

The first stage regulates short-term absences when employees are looking after sick or injured relatives.

To date, the Swiss Code of Obligations (CO) has not included any provision on paid absences for the care of sick or injured family members or life partners. Many companies have included such leave in their rules and regulations, enabling their employees to take up to three days' paid leave.

Now, this principle is being incorporated into the Code of Obligations. It will allow for a maximum of three days paid leave in any one case, capped at ten days per year. The Federal Council has in addition to provision for continued salary payment in the event of short absences, also extended care credits within Old Age and Survivor's Insurance (OASI) and amended entitlement to the supplement for intensive at-home care allowance under invalidity insurance for children.

The second stage includes the introduction of a 14 weeks' paid leave for the care of seriously ill children or children who have suffered an accident. This leave can be taken on a daily basis or in one go over a period of 18 months. The implementing provisions will be agreed mid 2021 for an entry into force as of 1st July 2021.

Geneva minimum wage

Swiss law does not provide for a minimum wage at federal level. A federal minimum wage has been rejected in May 2014.

However, three cantons have since introduced a statutory minimum wage: Neuchâtel, Jura and Ticino. **In the canton of Geneva**, after two initial unsuccessful attempts, **a minimum wage of CHF 23 per hour was finally adopted and came into force on 1 November 2020**. An employee working 40 hours per week in the canton of Geneva will then be entitled to a **minimum gross monthly salary of CHF 3'987**.

This minimum wage applies, according to the provisions of the Law on Inspection and Labour Relations (LITR), **to workers "usually carrying out their work" in the canton of Geneva**. The place of the employer's registered office is irrelevant in this respect, the determining factor being the place of work.

Insofar as employees on international mobility do not carry out their activity in Switzerland, this minimum wage may not be applicable to them, except for seconded employees whose usual place of work is deemed to be Switzerland, subject to any mandatory provisions in terms of minimum income that may be applicable in the host country for posted employees.

Furthermore, the Swiss legal provisions in terms of equal treatment and non-discrimination (direct or indirect), based on nationality or gender, remain fully applicable.

Survey on equal pay for men and women

From 1st July 2020, **Swiss-based companies with at least 100 employees** at the beginning of the year **are required to carry out an internal equal pay analysis** for that year.

A first internal analysis must be carried out before the end of June 2021. Once this analysis has been carried out, it must be verified by an independent auditor before the end of June 2022 and made known to employees and shareholders before the end of June 2023.

The Federal Office of Justice has specified that **employees of a Swiss company working abroad** must be counted for the threshold of 100 employees triggering the obligation to conduct an analysis, but these employees **shall not be included in the analysis itself due to the adaptation to the living conditions at the workplace abroad** and their impact on the level of income.

The law does not provide for direct sanctions in case of non-compliance by companies with their obligations in this respect.

Amendments to the Ordinance on Occupational Pension Plans

In the area of occupational pensions some changes in specific areas came into force on 1 October 2020. The main changes concern:

- The adjustment of the technical interest rate;
- Adjustments to the pension compensation for divorce at retirement age;
- The tax deduction entitlement for contributions to recognised forms of pension provision.

In addition, new provisions coming into force on 1 January 2021, brings new features for Swiss occupational pension funds (new art. Art. 47a BVG/LPP). Pension institutions (LPP) must offer insured persons who cease to be subject to compulsory insurance due to the termination of employment relationships by the employer after reaching the age of 58 the possibility of maintaining insurance. Please note that the pension institutions will now have to implement these new legal provisions in their plan regulations. These innovations raise many questions that the legislator has not explicitly addressed. The formalities in respect of a possible

maintenance of the assets as well as any withdrawal, will thus have to be confirmed and validated with the insurer with regard to the Swiss mandatory BVG /LPP scheme in the light of the ongoing reform.

Working hours and rest periods

On 18 September 2020 the Federal Council decided to amend the Ordinance to the Employment Act in order to clarify and remove uncertainties over the application of the provisions on working and rest hours. This new provisions entered into force on 1 November 2020.

- **International business trips** : The journey to and from work is not considered working time under Swiss law. It is now clarified that in this respect, shall be considered not the journey itself, but the time required to complete the journey. **A new provision stipulates that, in the case of international business trip, the time spent travelling to and from work on Swiss territory is deemed to be working time if it is longer than the usual travel time between home and the place of work.** It is recommended that the treatment of travel time abroad be contractually regulated (subject to mandatory regulation applicable under foreign law). As an exception to the rules on night work, Sundays and public holidays, no authorization is required for the additional working time caused. However, the mandatory provisions on extra pay and time surcharges still apply, along with those on rest hours.
- **Working week**: The definition of the working week is clarified. The new provisions expressly states that the working week begins at 00:00 on Monday and ends at 24:00 on Sunday. The hours worked between these times constitute weekly working hours.

In addition, there are new provisions on working on Sundays and public holidays and on mandatory medical examinations for night work.

Withholding tax

Switzerland has adopted a revision of withholding tax which comes into force on 1st January 2021. It is intended to reduce the inequality of treatment between taxpayers taxed on the basis of a tax return and those taxed at source, and to harmonise cantonal practices in this area.

This new law will impact both employers and taxpayers.

For employers, the changes are as follows:

1. Unified territorial competence in matters of withholding tax

Employers of persons subject to withholding tax must settle directly with the canton entitled to tax via electronic transmission. Thus, employers must calculate and withhold tax at source throughout the year according to the law of the canton of residence with the right to tax at source (and no longer according to the law of the canton in which the employer's registered office is located).

An electronic data exchange application, called ELM-QST, has been developed in collaboration with the Confederation to facilitate the work of employers.

2. The scale will follow the evolution of the family situation as of the month following the change.

Employers of persons taxed at source must take into account the taxpayer's marital status and family responsibilities on the basis of his family situation at the end of the month preceding payment of the taxable benefit (and no longer on 31 December of the year concerned). Thus, any change requiring a change in the scale (e.g. wedding, divorce, birth, etc.) is to be taken into account for the deduction of tax at source from the beginning of the month following the change.

3. Other changes

The employer is remunerated by a collection commission, the rate of which remains fixed at 2%. A specific rate of 1% applies for lump-sum benefits. This commission is now capped at CHF 50 per lump-sum benefit.

Scales:

- Deletion of scale D, creation of scale G.
- Income paid directly by an insurance fund will be subject to the new scale G (progressive scale), which replaces the current scale D.

Employees of a Swiss company, not tax resident in Switzerland and exercising their professional activity abroad, outside of Switzerland, shall not be impacted by this revision.

[For further information please contact
ITX – International Mobility Consulting Department](#)

Emilie RULLAND

Chief Legal Officer

& Head of International Mobility Consulting Department

The information enclosed within the present newsletter are not exhaustive and do not cover necessarily all legal aspect of the subject and in no case can replace a legal professional advice. Copyrights are reserved, except with prior written consent.