

< Switzerland

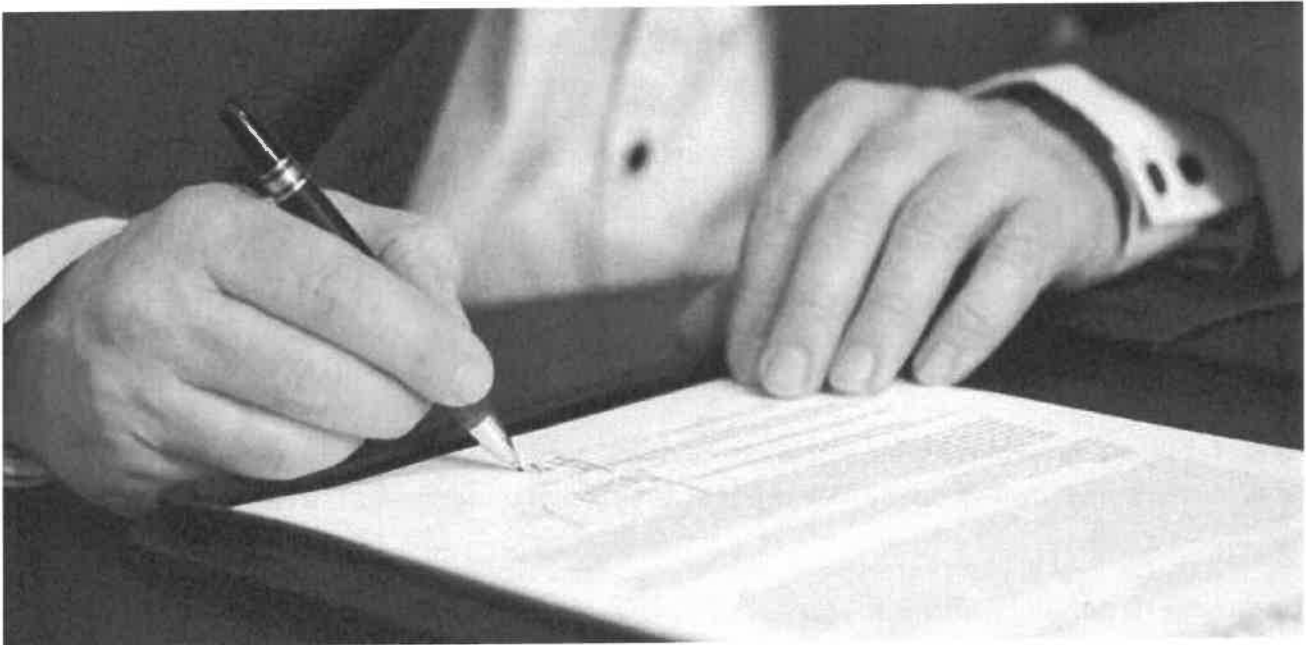
Practical Tips for Employees in Switzerland

By reuka cavadini

Switzerland has some of the most flexible hire and fire rules, which make it a very employer-friendly jurisdiction. However, if the employment rules are not respected, the employment courts, on the contrary, tend to be very employee-friendly. The following are helpful practical rules and tips.

ALSO IN THIS ARTICLE:

- » Practical Tips for Employers and Employees in Switzerland
- » Contracts: Vacation, Illness, Confidentiality
- » Special Case: Domestic Employees



Employees in Switzerland are entitled to the payment of their extra-hours unless their employment agreement provides otherwise. For employees that fall under the "*Loi fédérale sur le travail*" (LTr), there are strict working hours that need to be complied with.

Employment Agreement

The existence of an employment agreement is as important for employees as for employers since it is the written evidence of what was agreed upon and also usually required by the unemployment authorities to examine the claims for unemployment benefits.

Employees should examine their employment agreements carefully and not accept unilateral amendments to the agreement during the course of employment. Under Swiss law, the employment agreement is a bilateral agreement which cannot be amended without the written approval of both parties.

It is essential for the employee to ensure that the employment agreement is subject to Swiss law. If it is subject to a foreign law, the execution of such agreements becomes extremely onerous for employees in case of litigation.

Termination of Employment: Employee's Rights

An employee is entitled at the end of his/her employment agreement to a work certificate from his/her employer, describing the tasks accomplished and the quality of his/her work, a salary certificate for the ongoing year, as well as a declaration to the unemployment authorities concerning the conditions of employment and the reasons for termination.

An employee can contest a termination that he/she has been provided with, if it is sent to him/her during the periods of protection mentioned in article 336c Swiss Code of Obligations (CO), e.g. military service, during his/her inability to work, her pregnancy and during the sixteen weeks after the delivery. A termination notified during these periods is null and void. If it is notified before a protection period, it is prolonged till the end of the protection period provided by the article 336c CO.

The employee can also contest the termination for bad faith if it has been given, according to the employee, for one of the reasons mentioned in article 336 CO, e.g. reasons related to his/her personality, the exercise of a constitutional or contractual/legal right (unless the reason is relevant for the working relation), or causes a serious prejudice to the work within the company.

The employee can claim damages for an unjustified termination.

Non-compete Clause

As mentioned above, these clauses are usually inadmissible for doctors, lawyers, accountants, and other professions where the independent activity is related to the personality of the employee and the choice of the clients.

This is of course very favourable for employees to develop their clientele and then move with their clients to create their own company. However, the violation of trade secrets is a criminal offence under Swiss law.

Non-payment of Salary and Bankruptcy of Employer

An employee is entitled to legally stop working if his/her salary has not been paid. In the event of the bankruptcy of the employer, the employee needs to file his/her claim before the bankruptcy office and the salaries of employees are paid as first priority (after the expenses of the bankruptcy office).

Data Protection

In case of termination of the employment agreement, the employee is entitled to consult and/or have a copy of any internal minutes of meetings related to the termination of his/her employment.

Work Certificate

Finally, it is important to note that if the employee wishes to remain an employee and not become independent, the work certificate is an extremely important document and serves as a reference letter. It is therefore recommended to maintain good relations with the employer and be cooperative, even in the event of termination.

Summary

Based on the above, to summarize, the tips for an employee are:

- » To request, receive, propose amendments and then sign the employment agreement;
- » To ensure the agreement is in accordance with Swiss law;
- » To not accept a unilateral change in the employment agreement;
- » To receive his/her salary each month for the work done;
- » To take the number of days of vacation to which he or she is entitled to – as per law or the contract;
- » To stop working if the salary is not paid;
- » To not accept an over-restrictive non-compete clause;
- » To demand access to his/her file in case of termination;
- » To demand a reason for the termination;
- » To claim the bonus due under the employment contract;
- » To contest the termination if it is provided during a protection period or if it is of bad faith;
- » To claim the salary during the notice period, the salary for the days of vacation which have not been taken by the end of the notice period, the work certificate and the salary certificate;
- » Be cooperative and diplomatic with the employer till the end of the contractual relations and if possible thereafter.

If you are an InterNations member and would like to contribute an article, do not hesitate to contact us!



About renuka cavadini

Renuka Cavadini is a lawyer active in corporate, civil, data protection, IP and immigration law in Geneva. For further enquiries on this or similar topics, please contact her via her InterNations profile.

[← Previous](#)

Related Articles