

Labour and Social Insurance Law

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Some non-profit associations also employ staff (e.g. management, secretaries, caretaker, cleaning staff) – and are thus subject to labour and social insurance laws. The board of directors is responsible for compliance with the applicable provisions.

We have summarised the key points below:

1. Labour law

a) Key points – employment contract

Associations are also advised to conclude written contracts with their employees (keyword: evidence); written contracts are mandatory in the case of training contracts (trainees) and contracts with foreign employees (keyword: tax at source).

Contents of contract:

- Beginning and duration (definite/indefinite period of time)
- Place of work
- Function, areas of responsibility and type of work (job description or list of duties – power to act and decision-making power as well as supervisory and control duties)
- Weekly working hours and full-time equivalents
- Trial period: max. 3 months (if unspecified: 1 month)
- Notice period
- Holidays (by law: 4 weeks as of age 20; 5 weeks up until age 20)
- Gross monthly wage (including bonuses and deductions)
- Continued wage payments in the case of sickness and accidents
- Pension fund
- Final provisions (applicable law, place of jurisdiction, written form requirement, etc.)
- Date and signature
- Generally applicable points can also be included in the company regulations or HR regulations. Add a note to the employment contract that the regulations are an integral component of the contract.

b) Distinction between 'overtime' and 'extra hours'

Overtime refers to working hours that exceed the contractual working hours or the company's normal working hours. Overtime is mandatory if it is necessary and reasonable. Overtime is compensated as follows:

- Remuneration (wage + wage benefit 25%) – can be explicitly excluded in the contract
- or compensation through time off (hours).

Extra hours accrue when working hours exceed the maximum number of working hours (according to labour law: 45 / 50 hours a week). Compensation for extra hours **cannot** be explicitly excluded in the contract. Extra hours are compensated as follows:

- Remuneration (wage + wage benefit 25%);
- or compensation through time off (hours) within 14 weeks.

c) Dismissal

Form: Registered letter recommended (evidence).

Grounds: Statement of grounds for dismissal is not required – however, the employee may subsequently ask for the grounds for the dismissal.

Protection against dismissal. Dismissals are not permissible in the following situations:

- No-fault illness or accident; between 30 and 180 days depending on length of employment;
- Pregnancy or birth: during pregnancy and 16 weeks after the birth;
- Military or community service: 4 weeks before, during, and 4 weeks after.

d) Work reference

After termination of the employment contract, the employer is required to write a work reference for the employee. Before termination of the employment contract, employees may request an interim work reference.

- Work references serve as a means of communication between previous and new employers and should include information regarding the duration of the employment, the work performed by the employee and his/her conduct.
- Work references shall be true and fair, favourable, complete and transparent (no codes).

2. Distinction between 'employed' and 'self-employed'

Employment and self-employment have different consequences in terms of contract design, social insurance and tax law.

a) Employed persons (employment contract)

Employed persons perform work in a subordinate position for a definite or indefinite period of time without bearing an economic risk (employment contract).

Characteristics:

- No substantial investments
- Act on behalf and account of another
- Subordination: obligation to follow instructions
- Bound to work schedule, working hours, mandatory attendance
- Assignment of a workplace
- Regular work for the same employer
- Employer provides work equipment or material
- Regular wage (monthly wage, hourly wage, etc.)

b) Self-employed persons (agency contract or contract for work)

Self-employed persons work in their own name and for their own account, have an independent position and bear their own economic risk (agency contract or contract for work).

Characteristics:

- Substantial investments required
- Act in one's own name and for own account
- Own business premises
- Responsible for expenses and risk of loss
- Employment of staff
- Free to determine the manner in which services are provided
- Free to determine the hours of service provision (i.e. 'working hours')
- Work performance for several clients or principals

In **cases of doubt**, the specialised authority (compensation office, tax office, labour market or migration office) decides upon the classification. In practice, it is advisable to obtain the relevant information from the AHV compensation office *in advance*.

If the association engages a person for work, it is obliged to verify their self-employed status. If the person is not self-employed, he/she must be employed by the association.

Example: secretarial work:

- *Employed (i.e. in the association's employ): works at specified times and at an assigned workplace and performs the work according to the instructions of the board of directors or the management.*
- *Self-employed (i.e. for own account): carries out the assignment during freely chosen hours, without direct instructions and in his/her own office.*

3. Social insurance law

Social insurance law is complex. If you have any questions relating to social insurance, it is advisable to contact the AHV compensation office as a first step, submit your question in writing and request a written reply (evidence).

a) Generally: three-pillar principle

1. **State pension insurance** (for everyone): AHV/IV (Old Age, Survivors' and Disability Insurance), supplementary benefits and EO (income compensation) secure the minimum subsistence level.
2. **Occupational pension insurance** (for employees): BVG (Law on Occupational Retirement, Survivors' and Disability Pension Plans), sickness daily allowance, accident insurance and unemployment insurance secure the habitual standard of living.
3. **Supplementary insurance:** Pillars 1 and 2 can be supplemented on an individual basis: private life insurance or investments (e.g. 3a or 3b).

b) First pillar: AHV

- **Liability to pay AHV contributions:** Applies to anyone living or working in Switzerland with the exception of children and adolescents, non-working spouses and university students.
- **Exception:** Where employees earn no more than CHF 2,300 a year, AHV contributions will not be charged unless expressly requested by the employee.

This exception does not apply to cleaning, household and care services (e.g. eldercare, childcare or pet care) provided in one's *own private household* or in the art or cultural fields (including schools). In these contexts, the CHF 2,300 allowance does not apply and contributions are payable on all earnings.

c) Second pillar: occupational pension insurance (BVG)

- Insured: all employees aged 18 and above who receive wages in excess of CHF 21,600 a year from one employer (entry threshold 2013);
- Not insured: anybody who is employed for less than 3 months; secondary employment (if insured via main employment); the self-employed; employees working abroad; employees with several employers who do not reach the entry threshold;
- Exceptions are possible under the regulations or for self-employed persons in certain sectors (e.g. artists).

d) Maternity insurance

Maternity insurance covers all women who were insured under the AHV for at least 9 months before the birth, worked for a minimum of 5 months during this period and were either employed or self-employed at the time of birth.

4. Procedure for employment

- Conclusion of employment contract
- Registration with the compensation office
- Accident insurance (occupational accidents: all – non-occupational accidents if employee works more than 8 hours per week)
- Sickness daily allowance insurance (voluntary)
- Occupational pension insurance (BVG): if annual income exceeds CHF 21,060 (or as per regulations)
- Child allowances (verify)
- Payment of wages
- Accounting for compensation fund
- Transfer of contributions to compensation fund
- Wage statement for employee
- Foreign nationals: mandatory registration and authorisation (Federal Act on Foreign Nationals, tax at source)

Useful links

- Work: www.seco.admin.ch
- Social insurance: www.ahv-iv.info/ (respective leaflets)
- Wage statement:
<http://www.estv.admin.ch/bundessteuer/dienstleistungen/00666/00852/index>