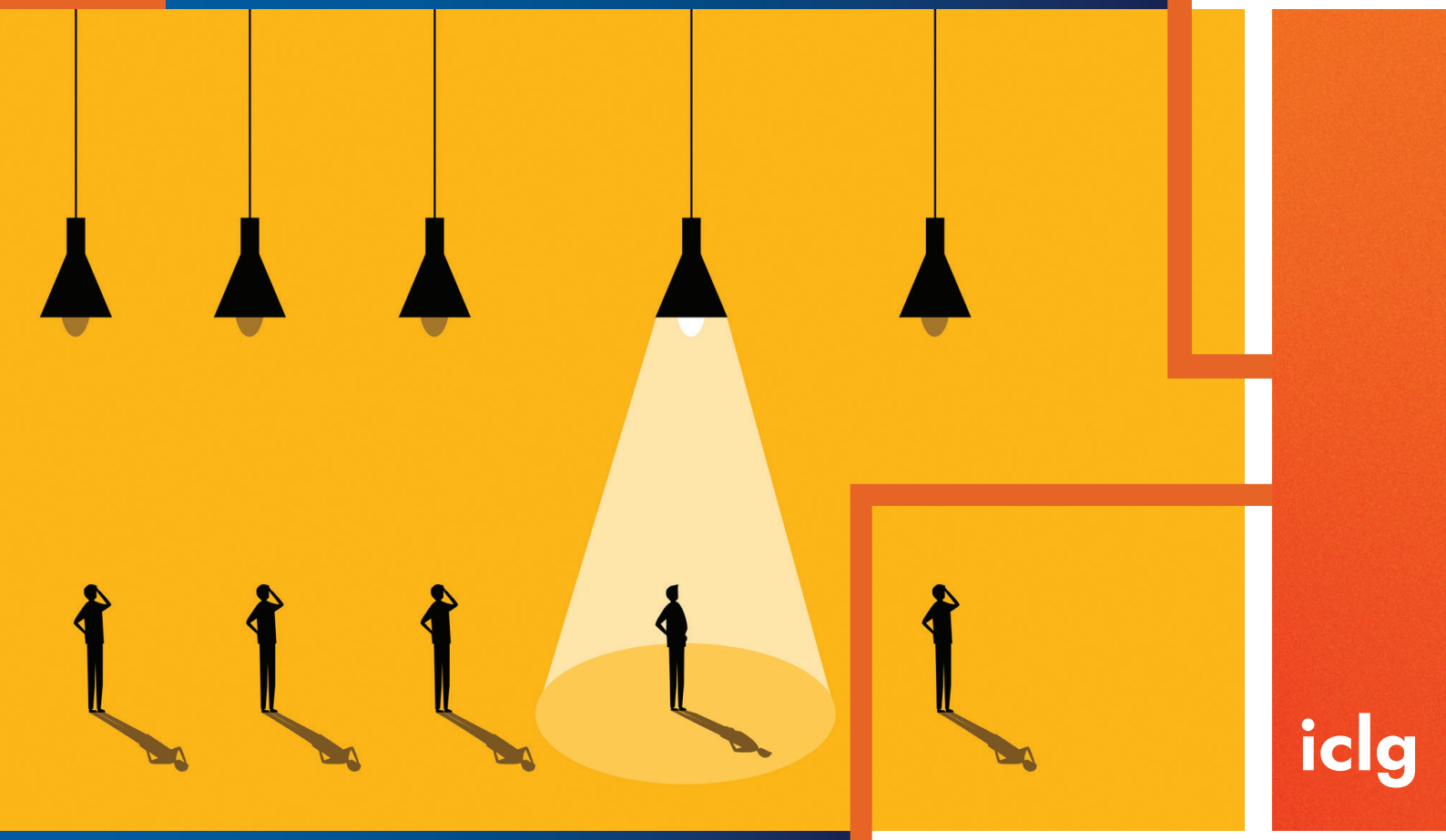
International Comparative Legal Guides

Employment & Labour Law 2026

A practical cross-border resource to inform legal minds

16th Edition

Contributing Editors:
Stefan Martin & Jo Broadbent
Hogan Lovells



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iclg

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Vincent Carron


Catherine Weniger

Schellenberg Wittmer Ltd

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are the Swiss Code of Obligations (SR 220), the Employment Act (SR 822.11) and its Ordinances, the Gender Equality Act (SR 151.1), the Participation Act (SR 822.14), the Recruitment Act (SS 823.11) and the Posted Workers Act (SR 823.20).

Depending on the industry, collective bargaining agreements or standard employment contracts may apply.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Employees who have lodged a complaint of discrimination under the Gender Equality Act to a superior or a court, as well as work council members, benefit from an accrued protection against dismissal.

The Employment Act, which mainly regulates health protection, working time and rest periods, provides for specific protection for some employees (e.g. pregnant women, breastfeeding mothers and younger employees). However, it does not apply (or only partially) to some types of employees (e.g. senior executives and travelling salesmen).

1.3 Do contracts of employment have to be in writing? If not, are employers required to give employees specific information in writing?

As a rule, contracts of employment do not have to be in writing.

If the employment contract is not in writing, the employer must inform the employee in writing of some specific information (e.g. name of the parties, employment start date, functions and salary).

Some deviations from statutory law are valid only if agreed in writing (e.g. change of the duration of the notice period).

1.4 Are there any minimum employment terms and conditions that employers have to observe?

Yes. Provisions of the Employment Act and its Ordinances are mandatory as well as some provisions in the Swiss Code of Obligations from which a contractual clause cannot validly derogate (e.g. employees older than 20 years old are entitled to four weeks of holiday per year). Federal law does not provide for minimum wages. Some cantons (Jura, Neuchâtel, Geneva, Ticino and Basel-City) and a city (Lucerne) have implemented a minimum salary. Collective bargaining agreements or standard employment contracts may also provide for minimum wages.

1.5 Are terms and conditions of employment normally agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining agreements are concluded between employers or employers' associations and trade unions. They usually contain the minimum conditions to be observed in individual employment contracts (e.g. minimum wages, notice period, etc.).

Collective bargaining agreements are usually concluded at the industry level. Some collective bargaining agreements were declared mandatory for the entire industry by the Swiss Federal Council or by a cantonal government for the industry in the canton.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade unions must have legal capacity, must be independent from the employer and from other third parties, must aim via statute at improving their members' working conditions, and membership must be voluntary.

2.2 What rights do trade unions have?

Trade unions have the right to participate in the negotiations of a mandatory social plan with an employer (see below question 6.6), provided the employer and the trade unions are party to a collective bargaining agreement.

A trade union is entitled to adhere to an existing collective bargaining agreement under certain conditions (e.g. the trade union must be sufficiently representative and behave fairly).

Collective bargaining agreements may confer specific rights to trade unions.

2.3 Are there any rules governing a trade union's right to take industrial action?

A trade union's right to take industrial action (e.g. strikes or lockouts) is a constitutional right. Specific requirements must be met to avoid unauthorised collective action (e.g. it must aim at getting specific work conditions that can be subject to a collective bargaining agreement).

The parties to a collective bargaining agreement are required to maintain peace and to refrain from industrial action on matters regulated by the applicable collective bargaining agreement.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies and do they have co-determination rights?

In businesses with at least 50 employees, the employees may request to appoint a work council. The number of members of the work council must be at least three. Elections are general and free.

Work councils have consultation rights in some areas (e.g. mass dismissals and business transfers) and co-determination rights in some rare cases (mainly choice of pension fund and mandatory social plan).

2.5 Are employees entitled to representation at board level?

No, employees are not entitled to representation at board level.

3 Discrimination

3.1 Are employees protected against discrimination? What types of discrimination are unlawful and on what grounds?

Employees are protected against discrimination based on the duty of the employer to protect and respect the employees' personality rights.

An employer's decision contravenes the prohibition on discrimination only insofar as it demonstrates a disregard for the affected employee's personality and harms him/her. To such extent, and provided it is not justified by any objective reason, any kind of discrimination by reason of the employee's social situation, principally origin, race, sex, age, language, way of life, religious, philosophical or political convictions, or because of a physical, mental or psychological disability, is prohibited by law.

The Gender Equality Act specifically prohibits discrimination against an employee on the basis of his/her gender (male/female).

International agreements concluded between Switzerland and the EU/EFTA Member States prohibit discrimination by a Swiss employer against employees from another contracting party based on their citizenship with regard to employment and working conditions.

3.2 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Based on their general duty to protect their employees' health and personality rights, employers are required to take all adequate and reasonable measures necessary to prevent sexual harassment in the workplace.

The relevant measures are not defined by statutory law and depend on the actual circumstances. The State Secretariat for Economic Affairs recommends implementing, in particular, the following measures:

- set up a declaration of principles on the prohibition of any sexual harassment, and any other infringement to dignity;
- inform employees on the definition of and describing, namely, unauthorised behaviours, as well as possible steps employees can take in case of sexual harassment;
- set up a document outlining principles in place to prevent sexual harassment, mobbing and any other infringement to dignity as well as the procedure to follow in case such an event occurs; and
- appoint an impartial and trustworthy person, in or outside the company, to support the victims and any employees faced with a situation of harassment.

In case of complaint, the employers must clarify the situation immediately or conduct an internal investigation.

3.3 Are there any defences to a discrimination claim?

The main defence is demonstrating that the distinction between employees is based on objective grounds.

3.4 How do employees enforce their discrimination rights and what remedies are available? Can employers settle claims before or after they are initiated?

Employees must file a claim before the court. They can claim damages for financial loss and/or pain and suffering. Employees can also request the court to prohibit a threatened discrimination, stop an existing one or make a declaratory judgment to acknowledge the discrimination.

If the termination of the employment agreement follows a complaint of discrimination under the Gender Equality Act by the employee to a superior or the initiation of proceedings in this respect, the employee may request his/her reinstatement.

Employers can settle claims before or after they are initiated. Most claims are settled by the parties during the conciliation process or in an out-of-court agreement.

3.5 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

There is no specific provision in Switzerland regarding whistleblowers.

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 disclose the issue to the relevant authorities. As a last resort, in case of failure of the authorities to take any action and provided there is an overriding public interest, the employee may make the misconduct public.

Employers are not required to establish a whistleblowing system, but it is best practice to do so.

3.6 Are employers required to publish information about their gender, ethnicity or disability pay gap, or salary or other diversity information?

Employers with at least 100 employees must perform an internal equal pay analysis and inform the employees about the results of the analysis. Listed companies must publish the result of the analysis in the notes to their annual accounts. The analysis must be repeated every four years until an analysis demonstrates that equal pay requirements are met. Employers that do not comply with the equal pay analysis obligations are not subject to sanctions.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last? Is a woman entitled to return to the same job after maternity leave?

Female employees are entitled to 14 weeks of maternity leave paid by the federal loss of earnings insurance, provided certain conditions are met (see question 4.2 below). In Geneva, employees are entitled to two additional weeks paid by the cantonal loss of earnings insurance (i.e. 16 weeks in total).

Pursuant to the Employment Act, female employees must refrain from working during the first eight weeks following childbirth and may opt not to work from the ninth to the 16th week following childbirth.

Under certain conditions, maternity leave may be extended by up to 56 days if the newborn child stays in hospital for at least two weeks.

A woman is entitled to return to the same job after maternity leave.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

During maternity leave, female employees are entitled to federal loss of earnings insurance indemnities amounting to 80% of their average salary before birth, but not more than CHF 220 per day (amount as of 2024), provided that the insurance eligibility requirements are met.

Depending on circumstances, the employer may be required to pay the difference between the amount of the loss of earnings insurance indemnities and 80% of the actual average salary before birth during a certain period.

Cantonal provisions, individual employment agreements and collective bargaining agreements may provide for more generous arrangements.

4.3 Do fathers have the right to take paternity leave?

Fathers, as well as the biological mother's wife in case of same sex marriage, are entitled to two weeks' other parent's leave. The leave must be taken within six months of the date of birth. It can be taken in one block or in separate days.

In the event of the birth mother's death within 14 weeks following the child's birth, the other parent is entitled, in addition to the two-week leave, to a further 14 weeks' leave to be taken immediately.

4.4 Are employees entitled to other types of parental leave or time off for caring responsibilities?

Upon placement of a child under the age of four years for adoption, the prospective parent is entitled to two weeks of adoption leave under certain conditions.

Employees are entitled to paid leave for the time they are caring for a sick family member or partner. Such leave is limited to three days per event and no more than 10 days per year. The 10 days yearly limit does not apply to care given to a sick child.

If an employee's child's health is seriously impaired by illness or accident, the employee is entitled to care leave of a maximum of 14 weeks within 18 months under certain conditions.

In the event of the mother's death within 14 weeks following the child's birth, the other parent is entitled, in addition to the two-week leave, to a further 14 weeks' leave to be taken immediately.

In the event of the death of the father or the mother's wife within six months following the child's birth, the mother is entitled to an additional two weeks' leave.

4.5 Are employees entitled to work flexibly or remotely, for example if they have responsibility for caring for dependants?

See question 4.4 regarding care leave. Nursing employees must be given the necessary time off for nursing or expressing milk. In the first year of the child's life, this time is considered as paid working time up to a cap depending on the daily working time.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer), do employees automatically transfer to the buyer?

On business transfer by way of an asset deal, employees automatically transfer to the buyer.

In case of a share deal, there is no impact on the employment relationship since the employer remains the same.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

The employment relationships existing at the time of transfer are automatically transferred to the buyer with all rights and obligations.

Employees can object to the transfer. If an employee objects, the employment contract ends at the end of the statutory notice period, but not earlier than on the transfer date.

If the transferred employment relationships are governed by a collective bargaining agreement, the buyer is obliged to abide by it for one year, unless such collective employment agreement ends earlier. In some cases, mandatory bargaining agreements apply.

There is no transfer in case of a share deal.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The employer must inform the employee representative body or, if there is none, the employees themselves in good time before the transfer is carried out, of the reasons for the transfer and the legal, economic and social implications for the employees.

Consultation of the employee representative body or, if there is none, the employees themselves is required if measures are being contemplated as a result of the transfer (e.g. amendments to the employment contracts or redundancy). As a rule, the duration of the consultation period should not be shorter than two weeks.

Statutory law does not provide any specific sanction for the violation of the duties to inform and consult. Therefore, an affected employee may only claim for damages if he/she can prove that he/she suffered from a prejudice due to the violation by his/her employer of its duties of information and consultation.

In case of a merger, demerger or transfer of assets under the Merger Act (SR 221.301), the employees can request a judge to block the registration of transaction in the Commercial Register for as long as the consultation requirements have not been properly complied with.

There is no information or consultation requirement in case of a share deal.

5.4 Can employees be dismissed in connection with a business sale?

The employer is not entitled to terminate the employment contract for the sole purpose of circumventing automatic transfer regulations. However, a business transfer is not an obstacle to terminations as long as they are based on an entrepreneurial justification (e.g. economic or organisational measures).

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Employees must be consulted before any decision is made in this respect (see question 5.3 above).

Changes in terms and conditions of employment in connection with a business sale are subject to the same rule as usual changes in terms and conditions of employment, i.e. the parties must agree on an amended employment contract or the employer must proceed with a "termination amendment" (*Änderungskündigung*).

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Yes, employees have to be given notice of termination, except for fixed-term employment contracts.

As per statutory law, the notice period is seven calendar days during the probation period (i.e. the first month of employment), one month to the end of a month during the first year of employment, two months to the end of a month from the second to the ninth year of employment, and three months to the end of a month thereafter.

Parties can agree on a different notice period in writing, but this cannot be shorter than one month net, except during the probation period.

The employer can dismiss the employee with immediate effect for cause.

6.2 What protection do employees have against dismissal? Do employers have to get consent from a third party before dismissing an employee?

After the probation period, the employer is not entitled to give notice of termination during protected periods. Protected periods are exhaustively defined by the Swiss Code of Obligations (e.g. during the pregnancy of an employee and the 16 weeks following birth or while the employee, through no fault of his/her own, is partially or entirely prevented from working by illness or accident for a limited period of time depending on his/her seniority).

A notice of termination issued during a protected period is null and void.

Swiss employment law is based on the contractual freedom principle, which means that no special reason is required for a dismissal to be lawful. However, a dismissal must not be based on abusive grounds.

Dismissal is deemed abusive if it is issued for specific reasons listed non-exhaustively in the Swiss Code of Obligations (e.g. if the termination is due to an inherent personal quality of the employee or because the employee asserts claims under the employment relationship in good faith).

In addition, case law has defined other circumstances where a notice of termination can be found abusive (e.g. a serious violation of personality rights in the context of a dismissal).

No consent from a third party is required before dismissing an employee.

6.3 Do any categories of employee enjoy special protection against dismissal?

The dismissal of a member of a work council is presumed abusive, unless the employer is able to demonstrate that he/she had a justified reason for termination.

Employees who have raised a complaint of discrimination under the Gender Equality Act to a superior or a court can only be dismissed with justified reason.

There are no additional categories of employees who enjoy special protection against dismissal. Nevertheless, depending on circumstances, employees may benefit from a protected period (see question 6.2 above).

6.4 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business-related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

No special reason is required for a dismissal to be lawful, but it must not be based on abusive reasons (see question 6.2 above).

In principle, employees are not entitled to any statutory compensation on dismissal.

One provision prescribes that employees of at least 50 years old with at least 20 years of service are entitled to a severance payment from two to eight months of salary. Nevertheless, if

the employee receives or will receive benefits from a pension fund, these benefits may be deducted from the severance amount insofar as they have been financed by the employer. As a result, this provision almost never applies in practice.

6.5 What claims can an employee bring if they are dismissed? What are the remedies for a successful claim and can employers settle claims?

Claims arising out of an employment agreement fall due at the end of the employment agreement. Hence, the employee may bring any claim in this respect (e.g. overtime and untaken holidays).

In case of abusive dismissal, the employee can additionally claim for an indemnity of up to six months of salary.

In case of unjustified immediate dismissal, the employee can claim for an indemnity of up to six months of salary and for a compensation corresponding to the remuneration he/she would have received until the end of the notice period.

Employers can settle claims. However, the employee is principally not entitled to waive mandatory rights arising out of the employment contract during the employment relationship and during one month following the end of the employment relationship without sufficient compensation.

6.6 Does an employer have any additional obligations if it is dismissing several employees at the same time?

In case of mass dismissal, the employer must consult the employee's representative body, if any, or the employees collectively before any final decision on the dismissal is made. The employer must also notify the cantonal labour law office.

Mass dismissal procedures apply if, within a period of 30 days, the employer dismisses at least 10 employees in a business with 21–99 employees, 10% of the employees in a business with 100–299 employees, or at least 30 in a larger business.

In addition, the employer must negotiate a social plan if it has at least 250 employees and it intends to terminate at least 30 employees within a 30-day time period.

6.7 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer breaches its obligations?

Failure to comply with the consultation requirement in the event of mass dismissal makes the dismissal abusive. Each dismissed employee is entitled to claim an indemnity of up to two months' salary.

Employment contracts end, at the earliest, 30 days after the notification to the cantonal labour office. There is therefore a risk of pending employment relationships if the notification to the labour office is omitted.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Post-employment non-compete covenants are recognised by statutory law.

According to case law, non-solicitation clauses are subject to the same statutory requirements as non-compete covenants.

7.2 When are restrictive covenants enforceable and for what period?

Non-compete covenants are enforceable provided that the following conditions are met:

- the clause is agreed in writing and duly executed by the parties;
- the employee has knowledge regarding the employer's clientele or manufacturing and trade secrets;
- the use of such knowledge might cause the employer substantial harm; and
- the clause is appropriately restricted with regard to place, time and scope.

The restraint prohibiting competition automatically lapses if the employer terminates the contract without a justified reason or if the employee resigns for a justified reason attributable to the employer.

7.3 Do employees have to be provided with financial compensation in return for covenants?

No. However, financial compensation will increase the chances of the clause being considered proportionate.

7.4 How are restrictive covenants enforced?

Breach of the non-compete clause results in liability to compensate for damages.

Due to the difficulty of proving any actual harm, a penalty clause is usually agreed between the parties. The judge can reduce the amount of the penalty if it is excessive.

Employers may demand cessation of the infringement provided they have expressly reserved the right to do so in writing.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The employer may handle data concerning the employee only to the extent that such data concerns the employee's suitability for his/her job or is necessary for the performance of the employment contract. The employer must also abide by the principles set forth in the Data Protection Act (e.g. it must be proportionate).

The Data Protection Act requires the employer to inform employees, among other things, on the purpose of the data processing, the indirectly collected data, the categories of recipients of the data and the countries in which the data will be processed. This applies whether the transfer is to other corporate group companies or to third parties. If personal data is transferred to or made available in a country that does not ensure an adequate level of data protection, the employer must take suitable measures to ensure that the data receives an adequate level of protection.

8.2 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Pre-employment checks are permissible if they are relevant to the proposed work, subject to proportionality requirements.

Criminal and credit checks are common if the employee is working in a position of trust (e.g. senior executives).

8.3 Are there any restrictions on how employers use AI in the employment relationship (such as during recruitment or for monitoring an employee's performance or productivity)?

General data protection principles also apply to AI.

In addition, the Data Protection Act provides for specific requirements regarding automated individual decisions, i.e. decisions that are based exclusively on automated processing and that have a legal consequence or a considerable adverse effect on the data subject. The employer must inform the employee about any automated individual decisions, and the employee may ask to express his/her point of view and/or that the automated individual decision be reviewed by a natural person.

9 The Future

9.1 What are the most significant labour market developments on the horizon in the next 12 months?

A draft amendment to current labour law to regulate teleworking in general (at home or elsewhere) is currently under consultation. However, a decision within the next 12 months is unlikely (except a possible refusal).

Vincent Carron is a Partner in Schellenberg Wittmer's Geneva office, where he heads the Employment Law Group.
He has extensive experience representing clients before the labour courts and advising them on all employment law matters (including review of contracts, employee handbooks, termination agreements, unilateral and collective dismissals, business transfers and assistance in M&A transactions, structure of severance payments, aspects of international employee transfers, international social security coordination, lease of services, restructuring of remuneration and bonus schemes, work schedule reductions, recording of working time, employer's liability, and due diligences).

Schellenberg Wittmer Ltd
15*bis*, rue des Alpes, P.O. Box 2088
1211 Geneva 1
Switzerland

Tel: +41 22 707 8000
Email: vincent.carron@swlegal.com
LinkedIn: www.linkedin.com/in/vincent-carron-8829631

Catherine Weniger is a Counsel in Schellenberg Wittmer's Geneva office. She has extensive experience advising employers of various industries in M&A transactions, business and workforce restructuring operations, TUPE regulation, collective redundancy as well as in day-to-day employment law matters (such as, among others, hiring and dismissal of individuals, termination agreements, recording of working time, sick and pregnant employees), including providing contractual employment documentation (employment contract, staff handbook, internal policies, incentive schemes) to companies relocating in Switzerland as well as reviewing and updating existing contractual employment documentation of various Swiss companies, including affiliates to multinational groups.

Schellenberg Wittmer Ltd
15*bis*, rue des Alpes, P.O. Box 2088
1211 Geneva 1
Switzerland

Tel: +41 22 707 8000
Email: catherine.weniger@swlegal.com
LinkedIn: www.linkedin.com/in/catherine-weniger-37141339

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- Terms and Conditions of Employment
- Employee Representation and Industrial Relations
- Discrimination
- Maternity and Family Leave Rights
- Business Sales
- Termination of Employment
- Protecting Business Interests Following Termination
- Data Protection and Employee Privacy
- The Future of Employment & Labour Law

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