



How to deal with Swiss employment matters in times of a pandemic (e. g. coronavirus)

Which aspects from an employment law perspective are relevant and what applies in such times?



Duty of care

As in normal times, the employer has the duty of care towards his employees. This means that the employer is obliged to take all necessary and appropriate measures to safeguard their employees' health. In times of a pandemic outbreak like **COVID-19**, the employer has an extended right for instructions and must take additional measures. These may include:

- remote work (currently, the mandatory way of working, if possible)
- regular disinfection of the workplace
- quarantine for employees being/feeling sick or returning from countries with an outbreak
- physical distancing, also by structural measures
- handwashing and providing disinfectants
- travel restrictions
- regular check-ins with employees working from home



Remote work

- As part of the duty of care, employees may be requested to work from home. There is however no legal entitlement to work from home.
- Employees have the right to be provided by their employer with the respective working equipment and material (e.g. laptop, mobile phone). Where they have to use their private equipment or own material, they have to be reimbursed, unless there is another contractual arrangement.
- Any necessary work-related expenses have to be reimbursed. Expenses incurring from voluntary work from home are not considered necessary expenses.



Continuation of salary payments as per the contractual or legal arrangements

- for all employees working from home or at the workplace
- for sick employees
- for employees, who cannot work due to the closure of the company
- for employees, who cannot work as they have to take care of their children (generally up to 3 days unless it is not possible to organise childcare)

Employees, who travel for private purposes to a risk country/area, a country with a heightened risk of infection, and cannot return to their country of residence, are not entitled to salary payments. The same applies to employees, who have to self-quarantine after their return from a risk country/area and who cannot work from home, unless they can work remote.



Overtime

- Employees can be asked to work overtime, if there is a business need.
- A reduction of overtime by compensation with free time generally requires the consent if the internal regulations of the company do not provide for different rules. In case of closures or a reduction of the workload, the employer may request overtime compensation.



Holidays

Planned holidays are not affected by the pandemic. If an employee is unable to take their planned holidays due to the pandemic, the employer is generally obliged to postpone the holidays. If the employee is unable to take their planned holidays due to the pandemic, the employer is generally obliged to postpone the holidays. If the employee is unable to take their planned holidays due to the pandemic, the employer is generally obliged to postpone the holidays.





Assignment of other tasks/role or a new work place

- Generally, the employer may request the employee to perform other tasks or assign a new work place if a respective contractual clause exists or if there is an urgent business need.
- However, any new tasks/role or work place must be appropriate, considering the specific circumstances.
- Additionally, such measures must not impede the employee's private life and have to be of temporary nature.



Short-time work compensation

- Short-time work is the temporary reduction of the contractual working time with the consent of the concerned employees.
- Short work compensation aims to safeguard employments and prevent unemployment.
- Compensation is 80 % of the loss of earnings attributable to the loss of work hours.
- Compensation is possible if the work loss is due to:
 - a. economic reasons (structural and/or cyclical reasons) and was unavoidable; or
 - b. official measures as long as the employer cannot avoid the loss of working hours by means of appropriate, economically viable measures or cannot hold a third party liable for the damage.
- Additional requirements:
 - a. The employee has completed the mandatory schools and has not yet reached the retirement age.
 - b. The employment is not terminated;
 - c. Work loss is likely to be of temporary nature and it can be expected that short-time work will maintain jobs;
 - d. work loss amounts to at least 10 % of working hours normally performed by the employees (in a calendar month) due to economic reasons;
 - e. work time is controllable (i.e. existing work time recording).
- The Swiss Government has also introduced a simplified procedure with a simplified notification and which applies until 31 March 2021. It entails that a less-detailed notification is filed 10 days in advance to the competent cantonal authority followed by monthly applications for reimbursements with the chosen unemployment fund.
- Currently, the following applies:
 - a. Employees (incl. on-call employees), who have an unlimited, not-terminated employment contract (in case of on-call employees: also with a fixed-term contract that can be terminated by notice) and have not yet reached the retirement age are entitled to short-term work. In addition, persons with a fixed-term contract or apprentices (only under the condition that the continuation of the apprenticeship is guaranteed and in companies that had to close by official orders) are again eligible for short-time work compensation for the period from 1 January 2021 until 30 June 2021;
 - b. The grace period and pre-notification are retroactively revoked as of 1 September 2020 until 30 June 2021;
 - c. New authorisations are valid for 6 months; after 1 July 2021 until 31 December 2021 at the latest;
 - d. The limitation that to in case of loss of working hours of more than 85%, the employees are only entitled to up to 4 months compensation did not apply between 1 March 2020 and 31 March 2021;
 - e. Short-time work compensation can be requested for up to 18 months within a 2 year's period;
 - f. Additionally, persons with low income receive a higher entitlement to short-time work compensation retroactively as of 1 December 2020 up until 31 March 2021.



Other compensation for loss of income

- The federal council has concluded that the following persons are eligible for compensation of loss of income:
 - a. parents, who could not go to work as they have to take care of their children;
 - b. any person, who is under medical quarantine.
 - c. self-employed persons/persons in an employer-like position, who suffer a loss of income due to official measures (i.e. business closures or ban of events) or if they are heavily affected by such measures. The latter is the case if their revenues in the respective month are reduced by at least 40 % compared to the average monthly revenues in the years 2015-2019. These persons need to have an AHV-insured annual income of at least CHF 10'000.
 - d. Employees/self-employed persons at high-risk, who cannot fully or partially work from home and suffer a loss of income
- Compensation is paid for up to a maximum of 7 days (quarantine) or in case of childcare until alternative childcare is guaranteed or the end of the measures due to COVID-19. For self-employed persons/persons in an employer-like position, compensation is paid as long as the above requirements are met, but until 30 June 2021 at most. Compensation is paid at a level of 80 % of the insured salary (max. CHF 196/day).

The current pandemic demands a lot from employees and employer alike. We therefore recommend that employment issues be dealt with in a practical and considerate manner.

Please contact our employment law team for all employment matters. They advise and provide guidance on strategies for how to navigate employment law requirements, reflect short- and medium-term business needs as well as on approaches to communications with employees and, where appropriate with trade unions.

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