



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Switzerland: Employment & Labour Law (3rd  
edition)

This country-specific Q&A provides an overview  
to employment laws and regulations that may occur  
in Switzerland.

This Q&A is part of the global guide to Employment &  
Labour Law. For a full list of jurisdictional Q&As  
visit <http://www.inhouselawyer.co.uk/practice-areas/employment-and-labour-law-3rd-edition/>

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

In principle, an employer can terminate the employment relationship at any time. Indeed, 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 11).

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?**

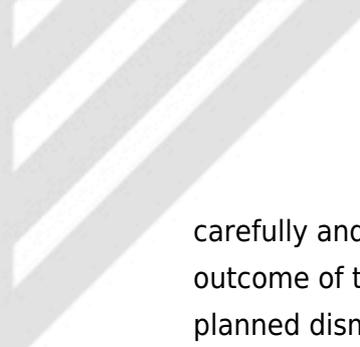
Swiss law contains specific provisions on collective dismissals (Articles 335d et seq CO). A collective dismissal is defined as any notice of termination given by an employer within a period of 30 days, for reasons not pertaining to the employees themselves, to:

- at least 10 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, the employees 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 and 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 dismissed employees.

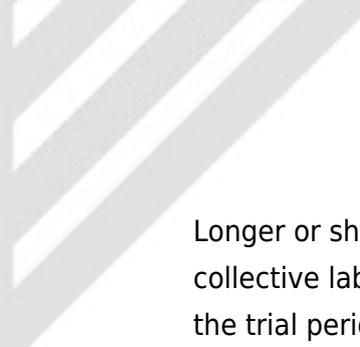
Additionally, all companies that dismiss ten or more employees at a time are required by law to notify the competent authorities at the latest on the day that notice is given. In cantons where the local labour market requires it, this number can be lowered. For example, in the canton of Geneva, any company that wishes to dismiss six or more employees must notify the competent authorities.

Moreover, companies that usually employ at least 250 people and intend to terminate at least 30 employees within 30 days for management reasons unrelated to the employees themselves, must establish a social plan. In order to do so, the employer must carry out negotiations 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 the employees themselves. If a social plan cannot be agreed upon 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 or to enter into a collective labour agreement which compels them to do so. The aim of such a social plan is to provide benefits to dismissed employees (e.g. severance payments, additional pension contributions, etc.).

### **3. What, if any, is the minimum notice period to terminate employment?**

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 335b 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 335c CO).



Longer or shorter notice periods can also be agreed upon by the parties in writing, in a collective labour agreement or in a standard employment agreement. However, after the trial period, the notice period cannot be shorter than one month, unless otherwise provided in a collective labour agreement and in any case limited to the first year of service.

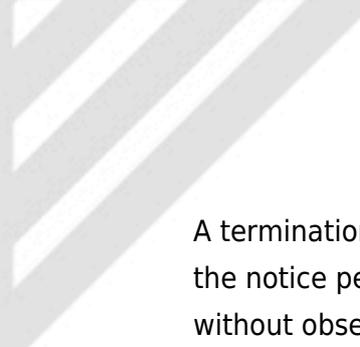
The employment agreement ends at the end of a month, unless otherwise agreed. It is mandatory that notice periods be of the same length for both employer and employee. Should the employment agreement state otherwise, the longest notice period is applicable to both parties.

It is also possible to terminate the employment relationship with immediate effect (i.e. without notice), provided that there is a 'just cause' (see question 5).

#### **4. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

The parties can agree in a termination agreement that the notice period be shortened in exchange for compensation. Such agreements must include equivalent 'reciprocal concessions', 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 waived rights (see question 16).

In other cases, the notice period must be observed unless the employer terminates the employment relationship without notice for 'just cause'. 'Just cause' is defined as any circumstance under which the continuation of the employment relationship cannot, in good faith, be expected from the terminating party. Swiss courts determine freely whether a dismissal was made for 'just cause' and usually take a restrictive approach in admitting such cases, for example, by requesting that a preliminary warning be issued prior to the dismissal. In any event, an employee being prevented from working through no fault of their own may, under no circumstances, be considered 'just cause'. In addition, once the 'just cause' has been identified, the employer must terminate the employment agreement (or issue a preliminary warning) within two to three business days.



A termination for 'just cause' does not imply the payment of monies to avoid observing the notice period. However, if the employer terminates the employment agreement without observing the notice period and in the absence of 'just cause', they must compensate the employee (see question 8).

5. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him 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.

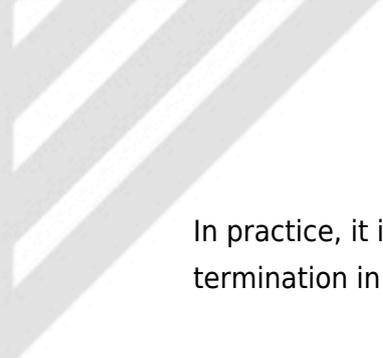
However, certain specific categories of employees retain the right to work, such as those whose professional skills require that they work continuously (e.g. surgeons, artists, athletes, etc.).

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.

6. **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 mandatory procedure to be followed in order to terminate an employment relationship.

Nevertheless, in order for the termination to be effective, a notice of termination must be issued. The notice of termination is not subject to mandatory written form, unless otherwise specified in the employment agreement or in a collective labour agreement.



In practice, it is of course more common and recommended to give notice of termination in writing.

In addition, notice of termination must be given in compliance with the statutory or contractual notice periods (see question 4), unless it is a termination without notice for 'just cause' (see question 5), and cannot be given for reasons deemed abusive (see question 11) or during a 'protected period' (see question 13).

**7. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?**

If notice is not given, or not in the prescribed form, the termination is null and void. This is also the case if notice is given by the employer during a protected period (see question 13).

If an employee is dismissed without notice in the absence of 'just cause', the termination is valid and takes effect at the time of notice, but the employee is entitled to compensation (Article 337c 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 statutory or contractual notice period (as applicable), 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 can however not exceed an amount corresponding to six monthly salaries.

Notice given for 'abusive reasons' is valid but entitles the employee to seek compensation (see question 12).

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

Collective labour agreements may set forth specific rules with respect to the termination of employment agreements, including notice periods and procedures derogating from statutory law to a certain extent.

For example, certain 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.

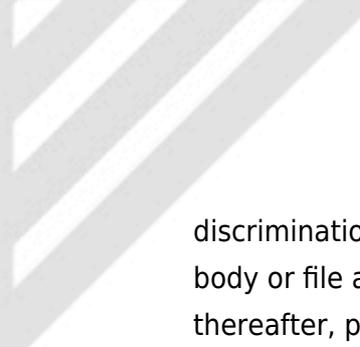
**9. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

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.

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

According to the Swiss Equal Treatment Act, gender discrimination is explicitly 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



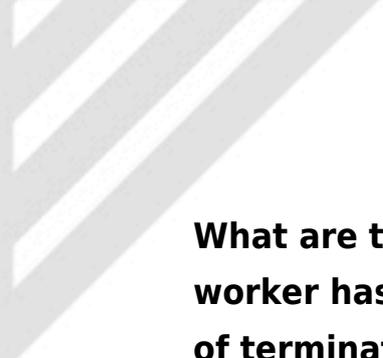
discrimination complaint with a supervisor, initiate proceedings before a conciliation body or file an action before court. For the duration of these procedures and six months thereafter, protection against dismissal applies. This means that a dismissal notified by the employer during this period, without good grounds, may be challenged by the employee (see question 12).

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 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 12).



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

11. As set forth in question 11, 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 file a claim before a court within 180 days from the termination date. The maximal 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.

Exceptionally, if during or within the six months following the filing by the employee of an internal discrimination complaint with a supervisor, the initiation of proceedings before a conciliation body or the filing of an action before a court, the employer terminates the employment relationship without good grounds, 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 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.

12. **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?**

The following categories of workers enjoy absolute protection against dismissals during certain periods ('protected periods'):

- pregnant mothers: during the pregnancy and 16 weeks following the birth of the child
- employees who are fully or partially prevented from working due to an illness or accident: 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;
- employees performing a 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;
- employees participating 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.

### **13. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

At present, statutory protection of whistleblowers is generally considered weak in Switzerland.

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 with the employer and can only subsequently inform the competent authorities. If the authorities remain inactive after being informed, the employee can then inform the public.

A bill aiming to improve the protection of whistleblowers has been under discussion for

several years. A new amended version of the bill will be discussed by the Federal Parliament, presumably in the course of this year (see question 21).

14. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

Employees are not entitled to any financial compensation (such as a severance payment) upon termination of their employment agreement.

Nevertheless, the Swiss Code of Obligations provides a compulsory rule on mandatory compensation for employees who are over 50 years of age and have worked for more than 20 years for the same employer. In practice, however, this rule is of very little significance insofar as payments made by the employer to the employee's pension fund can be deducted from the compensation due by the employer (Article 339d CO).

15. **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, describe any limitations that apply.**

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 mandatory rights pertaining to the employment relationship. In particular, the parties may agree to terminate the agreement before the end of the contractual notice period, which implies that the employee renounces part of their right to their salary. In addition, 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.

By law, the employee may validly waive claims resulting from mandatory rights only one month after the end of the employment agreement (Article 341 CO). Therefore, the validity of termination agreements is subject to limitations. According to case law, such agreements must include equivalent 'reciprocal concessions'. More precisely, the employer must grant the employee what they are legally and contractually entitled to obtain until the end of the notice period (including e.g. compensation for overtime or untaken vacation days), as well as an 'additional allowance' as a compensation for the waived rights. The Swiss Federal Supreme Court has not established clear criteria with regard to the method of calculation of this additional allowance.

**16. 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 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 space and time, 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 generally last six months to a year.

If an employee breaches a non-compete covenant, they must repair the damage caused to the employer. If the employment agreement contains a liquidated damages clause, the employee must pay the penalty, in addition to any damage which might exceed the amount of the penalty, in order to be released from the non-compete covenant. However, the parties may agree that payment of the penalty does not release the employee from complying with the non-compete covenant. In addition, if



they have reserved the right to do so in writing, the employer can also request before a court that the employee be ordered to cease any competing activity, including through interim measures.

In principle, a non-compete covenant ceases to take effect once the time limit has expired or if it is established that the employer no longer has a real interest in its enforcement. A non-compete covenant is also not applicable if the employer gives notice without good grounds or if the employee terminates the employment relationship for just cause attributable to the employer.

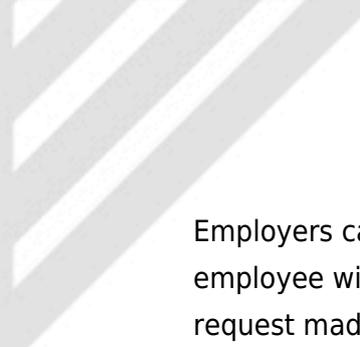
17. **Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

According to Article 321a CO, as a general rule, an employee must not use or reveal any confidential information which they have gained knowledge of during and within 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. In this context, an employee who reveals a manufacturing or trade secret in spite of a statutory or contractual duty of confidentiality is, upon complaint, potentially liable to a maximum three-year custodial sentence or to a monetary penalty.

18. **Are employers obliged to provide references to new employers if these are requested?**



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 work certificate at the end of the employment relationship, which their former employer is required by law to deliver (Article 330a CO). The work certificate must truthfully reflect the employee's performance but still depict them in a globally positive light. If the employee also requests that the former employer provide references, the employer can directly refer the potential new employer to the work certificate in order to avoid conflicting assessments or confirm the assessment contained in the work certificate.

**19. 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?**

A first difficulty for employers who terminate employees (unilaterally) lies in the occurrence of events which give rise to a protected period after notice has already been given, such as accidents, illness or pregnancy.

Indeed, a protected period which comes into play after notice of termination has been given results in the suspension of the notice period, potentially for a duration of up to 180 days per case, thus deferring the end of the employment relationship. 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 13).

Solutions which can partially mitigate this risk include the possibility to terminate the agreement by mutual consent, through entering into a termination agreement (see question 16). However, as stated above, termination agreements must include 'reciprocal concessions' in order to be valid, which implies that the employer must pay

the employee an 'additional allowance' as a compensation for the 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 reciprocal.

A second difficulty for employers who terminate employees (by mutual consent) is linked to the above-mentioned solution and lies in the uncertainty related to the validity of termination agreements.

In order to mitigate this risk, it may be recommended that employers obtain a confirmation of the terms of the termination agreement from employees more than one month after the end of the employment agreement (i.e. by signing a 'waiver'), and that they pay employees the additional allowance only after receipt of this waiver.

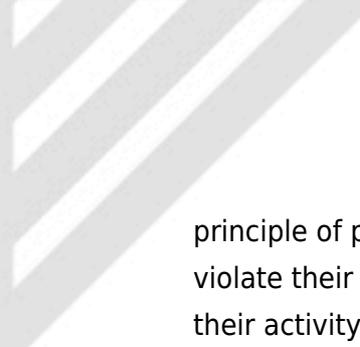
As employees may waive claims resulting from mandatory rights one month after the end of the employment agreement, there are good reasons to believe that a court would acknowledge the validity of this solution.

20. **Are any legal changes planned that are likely to impact on 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.

Nevertheless, as mentioned above, a new amended bill dealing with the protection of whistleblowers is currently pending and will presumably be discussed by the Federal Parliament this year (see question 14).

This bill is essentially modelled on the principles developed by case law, notably the



principle of proportionality. It sets forth an escalation process allowing the employee to violate their duty of loyalty in order to report an irregularity discovered in the course of their activity for the employer.

The process mainly includes the following steps:

- an irregularity must first be reported to an internal or external body, specifically competent for receiving such alerts;
- if the employer does not remedy the irregularity within a certain period of time, the employee is entitled to report it to the competent authorities;
- finally, the irregularity may be disclosed to the public provided that the employee has previously (and unsuccessfully) reported it to the employer and to the competent authorities.

As the bill is based on existing case law, we do not expect major changes in practice and the protection of whistleblowers will likely remain rather weak.

In order to ensure that irregularities are handled efficiently, it may be advisable for employers to put in place an independent body (a 'contact person') to which employees can report such suspected irregularities on a confidential basis.

This would also ensure that employees who disclose potential irregularities directly to the authorities or to the public be lawfully terminated for breach of their duty of loyalty.