

Switzerland

Introduction

Switzerland has long been praised for the constructive relationship that it has established between workers and their employers. The art of compromise at the base of this relationship has contributed to the prosperous economy of the country.

Since the beginning of the 1990s, Swiss trade unions have seen a steady decline in their membership. The recent recognition of the right to strike in the New Federal Constitution, which came into force on January 1, 2000, did not alter this trend. Decreased industrial activity, the sector in which trade unions have traditionally been the most active, coupled with the prevailing culture of individualism, has caused many employees to regard trade unions as no longer having a real purpose.

Trade Unions

The General Role Of Trade Unions

Traditionally, trade unions have represented the interests of their members in the negotiation of collective bargaining agreements with employers' associations. However, trade unions also offer their members a variety of services in relation to their working conditions and have always been an active lobby before the Parliament.

Trade union structures are diverse: some are targeted in specialised areas, while others are more general. Some of them have adopted a federalist structure. In total, there are approximately 50 trade unions in Switzerland, which is often perceived as a matter of concern because the large number leads to inefficiencies and duplications.

Constitution Of A Trade Union

A trade union is an association that has legal personality. It can therefore appear in court proceedings and enter into contracts.

The articles of incorporation of a trade union define its organisation, stipulate the powers of its officers and officials, and specify its role. They also define the rights and obligations of the members. Amendments to the articles of incorporation can

be introduced only with the approval of the members. Under the specific provisions governing associations, each member is free to terminate his or her membership at any time.

The Scope Of Trade Union Rights In Businesses

Article 357a of the Swiss Code of Obligations (CO) gives trade unions that are parties to a collective bargaining agreement the authority to monitor the correct application of the agreement. In fulfilling that task, they must keep labour peace and refrain from any strike to the extent that the matters at issue fall under the collective bargaining agreement. The obligation to keep labour peace is unlimited, but only if it is expressly agreed upon.

Collective bargaining agreements traditionally include provisions concerning the conclusion, content, and termination of the individual employment agreements executed by the participating employers and employees. They may also include other provisions, as long as they relate to matters that are covered in an employment agreement. Collective bargaining agreements may eventually regulate the rights and obligations of their contracting parties, as well as the control and enforcement of their provisions.

According to Article 356a CO and the freedom of association, no one can be forced to join a collective bargaining agreement. Provisions that would contain such an obligation are null and void.

The Function Of Trade Union Representatives

A trade union representative is appointed by the trade union members to represent the union in the negotiation of a collective bargaining agreement with the representatives of the employers' associations, according to the internal regulation of the relevant trade union. The representative can be a fellow employee of some or all of the members, or an employee of the trade union itself.

Fundamental to the success of any collective bargaining process is the careful consideration and balance of the various interests by the trade union representative. A representative must ensure that all employees feel that their views are properly represented, while at the same time keeping the procedure focused and not allowing it to degenerate into individual grievances.

Works Council

Currently, there is no right to have a National Works Council (NWC) in Switzerland. As Switzerland is not member of the European Union, it is not subject to the EU Directive on National Works Councils.

Trade Union Employee Protection Rights

Article 336 CO protects members of trade unions against an abusive termination of contract. An employer that terminates a contract of an employee on the ground that he or she is a member of a trade union may be sentenced to pay an indemnity, the amount of which is determined by a judge, but which cannot exceed six months' wages of the concerned employee.

Other Types Of Employee Representation

Enterprise Committees

At the present time, Swiss law does not provide for the participation of employees in the company's activities. However, enterprise committees are often established and regulated under collective bargaining agreements. Currently, there are approximately 140 collective bargaining agreements in Switzerland.

The Federal Act on Information and Consultation of Workers in Enterprises, which came into force on May 1, 1994, formally acknowledges the right of the employees to be timely and fully informed about all matters that they need to be aware of in order to correctly perform their employment duties. It also entitles the employees to be actively involved in the decision making process relating to measures discussed in the following matters:

- Safety at work;
- Transfer of undertaking, including merger and demerger;
- Collective dismissals.

In order to foster the participation of employees in such decision making processes, Article 3 of the Act provides the right for the employees to elect a representative body in enterprises that employ at least 50 workers. A company that employs fewer than 50 workers is also free to apply this provision.

The specific scope of powers entrusted to the employees' representative body is usually defined in a collective bargaining agreement. Otherwise, it consists of defending workers' interests that are likely to be affected by the transfer of the enterprise. In a company employing fewer than 50 workers, each worker is entitled to receive information and to participate in the decision-making process relating to the transfer of the enterprise.

The Federal Act on Information and Consultation of Workers in Enterprises does not, however, provide any specific sanctions in case of a violation of its provisions.

Internal Rules

The internal rules of a company (*règlement d'entreprises*) also govern its employment relationships, especially in the case of large industrial companies where internal rules are compulsory. If these internal rules are adopted unilaterally by the employer, they may relate to measures taken to protect the health and safety of the employees, the disciplinary rules, and sanctions.

If those internal rules are adopted on a contractual basis by the employer and the employees' representatives, they may include provisions relating to all employment matters, with the exception of issues usually addressed in individual employment contracts or collective bargaining agreements.

Collective Dismissals

In case of collective dismissals, Article 335f CO obliges the employer to consult with the employees or their representatives and offer them the possibility of making proposals on how to avoid the collective dismissal or how to reduce the number of redundancies and how to mitigate the consequences of such a decision. In addition, the employer must provide in writing to the employees or their representatives all the necessary information, including the reasons for the collective redundancies, the number of employees who will be dismissed, the total number of employees, and the period during which termination of contracts shall take place.

Working Hours

The maximum working hours permitted by law are 45 hours per week for industrial, technical, office, and sales personnel, and 50 hours per week for most other employees. Practice shows, however, that a lower number of weekly working hours is fixed in certain sectors by collective bargaining agreements or by individual agreements with employees.

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