Legal 500
Country Comparative Guides 2025

Switzerland
Employment and Labour Law

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Switzerland.

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Switzerland: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

In principle, an employer can terminate the employment relationship at any time. According to Articles 335 et seq. of the Swiss Code of Obligations ('CO'), an employer does not need a reason to lawfully terminate an employment relationship, provided that the dismissal complies with the applicable contractual or statutory notice periods and that it is not made for reasons that are deemed abusive (see question 12).

In any case, the employer must state the reasons for the termination in writing only upon specific request from the employee.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Swiss law contains specific provisions on collective dismissals (Articles 335*d* et seq. CO). A collective dismissal is defined as any notice of termination given by an employer within a period of 30 days, for reasons not pertaining to the employees themselves, to:

- at least ten employees in companies that usually employ more than 20 but fewer than 100 people;
- at least 10% of employees in companies that usually employ at least 100 but fewer than 300 people;
- at least 30 employees in companies that usually employ at least 300 people.

If an employer intends to undertake a collective dismissal, they must start a consultation process, during which the employees' representative body or, if there is none, the employees themselves, must be informed of the reasons for the collective dismissal, the number of employees affected, the number of people usually employed by the company, and the timeframe within which it is planned to carry out the dismissals. The competent authorities must also be informed that a consultation process is underway and given the above-mentioned information.

The employer must also give the representative body or, if there is none, all employees directly the opportunity to make suggestions on how to avoid or limit the dismissals and mitigate their consequences.

Once the consultation process is completed, the employer must review the suggestions carefully, notify the competent cantonal authorities and employees in writing of the outcome of the consultation process and provide all necessary information on the planned dismissals. It is only once this notification has been made that notice can be given to the employees to be dismissed.

Additionally, all companies that dismiss ten or more employees at once are required by law to notify the competent authorities at the latest on the day that notice is given. In some cantons, this number can be lower (for example, in the Canton of Geneva, this notification obligation is triggered when it is intended to dismiss six or more employees).

Moreover, companies with a workforce of at least 250 employees (head count) intending to terminate at least 30 employees within 30 days for reasons unrelated to the employees must initiate negotiations with the employees aiming at establishing a social plan. Negotiations have to be carried out with the contracting trade union (if the employer is party to a collective labour agreement) or otherwise with the employees' representative body or, if there is none, with all employees directly. If no agreement on a social plan is found during negotiations, an arbitral tribunal must be appointed.

Even though there is currently no statutory obligation for companies that do not usually employ at least 250 people to put in place a social plan in the event of a collective dismissal, it is frequent for companies to choose to do so. Social plan obligations can also be provided for in collective bargaining agreements. The aim of a social plan is to provide benefits to dismissed employees (*e.g.* severance payments, additional pension contributions, outplacement, etc.).

3. What, if any, additional considerations apply if

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a worker's employment is terminated in the context of a business sale?

If a business or part thereof is transferred to a third party (*e.g.* through an asset deal), the employment relationships pass on to the acquirer *ipso iure* (Articles 333 et seq. CO). The transfer of a 'business' is considered as being any transfer of an entire business or business unit from one legal entity to another.

Prior to a business transfer, the employees' representative body or, if there is none, the employees directly, must be informed and, as the case may be, consulted.

If no measures are envisaged in the context of the business transfer which might negatively affect the employees, it is sufficient to inform the relevant staff of the reasons for the transfer and the legal, economic and social consequences of the transfer. Such information must occur prior to the transfer in a timely manner. It can take place after all relevant decisions have been made but, in any event, prior to the consummation of the transaction. In this process, the employees have the opportunity to object to the transfer of their employment relationship. If they do, the employment relationship still transfers to the acquirer but ends automatically after expiry of the statutory notice period (as opposed to the contractual notice period; statutory notice periods vary between one and three months).

Additionally, a consultation is required if measures affecting employees, such as dismissals, salary cuts or material adjustments to employment conditions, are envisaged in the context of the transfer. The consultation must take place in a timely manner prior to the measures being resolved. If the business transfer leads to a collective dismissal, it is required that the collective dismissal consultation process be carried out prior to a decision being made (see question 2).

Subject to the information and consultation obligations being adhere to, employment agreements may, in principle, be terminated prior to the transfer (by the current employer) or after the transfer (by the new employer). However, there is a risk that dismissals in the context of a business transfer are viewed as circumvention of the transfer regime pursuant to Articles 333 et seq. CO, in particular where such dismissals cannot be justified by economic, financial or other objective reasons. As a result, dismissals in the context of business transfers are delicate and should only be considered where there is solid factual evidence for the existence of objective reasons unrelated to the transfer.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

The answer to this question depends on the specific employee protection provisions; some rights apply as of the first day of employment, whereas others depend on the length of service:

- **Day-One Protection:** Employees have the right to (*i*) request that the reasons for a dismissal be provided in writing (see question 1), (*ii*) ask that a letter of reference be issued and (*iii*) object against the dismissal as being unfair (see questions 12 and 13) as of their first day of employment, *e.* regardless of their period of service.
- **Minimum Service Requirements:** By contrast, the continuation of salary during inability to work pay as well as the protection from termination during certain so-called 'protected periods' (see question 14) depend on the duration of the employment relationship. As a general rule, such protection rights kick in after three months of service at the latest (however with the extent of such rights potentially extending as the service years increase).

In addition to the above, years of service may be of relevance in the context of termination negotiations (see question 19).

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

During the trial period (*i.e.* one month by law, extendable to a maximum of three months), the statutory minimum notice period is seven days (Article 335*b* CO). After the trial period, the statutory minimum notice periods are one month during the first year of service, two months from the second to the ninth year of service (included), and three months thereafter (Article 335*c* CO). Parties can contractually agree on longer or shorter notice periods (with the minimum being one month), provided that this is done in writing (meaning wet-ink signatures). It is mandatory that notice periods be of the same length for both employer and employee (Article 335*a* CO). In practice, often longer notice periods are agreed for senior employees (*e.g.* six months).

Absent any contractual agreement to the contrary,

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employment agreements end as of the end of a month. In some professions, the employment agreements may end at a different end date, for instance the end of the school year for teachers respectively of the season for a professional athlete.

Termination of the employment relationship with immediate effect (*i.e.* without notice) is possible, provided that there is a 'cause' (see question 6).

See question 14 regarding the effect of a notice given by the employer during a protected period.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

Payment in lieu of notice is not a concept known in Swiss employment law. If the parties wish to anticipate the termination date, this needs to be agreed in a mutual agreement. As a matter of Swiss case law, this type of termination agreements must meet a fair and balanced test, meaning that the employer must grant the employee what they are legally and contractually entitled to until the end of the notice period, plus compensation for any rights waived by the employee (see question 19). Exceptions may apply where the anticipation of the termination date is made at the express request of the employee.

In all other cases and in the absence of a termination for 'cause' the notice period must be observed. 'Cause', or 'important reason', is defined as any circumstance, under which the continuation of the employment relationship cannot, in good faith, be expected from the terminating party (Article 337 CO). Swiss courts determine freely whether a dismissal was made for 'cause' is justified and usually take a very restrictive approach in admitting such cases, for example, by requesting that a preliminary warning be issued prior to the dismissal. In addition, once the 'cause' has been identified, the employer must terminate the employment agreement within two to three business days. If the employer terminates the employment agreement without observing the notice period and in the absence of 'cause', the employee must be compensated (see question 9).

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

In principle, employers can put dismissed employees on garden leave during part or the entirety of the notice period. This is particularly common in the financial sector or if the employee is part of senior management.

However, certain specific categories of employees retain the right to work, such as those whose professional skills require that they work continuously (*e.g.* surgeons, artists, pilots, athletes, etc.).

When an employee is put on garden leave, the employer must pay their salary and grant them all contractual benefits during the entirety of the notice period.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Swiss law does not impose a specific procedure to be followed in order to terminate an employment relationship.

That said, in order for the termination to be effective, a notice of termination must be issued. The law does not require that the notice of termination be issued in a specific form, unless agreed in the employment agreement, a collective labour agreement or an employment handbook. Where it has been agreed that notice must be given in writing, it is important to ensure that the notice letter is signed in wet-ink by authorized signatories of the employer as most commonly used electronic signatures (such as AdobeSign or DocuSign) are not sufficient to this effect under Swiss law.

In addition, notice of termination must be given in accordance with the statutory or contractual notice periods (see question 5), unless it is a termination without notice for 'cause' (see question 6), and cannot be given during a 'protected period' (see question 14). In order for the notice to take effect, it must be received by the other party or at least 'enter their sphere'. What this means exactly depends on the specific means of service (in person, by mail, formal requirements etc.).

Further, case law holds that certain additional steps (*e.g.* interview, enquiry, internal transfer, etc.) need to be taken in certain situations, namely before terminating an old and long serving employee, in case of conflict between two employees or when the employer suspects a wrongful or illegal behaviour. If notice is served without these additional steps in a relevant scenario, the

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termination is not invalid but might be deemed abusive (see question 13).

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

If notice is not given, or not in the prescribed form, the termination might be invalid and/or not take effect. This is also the case if notice is given by the employer during a protected period (see question 14).

If an employee is dismissed without notice in the absence of a 'cause', the termination is nonetheless valid and takes effect at the time of notice, but the employee is entitled to compensation (Article 337*c* CO).

The amount of this compensation is equal to the salary and other statutory or contractual advantages that the employee would have received had notice been given in compliance with the applicable notice period, minus all cost savings and income earned (or intentionally renounced) by the employee due to the end of the employment relationship. Moreover, the employee is entitled to an additional indemnity, the amount of which the court can freely decide on according to all circumstances of the case. This indemnity however cannot exceed the maximum amount of the equivalent of six monthly salaries.

Notice given for 'abusive reasons' is valid but entitles the employee to seek compensation (see questions 8 and 13).

10. How, if at all, are collective agreements relevant to the termination of employment?

Collective labour agreements may contain a variety of provisions, in particular specific rules with respect to the notice periods and procedures deviating from statutory law.

For example, collective labour agreements can provide that the employer must hear the employee before dismissing them, that it is mandatory for the employer to disclose the reasons for the dismissal or that any dismissal that does not follow a certain procedure is null and void. For instance, in the gastronomy and hotel sector, notice during an employee's contractual vacations is null and void. Another example is the obligation to hold a meeting with sufficient advance notice prior to a dismissal when an employer in the construction sector considers terminating an employee aged 55 or more.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Except for collective dismissals (see question 2) or when the employer is party to a collective labour agreement, federal and cantonal authorities or employees' representative bodies are not involved in the process of terminating an employment relationship.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

According to the Swiss Federal Act on Gender Equality, gender discrimination is expressly prohibited in relation to recruiting, work assignments, working conditions, salary policy, continuing education, promoting and dismissing employees. Any form of sexual harassment is also prohibited.

Employees who have suffered gender discrimination or harassment may file an internal discrimination complaint with a supervisor, initiate proceedings before a conciliation body or file an action with a court. For the duration of such procedures and six months thereafter, they benefit from a special protection from dismissal. This means that any notice given by the employer during this period without an objective reason, may be challenged by the employee (see question 13).

In addition, protection against abusive dismissals according to Article 336 CO applies in the event of a dismissal based on discriminatory grounds (such as gender, religion, race or sexual orientation).

More generally, the following reasons for dismissals are considered abusive (non-exhaustive list):

- a quality inherent to the personality of the employee, such as age, race, sex, origin or other;
- the employee exercising a constitutional right, such as exercising a political right or pursuing religious activities;
- notice given by the employer in order to prevent claims based on the employment contract from arising;
- the employee asserting claims based on the employment contract in good faith;
- the employee performing compulsory military or civil

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defence services;
- the employee being or refusing to become a member of an employee association, or the employee lawfully pursuing a union activity;
- the employee being elected as an employee representative, unless the employer can justify the notice based on valid reasons;
- notice given by the employer in violation of the consultation process in connection with a collective dismissal.

In any of these cases, the termination can be challenged by the employee (see question 13).

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

As set forth in question 12, termination based on discriminatory grounds is deemed abusive. In the event of an abusive termination, the employee willing to seek compensation must oppose to the termination in writing during the notice period and initiate legal proceedings within 180 days from the termination date. The maximum compensation amounts to the equivalent of the employee's legal and contractual entitlements for up to six months.

Abusive dismissals are valid, which means that employees cannot require to be reinstated in their position. There is only one exception to this rule, which relates to gender discrimination (see question 12). Specifically, if, during or within the six months following an employee's submission of a complaint for discrimination (be it internally or outside of the employer), the employer terminates the employment relationship without objective reasons, the employee may seek provisional reinstatement for the duration of the proceedings (in lieu of claiming compensation). In such case, if the employee's claim is upheld on the merits, the termination is cancelled and the employment relationship continues as if the termination by the employer never occurred.

Employees who suffer discrimination or harassment in the context of the termination of their employment agreement may also seek damages, including moral prejudice, based on the violation of their personality rights.

In addition, in the event of discrimination or harassment, an employer may be held liable for failing their duty to protect the employee against the behaviour of their colleagues.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Workers are protected from dismissals during certain periods ('protected periods'):

- illness or accident fully or partially preventing from working: during a period of 30 days in the first year of service, 90 days from the second to the fifth year of service (included), and 180 days after the sixth year of service (each per event of illness or accident);
- pregnancy: during the pregnancy and 16 weeks following the birth of the child (see Article 35a paragraph 3 Swiss Labour Law);
- hospitalisation of the new-born child: before the end of the extended period of maternity leave in accordance with Article 329*f* paragraph 2 CO;
- parental leave: until the last day of the parental leave in accordance with Article 329*f* paragraph 3 CO, but not more than three months at the end of the period of 16 weeks following the birth of the child, or during the parental leave in accordance with Article 329*gbis* CO (death of the mother);
- childcare leave: for as long as they are entitled to childcare leave but for no longer than six months from the day on which the period within which to take the leave begins in accordance with Article 329*i* CO;
- compulsory military or civil defence service (provided that the service lasts more than 11 days): for the duration of the service, as well as the four weeks preceding and following the service;
- participation in a foreign aid programme assigned by the Federal authorities, with the employer's consent: for the duration of the programme.

Notice given by the employer during a protected period is null and void. If notice is given prior to the beginning of a protected period which arises during the notice period, the notice period is suspended for the duration of the protected period and shall continue to run thereafter. If, following the suspension, the notice period does not end on the last day of a month, the employment relationship is extended until the end of the following month.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to

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any special protection from termination of employment?

At present, statutory protection of whistleblowers is generally considered weak in Switzerland, as there are no specific provision applicable other than the general protection against abusive dismissal (see question 12).

According to case law, the dismissal of an employee due to whistleblowing is deemed abusive if the reporting of an irregularity by the employee is driven by an overriding interest and if the employee acts in compliance with the principle of proportionality. This means in particular that the employee must first address the potential issue internally with the employer and is only subsequently allowed to inform the competent authorities. If the authorities remain inactive after being informed, the employee can then inform the public.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

A notice of termination with the option of reemployment on altered conditions (so called 'constructive dismissal', *Anderungskündigung, congé-modification, disdetta con riserva di modifica*) may be given by an employer to unilaterally modify an employee's contract of employment, provided that its notification respects the contractual notice period and that the employee is given a reasonable period of reflection. Moreover, the new employment terms shall not violate the law or mandatory collective labour agreements. According to case law, a notice of dismissal shall not be used without any factual reason, *i.e.* without any operational or financial reasons justifying the less favourable employment terms.

If any of the abovementioned conditions is not fulfilled, the notice of termination may be deemed abusive and the employee may be entitled to compensation (see question 13).

In the event that the employee accepts the new employment terms, the new agreement enters into force at the agreed date and the employment relationship continues. If not, the employment relationship ends, provided that the contractual notice period is adhered to.

In any case, a consensual solution between the employer and employee on the end of their employment relationship may be found by entering into a termination agreement (see also question 19).

17. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

The use of AI in the context of processing applicants' data, as defined by the employer's predetermined criteria, does not inherently pose significant legal risks, provided that the AI tool is programmed and utilized in strict compliance with the relevant statutory provisions governing the recruitment of new hires and the termination of employment.

However, particular caution must be exercised concerning the selection criteria used by the AI tool, as they may inadvertently result in decisions that could be deemed abusive or discriminatory (see question 12). Similarly, the recruitment process itself may raise concerns of discrimination. To mitigate such risks, employers must ensure that the AI tool does not utilize or weigh potentially discriminatory factors – such as gender, ethnic origin, disability, age, sexual orientation, or other protected attributes – when making decisions.

In any case, the data controller – the entity that determines the purposes and means of data processing, typically the company deploying the AI tool – bears the primary responsibility for it. Even if the AI tool is developed by a third party, the company deploying it remains legally obligated to ensure compliance with data protection principles, conduct comprehensive risk assessments, and implement measures to prevent discriminatory outcomes. This includes actively overseeing the AI's data processing activities and addressing potential risks to safeguard individuals' rights.

Furthermore, the AI tool must be configured to issue notices of termination in accordance with statutory or contractual notice periods (see questions 5 and 10), unless the termination is for cause and has been appropriately assessed by the system (see question 6). Employers should also monitor the volume of terminations processed by the AI tool, as exceeding certain thresholds could trigger obligations under collective dismissal regulations, necessitating adherence to specific procedural requirements (see question 2).

Employers must also be prepared to provide written reasons for a termination upon an employee's explicit request (see question 1).

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In addition to employment law considerations, employers must strictly adhere to data protection regulations, as the AI tool will process personal – and potentially sensitive – employee data. This entails ensuring that the AI tool meets high data protection standards, including features that guarantee the secure deletion of data once retention is no longer legally justified.

To date, no published Swiss case law specifically addresses the use of AI or automated decision-making in the recruitment or termination process. Nevertheless, employers should proceed with caution and adhere to data protection and employment law principles to minimize legal exposure.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

There is no statutory entitlement to any financial compensation (such as a severance payment) upon termination of an employment agreement – unless this has been contractually agreed.

There is one exception to this rule, which relates to mandatory compensation for employees over 50 years of age and have worked for more than 20 years for the same employer. The amount of the compensation due by the employer (if any) shall not be less than two months of salary. However, in practice, given that pension fund payments (apart from very few exceptions) are mandatory when a certain salary threshold is reached, this rule is of very little significance as payments made by the employer to the employee's pension fund can be deducted from the compensation due by the employer (Article 339*d* CO).

19. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The parties can terminate the employment agreement at any time, based on their mutual consent, by entering into a termination agreement.

Entering into such an agreement typically results in the employee waiving certain (future) mandatory rights pertaining to the employment relationship. In particular, the parties usually agree on terminating the employment relationship on a particular date, causing the employee to waive their right to be protected against termination and to receive their salary during a certain period of time if they are prevented from working due to illness in the future.

As a matter of case law, termination agreements must meet a 'fair and balanced' test, meaning that the employer must compensate an employee for concessions made as part of the contractual compromise. While the Swiss Federal Supreme Court has not established clear criteria with regard to the method of calculation of such compensation payment, as a rule of thumb, it should amount to at least one monthly salary on top of what is contractually owed (*e.g.* salary during notice period, overtime, bonus, vacation) but may be more depending on the specific circumstances.

Alternatively, employees may be ask to expressly and formally waive any and all claims arising out of their employment. However, such waiver can only be validly made at the earliest one month after the end of the employment relationship (Article 341 CO).

As regards the employee's obligations, termination agreements usually contain non-disclosure or confidentiality clauses (see also question 20).

20. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Swiss labour law recognises the use of non-compete covenants after the termination of employment (Articles 340 et seq. CO). Such covenants must be agreed in writing (*i.e.* wet-ink signed agreements) and are only valid if the employee has had knowledge, within the employment relationship, of the employer's client base or of business secrets and if the use of such knowledge could cause serious damage to the employer.

Non-compete covenants must be reasonably limited in scope, duration and geographic reach as well as in terms of the type of business concerned. Their duration can exceed three years only in very specific and rare circumstances. In practice, they rarely exceed twelve or eighteen months. Restrictive covenants are not mandatory. The same restrictions, by way of analogy, apply to non-solicit covenants, albeit so-called non-poach covenants (prohibiting the solicitation of other employees) may be deemed invalid by case law.

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Possible sanctions in case of violation of restrictive covenants include damage claims and, if expressly agreed, liquidated damages. In addition, provided that this has been expressly agreed in writing, employers may request specific performance and request the competent court that the employee be ordered to cease any competing activity (including by means of *ex parte* interim measures).

As a matter of statutory law, restrictive covenants expire if the employer no longer has a real interest in its enforcement. In particular, this is deemed to be the case if the employer gives notice without cause attributable to the employee or if the employee terminates the employment relationship for cause attributable to the employer. The notion of 'cause' is not the same as for termination with immediate effect and is generally viewed less restrictively.

21. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Article 321*a* CO provides that employees in principle must not use or reveal any confidential information, which they have gained knowledge of during the employment relationship, such as business secrets.

This duty of confidentiality remains effective even after the termination of employment, so long as it is necessary in order to preserve the employer's legitimate interests.

Additionally, the disclosure of confidential business information may also fall into the scope of the Swiss Criminal Code. Specifically, an employee who reveals a manufacturing or trade secret in violation of a statutory or contractual duty of confidentiality is potentially liable to a maximum three-year custodial sentence or to a monetary penalty.

22. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Employers cannot communicate any information to third parties regarding the employee without being specifically requested to do so by the latter. Conversely, a request made by the employee to provide references serves as an authorisation given to the former employer to disclose work performance-related information to the new employer.

In this context, it is common practice for employees to request a reference letter at the end of the employment relationship, which their former employer is required by law to issue (Article 330*a* CO). The reference letter must contain information regarding the employee's functions and the tasks assigned, the duration of the employment relationship, the quality of the employee's work as well as their behaviour.

The reference letter must both be truthful as well as benevolent. It is evident that the two principles may stand in contradiction, which means that the exact wording of reference letters is often the subject of discussions in a termination situation. If the employee also requests that the former employer provide references, the employer can directly refer the potential new employer to the reference letter in order to avoid conflicting assessments or confirm the assessment contained in the reference letter.

23. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

In our experience, a major risk for employers dismissing employees lies in the occurrence of events, which give rise to a protected period after notice has already been given (*e.g.* accidents, illness or pregnancy).

Protection periods arising after the service of notice suspend the notice period. The duration of such suspension depends on the cause underlying the protection period, extending to potentially up to 180 days (per event of illness or accident) or even until 16 weeks after childbirth (in case of pregnancy/maternity). In addition, as stated above, if the end of the extended notice period does not coincide with the last day of a month, the employment relationship continues until the end of the month following the end of the extended notice period (see question 14).

To mitigate this risk, employers – in particular for senior employees or in acrimonious termination situations – often try to enter into termination agreements (see question 19). However, as stated above (see question 6), termination agreements must meet a 'fair and balanced test' in order to be valid, which implies that the employer must pay the employee an 'additional allowance' as a compensation for any rights waived. These notions have not been clearly defined by the Swiss Federal Supreme Court, and, therefore, one cannot exclude that an employee calls into question the validity of a termination agreement arguing that the concessions are not

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reciprocal. This said, in practice, this is a very rare occurrence.

Another difficulty that might arise in the context of dismissals consists in employees (be it justified or not) arguing that the termination was abusive (*e.g.* due to bullying or violation of their personality). In our experience, employees frequently have legal aid insurance in place, which allows them to initiate litigation at minimum cost, trying to force employers into accepting a settlement to avoid costly court proceedings. This risk can be substantially mitigated by concluding a termination agreement in which all effects of the termination are mutually agreed.

24. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

Broadly speaking, Swiss employment law is rarely subject to changes, in particular with respect to rules on termination of employment.

In terms of planned changes, a legislative process has been initiated with regard to the definition of a new regime regarding working remotely. However, such process is in early stages and raised political controversy, thus it remains to be seen when and if at all any changes will be implemented. Other than this, to the best of our knowledge, there are not any fundamental legal changes related to employment matters planned in a near future.

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