

Employment Law in Switzerland: Part III

Insights

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This article is the third in a series which will provide an introduction to employment law in Switzerland and will cover the basic laws applicable to prohibitions against discrimination and harassment and the remedies available to employees who prevail in actions against their employers for violations of these laws. This article will also provide a brief overview of Swiss maternity leave laws.

I. Discrimination and Harassment

Pursuant to Swiss employment law, employers are generally prohibited from discriminating against employees based upon an employee's "personality trait" which has been interpreted to include the employee's age, religion, race, disability and political affiliation. International agreements between the European Union and Switzerland also expressly prohibit discrimination by a Swiss employer against an employee based upon an employee's nationality and require that the employee be treated the same with respect to working conditions and compensation as Swiss nationals.

There is broader and specific statutory protection provided by the Swiss Gender Equality Act which strictly prohibits both direct and indirect discrimination based upon an employee's gender in both the private and public sector. Employers are not permitted to treat employees less favorably based upon the employee's marital status, pregnancy or familial status with respect to all conditions of employment including hiring, compensation, working conditions, promotions, demotions, benefits and termination of employment. The law also expressly requires equal pay for equal work and equal professional development opportunities regardless of gender.

The Swiss Gender Equality Act and the Federal Act on Equal Treatment of Women and Men also expressly prohibit sexual harassment of employees. Sexual harassment is defined to include threats, the promising of job-related advantages or coercive acts to obtain favors of a sexual nature. Swiss employers by law are required to take all reasonable steps to prevent sexual harassment.

II. Remedies Available to Employees for Discrimination and Harassment

An employee can commence a legal action in a Swiss court of proper jurisdiction against an employer alleging discrimination or harassment based upon both statutory law and the employee's employment contract and seek an order prohibiting further discrimination, compensatory and emotional distress damages and/or a declaratory judgment. The Swiss Gender Equality Act also provides specific remedies to employees for gender discrimination and sexual harassment

including reinstatement, up to six months' salary, and in the case of discrimination relevant to unequal pay, the difference in compensation which resulted from the discrimination.

III. Maternity Leave Laws

Pursuant to the Swiss Code of Obligations, a woman cannot be dismissed by her employer if she is expecting or during the sixteen (16) weeks following the birth of the employee's child. If an expectant mother has to cease working due to pregnancy-related complications or health issues, the employee is entitled to receive her salary for a time period specified by Article 324 of the Swiss Code of Obligations provided she was employed for more than three (3) months or that the contractual term of employment was for a period exceeding three (3) months. During the eight (8) weeks prior to giving birth, the employee may not work between the hours of 8 pm and 6 am and the employee may not work for a period of eight (8) weeks after giving birth. Additionally, the employee is entitled to a minimum of fourteen (14) consecutive weeks of maternity leave and, in most cases, the employee is entitled to receive 80% of her salary during her maternity leave. There is no current statutory paternity leave law in Switzerland although some private employers do provide paternity leave pursuant to company policy.

Any employer doing business in Switzerland should be familiar with laws pertaining to maternity leave as well as those applicable to discrimination and harassment. Swiss employers who are uncertain as to the legal requirements and obligations pertaining to these laws should consult legal counsel.