



Changes to Personnel Law with effect from 1 October 2020

This partial revision constitutes a major partial revision of the Personnel Ordinance for the ETH Domain (ETH PO)¹, which was last subject to a major partial revision in 2013 following the comprehensive revision of the Federal Personnel Law (FPL)²; the purpose of the present partial revision is to adapt the Ordinance to current needs and requirements and, where appropriate, to the rules of the Federal Administration. In addition, the adoption of International Public Sector Accounting Standards (IPSAS) has made it necessary to adapt the way the number of hours worked is documented. The draft has undergone two internal consultations and two office consultations.

The Federal Council approved the changes to the Personnel Ordinance for the ETH Domain (ETH PO) on 19 August 2020.

The most important changes and clarifications by Article are:

Advertisement of jobs (Article 14 paragraphs 1–4)

Amendment and clarification of the Article to explain when it is, as an exception, permissible to forgo advertising posts in relation to internal advancement and promotions.

The list of cases in which public advertising may be forgone is exhaustive and encompasses the following exceptions:

- fixed-term positions lasting for a maximum of one year (letter a),
- vacancies that are to be filled internally, especially in relation to internal advancement and promotions (letter b),
- positions subject to internal job rotation (letter c)
- and positions for the occupational reintegration of sick or injured employees or for the integration of people with disabilities (letter d).

Senior management positions (i.e. the presidents of the ETHs and the directors of the Research Institutes) must be advertised publicly.

By contrast, the deputies for the above-mentioned functions are often people who already hold a primary post and are then entrusted with this supplementary role. As in the Federal Administration, these supplementary roles need not be advertised publicly.

Termination of the employment relationship without notice (new Article 20)

For reasons of clarity and comprehensibility, Article 20, which was previously left blank, lists the circumstances in which the relationship terminates without notice. The law currently in force shall apply; the reference in ETH PO does not constitute a substantive legal amendment. These are:

- termination by mutual agreement (paragraph 1)
- the expiration of the agreed duration of a fixed-term contract (paragraph 2 letter a)
- reaching AHV retirement age (paragraph 2 letter b) and the death of the employee (paragraph 2 letter c).

¹ Ordinance of the ETH Board concerning personnel in the Swiss Federal Institutes of Technology Domain (Personnel Ordinance for the ETH Domain, ETH PO) (SR 172.220.113)

² Federal Personnel Law, FPL (SR 172.220.1)

Termination of the employment relationship in the event of inability to work because of illness or accident (new Article 20b)

Article 20b governs protection from dismissal (proscribed period) in the event of illness/accident, and the process for terminating a permanent employment relationship in the event of long-term inability to work as a result of illness or accident.

Principle: In the case of long-term inability to work for health reasons, the employer may properly terminate the employment relationship as follows:

- in the first two years of service: at the end of a period of incapacity to work lasting 365 days (letter a)
- from the third year of service onwards: at the end of a period of incapacity to work lasting at least 730 days (letter b).

Exceptions when the employer may terminate the employment relationship at an earlier date:

- during the probationary period (letter a)
- following repeated breaches of the obligation to cooperate (letter b)
- after the expiration of the proscribed periods if the intention to terminate the contract had already been announced before the employee became unable to work (letter c) or
- from the date when a disability pension is first paid if a long-term partial incapacity to work is established for disability insurance purposes, provided that the person concerned is offered a job appropriate to their remaining working capacity (letter d).

The notice periods specified in Article 20a must also be complied with in these situations, unless there is termination without notice in an exceptional case.

Categories of personnel (new Article 24)

The legal basis for the payment of lump-sum salaries in Article 35 ETH PO previously took the form of a special regulation.

Given the key importance of this personnel category in the ETH Domain and for reasons of transparency and clarity, it was deemed advisable to create a new Article covering the two large personnel categories subject to ETH PO without altering their status in any way or altering the existing practice in the ETH Domain.

Paragraph 1 designates employees subject to the salary system as the first category. The provisions of Articles 25-28 apply to this personnel category without restriction.

Paragraph 2 defines the personnel category of employees who are employed on a fixed-term basis for educational purposes, for the purpose of entry to an academic career or for fixed-term research projects or – in exceptional cases – for fixed-term infrastructure tasks (previously paragraph 2 letter e of Article 19, which was abrogated in 2013). The condition for payment of a lump-sum salary continues to be the impossibility of allocating the post to a functional grade, because the criteria regarding experience and performance cannot be accurately measured and evaluated.

Paragraph 3 establishes the principles for setting the salaries of employees who are on lump-sum salaries. The amounts of the lump-sum salaries are in principle based on the guidelines of the funding bodies (e.g. the Swiss National Science Foundation (SNSF)). However, the salaries paid must not fall below the minimum salaries set forth in Appendix 3, and provision must be made for pay progression.

If funding bodies do not provide such guidelines, both ETHs and the Research Institutes must comply with the minimum salaries laid down by the ETH Board (new Appendix 3). Employees in

this personnel category receive a specified initial salary in the first stage of their career; this is automatically increased in predefined steps in the second and third years.

The previous Article 35 has been abrogated as a result of the new regulation; Articles 25-27 have been adapted accordingly.

Continued salary payments in the event of illness or accident (Article 36ff)

The Articles relating to entitlement to continued salary payments in the event of illness or accident, and their duration and amount, have been comprehensively revised and clarified. A new legal basis has been created, stating that employees who are unable to work owing to illness or accident within the meaning of Art. 28 GSSLA³ are obliged to cooperate. The amount and duration of the continued salary payments have been adjusted to conform with the rules of the Federal Administration, as has the time limit after which salary payments can begin anew following another illness or accident.

Entitlement to continued salary payments in the event of illness or accident, and offsetting social security benefits (Article 36)

This Article establishes the principles for entitlement to continued salary payments in the event of illness or accident, and specifies the Articles in which these are set out (Articles 36–36c).

The obligation to cooperate is a new condition for entitlement to continued salary payments in the event of illness or accident. This is regulated in the new Article 36a.

As in the previous regulations, both ETHs and the Research Institutes may alternatively meet their obligation to continue to make salary payments by taking out equivalent insurance cover.

In addition, the relationship between insurance benefits and continued salary payments is regulated.

Employees' obligation to cooperate in the event of inability to work owing to illness or accident (new Article 36a)

This Article regulates the employees' obligation to cooperate in the event of inability to work owing to illness or accident. The obligation to cooperate is to be understood within the meaning of Article 28 GSSLA.

Paragraph 1 confirms the current **established practice**, which requires employees who are off sick for more than three consecutive days as a result of illness or accident to submit a doctor's certificate from the fourth day of absence without waiting to be asked.

Paragraph 2 creates the legal basis for the possibility of **deviating from established practice** in justified cases: for example, the ability to require a doctor's certificate from the first, rather than the fourth, day of absence if the employee is suspected of abusing the system. The time limits for submitting a doctor's certificate may however also be extended, such as during an outbreak of influenza or a pandemic (letter a).

Furthermore, in the event of lengthy or repeated lengthy absences, the employers are authorised to order a medical examination, which the employee concerned is obliged to attend (letter b).

³ Federal Act on General Aspects of Social Security Law (GSSLA), SR 830.1.

Paragraph 3 requires employees to **cooperate with integration measures** as per Article 47a ETH PO, to **follow medical instructions**, to **attend any medical examinations that may be ordered** and to authorise the doctors treating them to **disclose information** to the examining doctor when so requested.

When planning to **travel abroad**, employees (mostly those from other countries) who are ill or suffering from the effects of an accident are required to inform their employer in writing well before their return to their country of origin, with details of the planned trip and where they will be staying. They must also enclose a certificate from the doctor treating them, which should give details about the employee's ability to travel, the expected impact on their recuperation and the treatment available at the place where they will be staying.

Duration and amount of continued salary payments in the event of illness or accident (new Article 36a^{bis})

This introduces a graduated scale for the maximum duration and amount of the continued salary payments made in the event of illness or accident, depending on the number of years' service and the duration of the incapacity to work.

Maximum duration of the continued salary payments in the event of illness or accident:

- Up to the expiration of the notice period if the employment relationship is terminated during the probationary period (letter a);
- If the employee falls ill or has an accident in the first two years of service after the expiration of the probationary period, they are entitled to continue to receive salary payments for 365 days (letter b);
- From the third year of service onwards, they are entitled to receive salary payments for 730 days (letter c).

The duration is calculated starting from the first day of the illness or accident. When calculating the years of service, the duration of the successfully concluded probationary period is counted. When calculating the duration of the continued salary payments, it makes no difference whether the incapacity to work is full or partial (paragraph 2).

Paragraph 3 regulates the **amount** of the continued salary payments in the event of illness or accident. When an employee is unable to work as a result of illness or accident, they receive their **full gross salary**, including supplementary allowances, for the **first 365 days**.

From the 366th day of absence as a result of illness or accident, **90 percent of the gross salary** is paid. Any task-related supplementary allowances are reduced to the same extent.

In the case of **fixed-term contracts**, the **entitlement to continued salary payments ends with the expiration of the contract** (paragraph 4). It is a specific feature of a fixed-term employment contract that it terminates without notice at the end of the fixed term, i.e. no further contractual employment relationship exists thereafter. Where no employment contract exists, there is no salary entitlement, and where there is no salary entitlement there can be no continued salary payments in the event of illness/accident, since a salary entitlement can exist only while the employment relationship exists.

In principle, **employees paid by the hour** who become unable to work should continue to receive the amount payable for their contractually agreed regular working hours. If no regular working hours have been agreed, the amount of the continued salary payments corresponds to the average salary in the twelve months immediately preceding the start of the incapacity to work. If

the employment relationship has existed for less than twelve months so far, the average salary is used as the basis for the calculation (paragraph 5).

Reduction or cessation of benefits (new Article 36b)

Whereas Article 36a regulates the obligation to cooperate in the event of incapacity to work as a result of illness or accident, Article 36b establishes the basis on which sanctions can be imposed by the employer if the employee fails to comply with the obligation to cooperate.

If an employee breaches their obligation to cooperate in the event of absence resulting from illness or accident, as set forth in Article 36a paragraphs 2-4, the employer may reduce – or, in serious cases, discontinue – the benefits.

Repeated breaches of the obligation to cooperate in the event of absence owing to illness or accident may, if any reductions in benefits previously ordered as a more lenient measure (Article 36 para. 2 and Article 36b para. 1) prove unsuccessful, lead to the termination of the employment relationship (Article 20b para. 2 letter b).

Interrupting the continued salary payments made in the event of illness or accident and starting them afresh (new Article 36c)

This Article replaces the previous Article 36a, the application of which repeatedly led to difficulties in distinguishing between a relapse and a new health problem. A distinction is now made between interrupting continued salary payments made in the event of illness or accident and starting them afresh.

Interruption: If an employee fulfils the terms of their contract in full (in terms of hours worked and performance) in between health-related periods of absence, the duration of the continued salary payments as per Article 36a^{bis} para. 1 is extended by the same number of days.

Starting afresh: In the event of incapacity to work as a result of another illness or accident or the recurrence of an illness or of the consequences of an accident, the time limits pertaining to continued salary payments start afresh if the employee has been able to work their full allotted hours for at least the previous twelve months without interruption.

Transitional provision regarding continued salary payments as per Article 36 (Article 65a)

Ongoing claims continue to be governed by the previous law.

Entitlements to continued salary payments in the event of an illness or accident that occurred after the entry into force of the amendment of 1 October 2020 are governed by the amended law.

Benefits in the event of an occupational accident (Article 39)

The benefit is paid only up to the date on which AHV retirement age is reached, because it is not possible to pay a salary to a retired person.

Occupational disability (Article 39a)

This Article has been clarified on the basis of Article 62 ff. of the VR-ETH 1 regulations⁴ and adapted to reflect Article 32j paragraph 2 FPL.

⁴ SR 172.220.142.1

Continued salary payments in the event of death (Article 40)

This Article defines “surviving dependants” in the same way as Article 338 paragraph 2 CO and specifies the amount of benefit. The latter is equivalent to a total of one-sixth of the annual salary plus any supplementary allowances. This sum is paid only once. This means that if more than one person is entitled to claim, the extra salary payment is shared between them equally. The previous paragraph 3 concerning the allowance payable for the support of close relatives has been integrated into paragraph 1.

Equipment (Article 43 paragraph 3 abrogated)

In view of the technological options now available (mobility), work performed outside the workplace (teleworking) need not necessarily be performed at the employee’s place of residence. The concept has therefore been given a broader definition and moved to Article 54 (new paragraph 2^{bis}).

Working from home does not usually involve additional costs. Since employees already have a workstation available on the premises of an ETH or a Research Institute, the employer is not obliged to meet the costs of teleworking. However, the employer must continue to provide work equipment such as laptops.

Loyalty premium (Article 45 paragraph 1) relates to the French version only

This amendment relates to the French version only. It corrects a translation error in the French version and thus relates to EPFL. EPFL has corrected this error with retroactive effect for the last five years and the employees affected have been informed.

Integration measures (Article 47a paragraph 2)

Article 47a now includes a commitment by the employer not only to support the reintegration into the workplace of employees who are ill or have suffered an accident, but (pursuant to paragraph 2) also to examine whether the employment relationship can be continued with a reduced number of hours or in a different job which is appropriate to the employee’s remaining working capacity.

Holiday entitlement for young people (Article 51 paragraph 3)

The holiday entitlement for young people has been clarified to reflect the provisions of FPersO: The entitlement to six weeks’ holiday also exists in the year in which the employee reaches their 20th birthday.

Paid leave/number of days caring for others (Article 52 paragraph 2 letter d)

Paid leave is granted not only, as before, for caring for sick persons in the employee’s own household, but has also been extended to include providing initial care and making arrangements for the continuing care of the employee’s own parents, if no other type of assistance is available. The paid leave covers the time required, up to a maximum of three days per event.

Protecting the interests of the Confederation, the ETH Board, both ETHs and the Research Institutes (new Article 53a)

Article 20 FPL requires employees to protect the legitimate interests of the Confederation and of their employer. The employees of the ETH Domain therefore have a twofold duty of loyalty, i.e. towards the Confederation and towards the respective employer. This twofold duty of loyalty

means that according to the law, employees subject to the FPL have a duty not only as employees but also as citizens. Many employees in the ETH Domain work here for a limited period only, are not Swiss citizens and have little knowledge of conditions in Switzerland. The duty of loyalty is therefore explained in detail in ETH PO (paragraph 1).

Close personal relationships between employees may affect the working environment. In order to prevent concentrations of power and double obligations, employees who are married, cohabiting or closely related should, if possible, be employed in such a way as to avoid a situation where they work directly together or one directly manages the other. Those who are related in any of the above ways must inform their superior (paragraph 2).

Recusal (new Article 53b)

The rules on recusal are an obligation arising from the employment relationship. The rules correspond to those set forth in the APA⁵.

Employees must recuse themselves (stand aside) if they could be biased in a particular matter owing to a personal interest, or for other reasons (paragraph 1).

Paragraph 2 lists the grounds for bias and differentiates between the following:

- a. those relating to a natural person or legal entity;
- b. those of a financial nature, such as a financial stake in a legal entity that is participating in a transaction or decision-making process or is affected thereby; or
- c. the existence of a job offer from a natural person or legal entity that is participating in a transaction or decision-making process or is affected thereby.

Employees are required to declare any avoidable grounds for bias to their superior promptly. In cases of doubt, the latter decides whether recusal is necessary (paragraph 3).

Working time (Article 54 new paragraph 2^{bis} and paragraph 3)

In view of the technological options now available (mobility), work performed outside the workplace with the agreement of the competent body (teleworking) need not necessarily be performed at the employee's place of residence (previous Article 43 paragraph 3). The concept has therefore been given a broader definition and moved to Article 54 (new paragraph 2^{bis}). The previous Article 43 paragraph 3 has been abrogated.

The rules on what counts as working time during business trips have been clarified. As before, a distinction is made between business trips in Switzerland and those undertaken abroad: Traveling time in Switzerland counts as working time, but for business trips abroad, only the working hours agreed in the employment contract are counted as working time. The disincentive to make trips abroad is intentional. In view of the communication technologies now available (e.g. Skype, Zoom) and in order to protect the environment, employees are encouraged to avoid travelling abroad as far as possible.

Documenting time worked and absences (new Article 54a)

Paragraph 1 establishes a minimum rule for the entire ETH Domain: All employees are required to keep an accurate record of their absences, including holidays, leave, maternity, illness, accident, military service, civil protection service and civil defence service, and of any loyalty bonuses taken as paid leave.

⁵ Federal Act on Administrative Procedure (Administrative Procedure Act, APA) (SR 172.021)

Both ETHs, the Research Institutes and the ETH Board may each establish rules, in their own areas and in accordance with the applicable law, regarding the documentation of hours worked and absences, the details of working patterns, shift work and on-call duties, and carrying over, offsetting and making payments for holidays, leave, extra hours and overtime balances. If required they may introduce simplified recording of hours worked as per Article 73b of Ordinance 1 to the Employment Act⁶ in consultation with employee representatives.

Extra hours and overtime (Article 55 paragraphs 1, 3–6)

This Article is being amended again before the next revision of ETH PO.

In consultation with the responsible body, SECO, the current rules on extra hours are being retained as a transitional solution and regarding overtime, reference is being made to the Employment Act in a new paragraph 4^{bis}.

Secondary activities (Article 56)

The Article on secondary activities has been completely revised. The new rules are more precise and are based on Article 91 FPersO and other federal regulations. The obligation to inform the superior is intended to ensure that the employer is aware of a secondary activity in good time and can issue consent and impose conditions if necessary.

Paid activities: Employees are required to inform their superior about all public offices undertaken and all paid activities exercised outside their employment relationship (particularly external teaching obligations, consultancy work, directorships and other services) (paragraph 1).

Unpaid activities must be reported if conflicts of interest cannot be excluded or if the activities could harm the employer's reputation. In cases of doubt, a secondary activity should be reported (paragraph 2).

Offices and activities within the meaning of paragraphs 1 and 2 **require permission** if:

- a. they could negatively affect the employee's performance, particularly if the total time required in order to carry out both the main job and the secondary activity exceeds the hours worked during full-time employment by more than 10 percent;
- b. the type of activity risks creating a conflict of interests; or
- c. the employee intends to use the workplace infrastructure.

If **conflicts of interest** cannot be excluded in individual cases, permission is either denied or is granted with special conditions and requirements attached. Conflicts of interest may arise in connection with the following activities and tasks, for example:

- a. when advising or representing third parties in matters that form part of the tasks of the employment relationship;
- b. in connection with contracts that are being executed for the employer, or that are due to be placed by the latter in the near future.

⁶ Ordinance 1 to the Employment Act (EmpA 1; SR 822.111)

The **notification or the application for permission must be submitted to the superior in due time before the commencement of the activity**. They must state:

- a. the nature and duration of the secondary activity;
- b. the amount of time it is expected to take;
- c. the nature and extent of the use of infrastructure;
- d. possible conflicts of interest.

Acceptance of advantages (Article 56b paragraphs 1 and 2)

The rules on the treatment of gifts have been clarified to make clear that gifts and advantages may not be accepted if they go beyond modest, customary social gestures or could create a sense of obligation. The Confederation has set an upper value of CHF 200 for the acceptance of gifts. This maximum amount is also specified in ETH PO.

In cases of doubt, the superior decides whether gifts may be accepted.

Minimum salaries for employees on lump-sum salaries

(new Appendix 3 to Article 24 paragraph 3)

In the new Appendix 3, the ETH Board specifies the minimum salaries for employees on lump-sum salaries; these shall apply in cases where no guidelines are provided by the funding bodies (e.g. the Swiss National Science Foundation).

In general, however, the guidelines of the funding bodies shall apply. These also make provision for pay progression.

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