

European Labour Market, Laws and Regulations

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I. INTRODUCTION

- In today's global economy, companies also need (legal) advice and solutions to their **global employment issues**, namely when employees are working across jurisdictions & juggling with different regulatory requirements.
- **Key topics** are:
 - How employees are engaged, remunerated and dismissed.
 - The rights of employers and employees during and after employment.
 - Protecting confidential information and business interests.
 - Employee consultation, works councils and trade unions.
 - Costs associated with employment.



II. REGULATION OF EUROPEAN LABOUR MARKETS: EU LEVEL

- **EU employment law often operates differently** in each member state (because most EU employment law is brought into national law by each member state).
- **Areas covered** by EU employment law include:
 - Working time, part-time and fixed-term work.
 - Protection from discrimination, protection of pregnant workers & equal pay rights.
 - Informing & consulting workers on workplace issues, including collective redundancies and business transfers.
 - Protection of employees' rights in case of a business transfer.

II. REGULATION OF EUROPEAN LABOUR MARKETS: COUNTRY LEVEL

- Every country has established a **complex system of laws and institutions** intended to protect the interests of workers & to help assure a minimum standard of living for its population.
- Legal framework typically encompasses **three bodies of law**:
 - 1. Employment Law**
Governs the individual employment contract.
 - 2. Collective/Industrial Relations Law**
Regulates the bargaining, adoption and enforcement of collective agreements, the organization of trade unions and the industrial action by employees and employers.
 - 3. Social Security Law**
Governs social response to needs and conditions that have a significant impact on the quality of life, such as old age, disability, death, sickness, and unemployment.

III. COMPARISON #1: HOLIDAY ENTITLEMENT

 **France**

- Minimum of **25 days'** paid annual leave.
- In addition, approx. **11 paid public holidays** (equivalent to bank holidays) per year for most employees.
- Collective bargaining agreements (CBAs) often grant **additional paid leave** (e.g. dependent on the length of service).

 **Germany**

- Minimum statutory entitlement to **20 days'** paid annual leave (for employees who work five days per week).
- Many employees receive **between 25 and 30 days'** paid annual leave, depending on their seniority and the type of business.

 **Switzerland**

- Minimum statutory entitlement to **20 days'** paid annual leave (employees below the age of 20 benefit from 25 days' paid annual leave).
- It is quite common for employees to receive **25 days'** paid annual leave when they reach the **age of 50**.

III. COMPARISON #2: MATERNITY/FAMILY LEAVE

 **France**

- **16 weeks' maternity leave**, extended to 26 weeks for the birth of a third child.
- Women receive **up to 81% of salary** up to a ceiling paid by a social security institution. Many CBAs require **employer to top this up to full normal pay**.
- **3 days' paternity leave**, includes entitlement to full pay.

 **Germany**

- Right to maternity leave from **6 weeks prior to the expected childbirth date**.
- Compulsory maternity leave for first **8 weeks after birth** (in some cases 12 weeks), **100% net daily pay**.
- Either parent has right to claim **unpaid parental leave** for a period up to **3 years**.

 **Switzerland**

- Maternity leave for the first **14 weeks after the birth** (but women may start working again earlier).
- Daily health insurance fund benefits of **80% of salary or max. CHF 196.00/day**, employer may pay more.
- **No paternity leave**.

III. COMPARISON #3: TRADE UNIONS/LABOR STRIKES

 France

- “**Representative**” **trade unions** (i.e. those which are recognized as representing a group of employees) and **elected staff representative bodies** (works council, health and safety committee, group) have **very wide powers**.
- **Strikes** are **common**, not only in public sector.

 Germany

- Main function of trade unions is to conclude **collective bargaining agreements**.
- Trade union representatives support **employees and works councils** but do not have participation rights within a company.
- **Strikes** became **more common** in recent years.

 Switzerland

- Main function of trade unions is to conclude **collective bargaining agreements**.
- Switzerland has enjoyed **relative stability** in labor relations for decades due to the unique “Sozialpartnerschaft”.
- Short **strikes are rare**, lengthy strikes hardly ever happen.

III. COMPARISON #4: NOTICE BY EMPLOYER/SEVERANCE PAYMENTS

 **France**

- **Real and serious grounds** for dismissal required, **special/formal procedure** to be observed.
- Up to 2 years' service **1 month** notice period, above 2 years' service **2 months** (and 3 months for executives).
- **Severance pay** of **1/4 of monthly salary** per years of service, **1/3 of monthly salary** beyond 10 years' service.

 **Germany**

- **Right to dismiss** employees **substantially restricted** by law.
- Up to 2 years' service **4 weeks** notice period, up to 20 years' service **between 1 and 7 months** notice period (sliding scale).
- **Severance payments of 18 months' pay** if no reinstatement under specific circumstances.
- **Termination agreements** are common.

 **Switzerland**

- **No cause** for termination of employment **required**.
- **1 month** in 1st year, **2 months** up to 9th year of service and **3 months** beyond 10 years' of service.
- In rare cases **penalty of 2-3 months' pay** (up to 6 months' pay).
- **Termination agreements** feasible, also during protected periods (illness, pregnancy etc.).

III. COMPARISON #5: NON-COMPETE RESTRICTIVE COVENANTS

 France

- Non-compete clauses are **enforceable** post-termination.
- Duration and territorial scope to be **proportionate to business needs**, non-compete clause must **not restrict employee from practicing his/her job**.
- **Payment to employee needed** for non-compete clause to be enforceable.

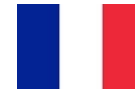
 Germany

- Non-compete clauses are **enforceable** post-termination.
- Duration and territorial scope to be **proportionate to business needs** (max. 2 years), less strict as regards managers/board members.
- **50% of last pay** for duration of non-compete period **required** for non-compete clause to be enforceable.

 Switzerland

- Non-compete clauses are **enforceable** post-termination.
- Duration and territorial scope to be **proportionate to business needs**, non-compete clause must **not restrict employee from practicing his/her job**.
- **No payment needed**.

III. FRENCH EMPLOYMENT LAW IN A NUTSHELL



- Employment law provides employees with a **very high level of protection**.
- **Legal environment is constantly changing** as a result of government reforms and case law evolution.
- **Representative trade unions have wide powers.** Most notably, they have the exclusive right to introduce candidates at the first round of voting for the staff representative bodies.
- **Choosing the wrong option** may result in **costly** individual or collective **litigation**.

III. GERMAN EMPLOYMENT LAW IN A NUTSHELL

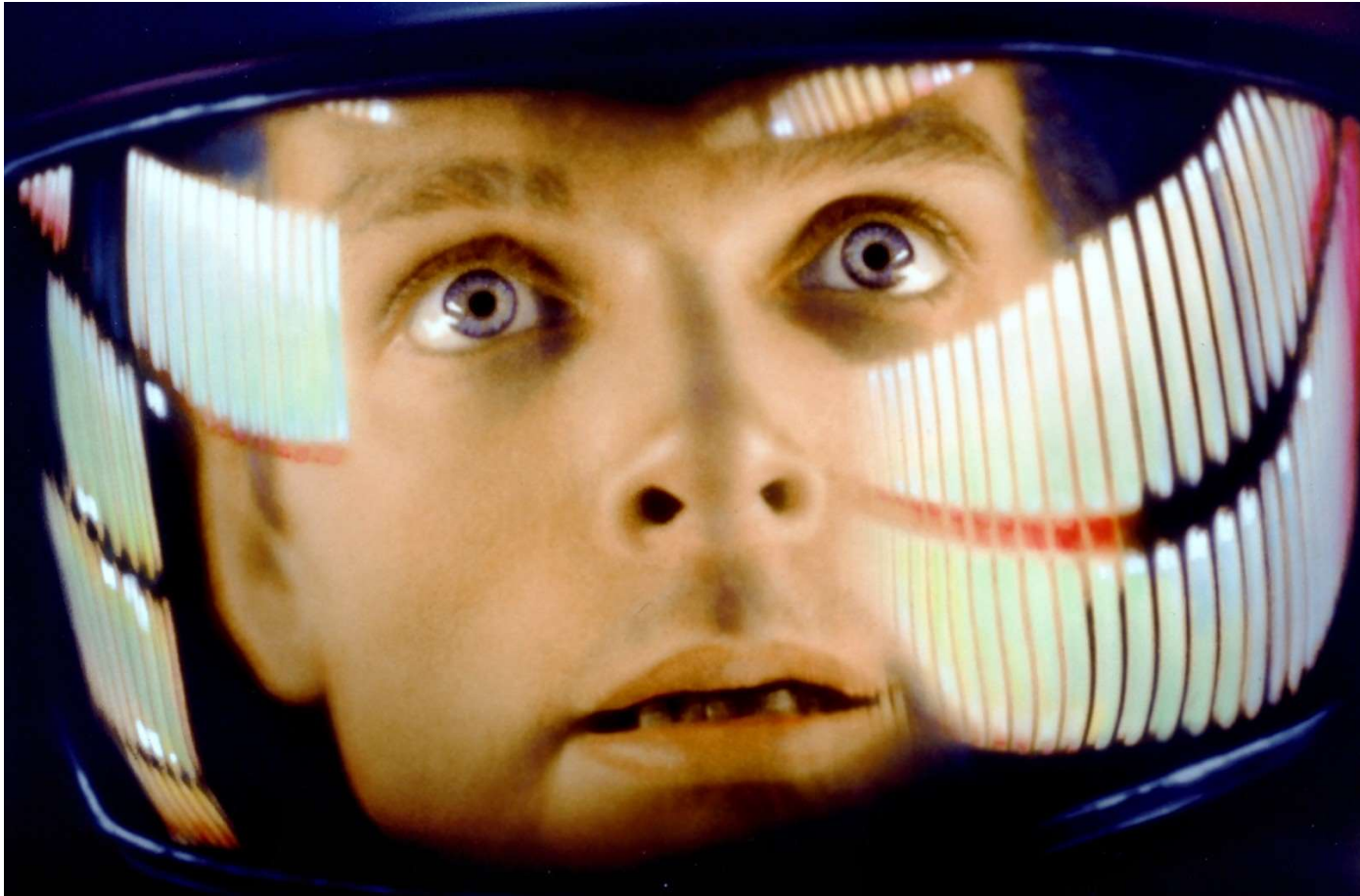


- Employment law provides employees with a **high level of protection against dismissal**. Therefore, it is reasonably common for employees to challenge their dismissal in court where parties often agree on severance payment.
- **Terms of employment** and the nature of labour/management relations **are often moulded by CBAs** (between trade unions & employers' associations /employers) or **works agreements** (between works councils [Betriebsrat] and employers).
- **Employee participation is well developed**, “co-determination” rights conferred on works councils (significant factor in areas such as hiring and dismissing employees, health and safety, HR planning and restructuring).

III. SWISS EMPLOYMENT LAW IN A NUTSHELL

- Compared with other jurisdictions, **Swiss Employment Law is employer-friendly.**
- **Stable labor relations, strikes are very rare.**
- In principle, **employers may terminate** employment relationships **for any reason** (“at will”), employees have a statutory right to request written reasons for their dismissal.
- **Termination agreements are feasible** and common, in particular during protected periods (e.g. during illness, pregnancy etc.).

IV. CONCLUSION: EUROPEAN LABOUR MARKETS ARE COMPLEX LEGAL SYSTEMS



«My God, It's Full of Stars!»

IV. CONCLUSION: THINKING OF HIRING OVERSEAS-BASED EMPLOYEES?

Watch out for the following:

- **Time Off Laws** (e.g. vacation, sick and maternity leave).
- **Power of Unions** (unions may carry a lot of weight and employee benefits and work conditions may strongly be controlled by Collective Bargaining Agreements).
- **Terminating Employment** (notice periods, reasons for termination, severance payments).
- **Non-Compete Agreements** (countries may prohibit non-compete agreements).
- **Employee Privacy** (countries may have strict laws that govern the exchange of employee information).



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Urs Marti has extensive experience in all areas of commercial and contract law (in particular distribution agreements, license agreements and research agreements), in a national and international context. Thanks to a secondment in the Legal & Compliance department of a pharmaceutical company, Urs Marti knows the needs of corporate clients very well.

As a Certified Specialist SBA Employment Law, Urs Marti is a specialist in all labor law issues (individual, public and collective labor law). He regularly publishes and lectures on labor law topics.

In addition to providing legal advice to companies and private individuals, one of his main areas of activity is the personal support and representation of his clients in legal disputes.

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