



## **Changes to personnel law with effect from 1 January 2022**

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The partial revision of the Personnel Ordinance for the ETH Domain (ETH PO)<sup>1</sup> that entered into force on 1 October 2020 was approved by the Federal Council, subject to certain conditions. It was expected that the provisions of the ETH PO will – where appropriate and possible – be harmonised with Federal Administration rules, and that the ETH Board will

- abrogate Article 39a (Occupational disability) and, in Article 45 paragraph 2, discontinue the loyalty premium due after 5 years as per the federal rules; and
- restrict the eligible recipients of a bridging pension to harmonise with the Federal Administration and limit the employer's contribution to financing the bridging pension as described in Article 42a (Annex 5), to bring it into line with the federal rules.

The ETH Board was instructed to carry out the work needed in order to clarify the outstanding issues in a timely manner. While the revised law was being drafted, further matters requiring review were added.

This partial revision of the law underwent consultation processes both internally and with the federal offices.

The Federal Council approved the changes to the Personnel Ordinance for the ETH Domain (ETH PO) on 3 December 2021.

Some of these changes result in further adjustments also being needed, particularly in relation to the social plan as already initiated.

### **The key changes and clarifications** (in the same order as the articles)

#### **Employment beyond the normal retirement age** (new Article 20c)

In order to take account of demographics and the trend on the employment market, employees may now (with the employer's agreement, and in line with Art. 35 of the Framework Ordinance for the Swiss Federal Personnel Law, FPO) continue to be employed beyond the normal retirement age until not later than the date on which the employee reaches the age of 70 (paras. 1 and 3). Employees have no entitlement to continue in employment beyond the normal retirement age.

A provision is also being introduced to give female employees the right to continue working up until their 65th birthday if they so wish (para. 2). The request must be submitted no later than six months before the 64th birthday.

#### **Early retirement in consequence of restructurings** (Article 22 ff.)

In line with the Federal Administration rules, a minimum age of 60 instead of the present 58 shall, in accordance with a social compensation plan, also apply in the case of early

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<sup>1</sup> 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)

retirement due to restructurings. The current article is being split into three articles, with Art. 22 and Art. 22a dealing with early retirement in accordance with a social plan and Art. 22b setting out the conditions under which the employer may, in individual cases and by mutual agreement, terminate an employment relationship with an employee aged at least 60. The wording of these articles has been adjusted to conform with that used in the FPO.

### **Benefits in the case of early retirement due to restructurings**

(Article 22a)

Employees aged 60–62 at the time of their early retirement no longer receive a retirement pension equal to a disability pension; instead, they receive the retirement pension to which they would be entitled if they retired on reaching the age of 63, together with a bridging pension fully financed by the employer in accordance with Article 64 (para. 1) of the ETH Pension Plan Regulations for employees in the ETH Domain dated 3 December 2007 (VR-ETH 1).

From the age of 63 the retirement pension as per the pension regulations is paid, together with a bridging pension fully financed by the employer in accordance with Article 64 VR-ETH 1 (para. 2).

The competent body responsible for the employment relationship may for justifiable reasons also provide the following benefits in addition to partial or full early retirement (para. 3):

- a. a maximum contribution of half the cost of continuing in the pension scheme in accordance with Art. 33a (letter a) of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision (BVG);
- b. a contribution to the purchase made in order to increase the retirement pension in accordance with Article 33 (letter b) VR-ETH 1;
- c. full or partial assumption of the contributions payable on the pension income in accordance with Article 28 of the Ordinance of 31 October 1947 on old age and survivors' insurance, but for no longer than the date on which the employee reaches the age limit specified in Article 21 (letter c) of the Federal Law on old age and survivors' insurance (AHVG).

A justifiable reason may exist if the person concerned receives only a small retirement pension as per the pension regulations after reaching the age of 63 (e.g. because they joined the pension scheme late) and had therefore relied on working until the statutory AHV age.

### **Benefits if the employment relationship is terminated by mutual agreement**

(new Article 22b)

In line with Federal Administration rules, the purpose of this new article is to provide, in addition to early retirement in accordance with Article 22 (social plan), the opportunity for the employer to work towards terminating the employment relationship by mutual agreement, subject to strict conditions, if there are operational or human resources policy reasons for termination as referred to in paragraph 2, but no sufficient subjective grounds for terminating the employment. In such a case, a higher contribution to the financing of the bridging pension than that specified in Appendix 5 may be made in respect of employees aged at least 60. This serves the interests of the employee and should make it easier to reach an agreement. The application of this provision is a management responsibility; the termination of the employment relationship by mutual agreement may be pursued only with the consent of the employer, the participating ETH Domain institution and the employee and provided all the following conditions are met:

- The employee is at least 60 years of age,

- there are no grounds for termination of employment under Article 10 paragraph 3 or paragraph 4 of the Swiss Federal Personnel Law (FPL) (exception: there are grounds for termination under Art. 10 para. 3 letter e FPL [termination for serious economic or operational reasons on the employer's side]),
- the employee is not already seeking voluntary early retirement, and
- the employee is able to work.

### **Adjustments to the salary scale (Article 28)**

To date, adjustments to the salary tables (Appendix 2) in the ETH PO as a result of salary awards decided by the ETH Board required an amendment of the ordinance, which had to be done retrospectively. Since this procedure is very time-consuming, it is being simplified. It is now no longer necessary to amend the ordinance unless the ETH Board's awards are higher than those made by the Federal Administration. For ETH Domain employees, the only change is that the most recent scales in the salary tables, like the scales for the benefits paid in addition to family allowance (Art. 41a), are no longer published in the ETH PO but are instead published separately by the ETH Board.

### **Adjustments for inflation (new Article 28a)**

New rules have also been brought in to define the salary elements and allowances to which the ETH Board applies the inflation adjustment and the increase in real earnings, and to clarify which adjustments to allowances are the responsibility of the institutions (e.g. Sunday and night work, on-call duty). The allowances are adjusted by the institutions if the inflation recorded since the last adjustment justifies this.

### **Paternity leave, registered partner's leave and adoption leave (new Article 37a)**

In line with the Federal Administration, which is also increasing paternity leave to 20 days as of 1 January 2022, registered partners are similarly entitled to paid leave of 20 working days on full salary on the birth of one or more children of the other partner (para. 1 letter b).

On the adoption of one or more children in accordance with Article 37 paragraph 4, there is an entitlement to paid paternity leave of 20 working days (para. 1 letter c).

According to that article, ten days of the leave must be taken in the first six months after the birth or adoption, and the remaining ten days within twelve months. The leave may be taken one day at a time or in blocks (para. 2).

Since paternity leave is partly financed by the Loss of Earnings Compensation Scheme (EO), the 10 days of statutory paternity leave must always be taken and documented within the statutory six-month deadline. The remaining (non-mandatory) 10 days may be taken in the subsequent six months if desired.

### **Leave to care for a child with severely impaired health (new Article 37b)**

On 1 July 2021 a new rule providing for a maximum of 14 weeks' paid leave to care for a child with severely impaired health came into force under the Loss of Earnings Compensation Act (EOG)<sup>2</sup> (Art. 16n ff. new EOG).

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<sup>2</sup> SR 834.1

As a result of EOG, a new Art. 329i was also added to the Swiss Code of Obligations (OR)<sup>3</sup> requiring private employers to meet any difference in salary not covered by EOG up to a maximum of 80 percent of the full salary or CHF 196 per day.

In the same way as for other types of absence from work that trigger an entitlement to loss of earnings compensation (maternity and paternity leave, military service, civil defence service, civil protection service, or managing youth and sport programmes), employees in the ETH Domain, like those of the Federal Administration, receive their full salary and social allowances throughout the period of care leave. In return, the statutory loss of earnings compensation is paid to the relevant body (respective institution of the ETH Domain) (para. 1).

Paragraph 2 defines the criteria for a child with severely impaired health. These are identical with those set forth in Article 16p of the new EOG.

Paragraph 3 defines the deadline by which the care leave must be taken, based on Article 16q of the new EOG.

Only one entitlement exists per case of illness or accident. If a child falls ill with a different serious medical condition, a new entitlement arises. Illnesses connected with the primary illness, e.g. because the immune system is impaired, do not count as new illnesses or new events. A relapse that occurs after a lengthy period without symptoms counts as a new event. A lengthy period is defined as 12 months (para. 4), in the same way as for continued salary payments pursuant to Article 36c.

Article 16g EOG states that claiming maternity compensation precludes the receipt of daily allowances for carer's compensation under Articles 16n-16s EOG for the same child. Since Article 37b ETH PO is an implementing provision for Article 16n ff. EOG in respect of the personnel of the ETH Domain, this principle also applies to care leave under ETH PO. If a child is born with a severe illness, the mother is therefore not entitled to care leave partly financed by loss of earnings compensation, although she is entitled to maternity leave in such a case.

### **Occupational disability (Article 39a)**

This provision is being abrogated in line with the Federal Council's expectations. Its removal means that the Pension Plan Regulations for employees in the ETH Domain (VR-ETH 1) need to be revised.

Current occupational disability pensions will continue to be paid, as they are not affected by this change.

### **Entitlement to family allowance (Article 41)**

The Swiss Federal Legislation on family allowances dated 24 March 2006<sup>4</sup> (FamZG) was amended on 1 August 2020 (the changes included lowering the age limit for the receipt of education allowances).

According to the current rules, changes in the FamZG must be re-enacted in the ETH PO and the ETH Professorial Ordinance by means of a partial revision of both ordinances. This was not always done promptly in the past, thus leading to uncertainty about how to handle such changes in the ETH Domain. In order to prevent any discrepancies and create more clarity, Article 41 now makes direct reference to the FamZG.

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<sup>3</sup> SR 220

<sup>4</sup> SR 836.2

This administrative simplification means that the ETH PO will not have to undergo partial revision every time the FamZG is amended in future. The procedures for family allowances are set forth in the FamZG.

### **Benefits paid in addition to family allowances (Article 41a)**

The article on benefits paid in addition to family allowances is being clarified and adjusted to the applicable legislation (FamZG). The benefits remain the same.

Benefits paid in addition to family allowances will continue to be adjusted for inflation. In future, however, a partial revision of the ETH PO will not be necessary when additional benefits change – as is the case with Article 28 (Adjustments for inflation). Instead benefit levels will, like the adjusted salary table, be published by the ETH Board rather than in the ETH PO (similar procedure to that followed by the Federal Administration).

### **Bridging pensions and Appendix 5 (Article 42a)**

In order to fulfil the owner's instructions as well as the ETH Board's expectations, this section has been reworded on the basis of Article 88f FPO; it takes account of the specific circumstances of the ETH Domain as far as possible and brings the proportion of persons eligible for a bridging pension with a financial contribution from the employer into line with the proportion of federal personnel who are similarly eligible.

The group of people eligible for a bridging pension is to be restricted as follows:

- Minimum age to rise from 60 to 62.
- The employer only contributes to financing bridging pensions for employees who carry out particularly demanding work within the meaning of the criteria defined in Article 42a paragraph 3. The ETH Board, with the agreement of the two Federal Institutes and the research institutions, decides which functions are to be rated as "particularly demanding" and thus qualify for a contribution by the employer to the financing of the bridging pension (paragraph 4). With a view to the entry into force of this revised ordinance, the ETH Board has invited the Federal Institutes and the research institutions to submit a proposal to it regarding such functions, while ensuring that their right to participate is preserved.

Furthermore, Appendix 5 (Employer's contribution to the financing of the Bridging Pension) has been adapted. The same rates and graduated scales are used as those applicable to employees of the Federal Administration. The sole exception concerns function levels 1-3: for these employees, the employer's contribution to the financing of the bridging pension is being reduced not by 25%, as set forth in Appendix 1 FPO, but by 10% in each case. This concerns employees on the lowest salaries who are subject to particular stresses.

### **Article 45 paragraph 2 Loyalty premium**

The first loyalty premium, consisting of one week's paid leave after the fifth year of employment, is being discontinued as required by the Federal Council. This will be done by abrogating Article 45 paragraph 2.

### **Paternity leave (Article 52 paragraph 2 letter c)**

This provision is being abrogated: a more detailed set of rules is required for paternity leave, given that its financing has been changed, its duration lengthened, and it has been extended to same-sex couples; it is now included in the newly created Article 37a in the "Social benefits" section of the ETH PO, immediately after the rules on maternity leave. The previous

article 52 paragraph 2 letter c in the “Holidays and time off” section is therefore being abrogated.

**Working time** (Article 54 paragraph 2<sup>bis</sup>)

The outbreak of the Covid-19 pandemic has greatly accelerated the flexibilisation of work. A large proportion of the employees in the ETH Domain worked from home during lockdown. The experience made by employers and employees alike was basically positive.

The provision that came into force on 1 October 2020 enables home working in the ETH Domain and has now been specified in greater detail in the present partial revision. The institutions of the ETH Domain are empowered to regulate flexible forms of working for their staff and, where appropriate, may decide on the place of work in consultation with their employees.

**Extra hours and overtime** (Article 55 paragraphs 4<sup>bis</sup> and 7)

When the work on the last partial revision of the ETH PO was being concluded, it was noted that Article 55 is incompatible with the Employment Act (EmpA) in respect of overtime. For the time being, the provision on offsetting extra hours and overtime by equivalent time off is therefore being restricted to extra hours only. Rules on compensation for overtime that comply with EmpA are now to be introduced in the present revision; these require the employee’s agreement.

At the same time a new paragraph 7 is being added, stating that extra hours and overtime worked without the direction or knowledge of the employer must be claimed for and documented within six months. The provision corresponds to Article 65 paragraph 3<sup>bis</sup> FPO.

**Transitional provision on the amendment dated 22 September 2021** (Article 65b)

Article 65b specifies the persons who can still receive bridging pensions in accordance with the current provisions of Article 42a.

Employees who reach the age of 59 before 1 January 2022 and take early retirement by 1 January 2025 at the latest (first pension day) may claim the bridging pension under the previous rules.

**Appendix 5 (Article 42a)**

**Employer's contribution to the financing of the Bridging Pension**

The employer now no longer contributes to the financing of the bridging pensions of employees aged 60 or 61, but only those of employees aged 62 or more and only in specified cases.

Appendix 5 contains the new, reduced contribution rates for the employer. The contribution is graduated according to age and function level.

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