial enterprises, as well as for clerical, technical and other employees, including sales staff of large retail trade enterprises); supplementary time is possible within appropriate limits (eg, in case of emergency, and generally for a maximum of 2 hours a day and 170 hours a year). There is a limit of 50 hours per week for other workers; supplementary time is possible within appropriate limits (eg, in case of emergency, and generally for a maximum of 2 hours a day and 140 hours a year). Generally, working hours of employees should be recorded.

Overtime

Overtime must be compensated at 125 percent. The employee can consent to compensation by time off. As long as overtime is not over the maximum legal duration, the employer and the employee can have a written agreement providing for other compensation (eg, at 100 percent instead of 125 percent), or even no additional compensation at all, when the agreed salary arguably compensates the overtime and overtime is not much more than what could be expected when signing the contract.

Wages

No general legal minimum wage, except in the Neuchatel canton (minimum CHF20.77 per hour, adapted every year to the consumer price index), in the Jura canton (minimum CHF20.60 per hour, adapted every year to the consumer price index), in the Geneva canton (minimum CHF24 per hour, adapted every year to the consumer price index), in the Ticino canton (minimum CHF19 per hour, adapted every year to the consumer price index) and in the Basel-City canton (CHF21.45, adapted every year to the consumer price index). Minimum wages are sometimes stated in specific collective labor agreements and specific standard employment agreements.

Vacation

At least 4 weeks' vacation per year (5 weeks for employees under 20 years old), and generally 9 public holidays (depending on the canton).

Sick leave & pay

Sick leave is paid in proportion to increasing seniority. Companies and employees can opt for a derogatory scheme (eg, loss of earning insurance providing for 80 percent of salary, up to 720 daily indemnities).

Maternity/parental leave & pay

16 weeks' maternity leave after childbirth (14 weeks paid by the federal insurance and 2 additional weeks in the Geneva canton). A 10-day paternity leave to be taken within the first 6 months following childbirth.

Other leave/time off work

Employees are entitled to short-term leaves for up to 3 days per case and 10 days in total per year to take care of a family member or partner with a health impairment. An employee who has a minor child whose health is seriously impaired due to illness or an accident is entitled to a care leave of up to 14 weeks.

Employees under the age of 30 are entitled to the equivalent of 1 week of unpaid leave per year for the purpose of carrying out unpaid leadership, care or advisory activities in connection with extracurricular youth work for cultural or social organizations and for related initial and ongoing training.

Other additional leaves (eg, wedding, funerals) may be stated in collective labor agreement or in an employment agreement.

DISCRIMINATION & HARASSMENT

Gender discrimination is directly prohibited. Other kinds of unjustified discrimination are indirectly prohibited (ie, only if the employee is able to prove that the discrimination has led to a violation of their personality – that is, when they have suffered painfully worse treatment than other employees, without any objective reason).

WHISTLEBLOWING

There is no specific law in Switzerland protecting whistleblowers from dismissal by their employer. Pursuant to case law, employees must first report misconduct internally to the employer. If all means of internal report have been exhausted without any reaction from the employer, the employee may then disclose the issue to the relevant authorities. It is only as a last resort, in case of failure of the authorities to take any action, and provided it is justified by the circumstances (overriding public interest), that the employee may consider making the misconduct public.

Employers are not required to establish a whistleblowing system (eg, hotline) but can do so on a voluntary basis. It is generally considered best practice.

BENEFITS & PENSIONS

Old age, survivors and disability risks are covered by a 3-tier system:

- first tier: mandatory social security contributions (AVS/AI);
- second tier: mandatory occupational insurance (the employer can agree to an occupational insurance plan over and above the mandatory requirements);

- third tier (optional and not related to the employment relationship): voluntary payments with tax exemption.

DATA PRIVACY

In general, employees should be notified of any processing of their personal data (and, in certain cases, give consent). Registrations with the Federal Data Protection Commissioner are required in certain circumstances. Special rules apply to data transfers outside of Switzerland. Significant restrictions on monitoring email and internet use.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer of all employment agreements in case of transfer of business undertakings – mostly asset deals. Duty to inform and consult with employee representatives, if any – or, if none, with the employees.

EMPLOYEE REPRESENTATION

Workers are entitled to elect a representative in companies with more than 50 workers. Trade unions are prevalent in certain sectors. Industry-level collective bargaining agreements are common. Trade-union arbitrators often act as conciliators when there is a collective labor dispute.

TERMINATION

Grounds

Termination of indefinite-duration contracts is possible for any reason, except for "abusive reasons." Certain reasons cannot serve as a fair basis for a termination (eg, individual characteristics, complaints made by the employee regarding their working conditions or their agreement not being respected, trade-union membership), and a fair process must be followed in any case.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Termination is restricted/prohibited when an employee is unfit for work (eg, due to an accident or sickness) for limited periods increasing with seniority (30 to 180 days), is pregnant or in military service, or within the 16 weeks following giving birth. These main examples are non-exhaustive.

Third-party approval for termination/termination documents

No requirement for third-party approval. No particular termination document is generally required. If contractually agreed, the termination must be given in writing.

Mass layoff rules

Information and consultation rules apply when at least 10 employees are to be made redundant within 30 days, depending on various thresholds. The employer must also notify the Cantonal Labor Authority of the result of the consultation.

Depending on the canton, specific rules may also apply when at least 6 employees are dismissed within the same calendar month.

In bigger companies (ie, 250 employees and more), the employer must hold negotiations with the aim of preparing a social plan if it intends to make at least 30 employees redundant within 30 days (redundancies over a longer period of time that are based on the same operational decision are counted together). In other cases, a social plan is not mandatory unless a collective bargaining agreement provides for it.

Notice

Unless otherwise stated in the contract: 7 calendar days within the probation period; 1 month's notice to the end of a month during the first year of service, then 2 months' notice to the end of a month from the second to ninth years of service, and 3 months' notice to the end of a month thereafter.

The contract can provide for different notice periods, but no less than 1 month's notice after the probation period.

No notice required for terminations for very serious misconduct (such terminations, in principle, must be notified within 2 to 3 days after the breach is discovered).

Statutory right to pay in lieu of notice or garden leave

No.

Severance

Due only to employees of at least 50 years of age and 20 years or more of service, provided there is a shortfall in pension benefits. Due to this last condition, this statutory entitlement almost never applies. The severance amount would be between 2 to 8 months' pay.

Written agreements and collective labor agreements may adopt specific provisions.

POST-TERMINATION RESTRAINTS

Non-competes

Possible, provided the working relationship allows for employees to have knowledge of their employer's clientele or manufacturing or commercial secrets and where the use of such knowledge might cause the employer substantial harm. Non-competition clauses based on knowledge of the client are, in principle, unacceptable in circumstances where the relationship between employees and clients is essentially a personal one, based on employees' abilities and their particular relationships with clients. The restraint must be appropriately restricted with regard to place, time and scope so that it does not unfairly compromise the employee's future economic

activity. Typically no more than 1 year, if based on the knowledge of the employer's clientele, and no more than 3 years, if based on knowledge of manufacturing and commercial secrets.

Customer non-solicits

Permissible, with similar restrictions to non-competes.

Employee non-solicits

Permissible, with similar restrictions to non-competes.

WAIVERS

Waivers of mandatory entitlements agreed upon during employment and the month after termination of employment are only enforceable if the waiver is made against well-balanced concessions.

REMEDIES

Discrimination

- Gender discrimination at hiring: up to 3 months' salary.
- Sexual harassment: up to 6 months' pay based on the Swiss average salary.
- Moral suffering: generally no more than CHF25,000.

Unfair dismissal

Maximum penalty of an amount equivalent to 6 months' salary (rarely more than 4 months). Unfair dismissal decided in retaliation against a gender claim may lead to re-instatement in the company (rarely invoked).

Failure to inform & consult

In regard to mass redundancies, there are 2 possible consequences:

- i. The employment agreements are not considered terminated as long as the Cantonal Labor Authority has not been notified of the results of the consultation;
- ii. The dismissal is considered as unfair, giving right to compensation capped at 2 months' salary.

Transfer of business undertakings: general remedies (reimbursement of damages). Merger, demerger and transfer of assets performed under the Federal Merger Act: possibility of blocking entry in the commercial register

CRIMINAL SANCTIONS

Failure to comply with health and safety legal requirements; undeclared or illicit work; sexual or psychological harassment.

KEY CONTACTS



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