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DROIT DU TRAVAIL

Mener une activité accessoire en parallèle de son activité salariée est possible en droit suisse, mais à quoi faut-il être attentif ?



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Is it possible to have a secondary activity in parallel with your salaried activity and what do you have to keep in mind ?

Swiss law allows employees to hold several jobs at the same time, and in particular to pursue a secondary activity in parallel with their salaried activity. However, both employers and employees must pay particular attention to the following points.

A. General

Generally speaking, employees are free to pursue a paid activity in parallel with their employment. This activity may consist of a contract of employment or a self-employed activity, including when the working time exceeds 100%.

In principle, the employer's agreement is not required, unless expressly prohibited by law or contract.

The employee carrying out such an activity must respect certain obligations towards the employer, such as the duty of diligence and fidelity, the prohibition on competition and respect for working hours and rest periods.

B. Duty of diligence and fidelity

By virtue of his duty of diligence, the employee must carry out his activity as closely as possible to the employer's interests in accordance with the rules of good faith. The employee's duty of loyalty also requires him to faithfully safeguard the legitimate interests of the employer (art. 321a CO).

In particular, these obligations require the employee to provide quality work, without being exhausted or overburdened by parallel activities. In other words, any other jobs the employee may have must not compromise the performance of the employee's work and be detrimental to his or her performance.

The activities carried out by the employee must also remain compatible with each other and not compete with the employer.

C. Working hours and rest periods

If the employee is subject to the Labour Law (LTr, RS 822.11), his employer or, where applicable, his employers, must respect and pay particular attention to the following aspects (art. 9 to 28 LTr):

- Maximum length of the working week / Overtime;
- Maximum daily working hours (14 hours during the day / 10 hours at night);
- Daily and weekly rest (45/50 hours);
- Half-day's weekly leave;
- Sunday work;
- Other specific provisions (in particular Ordinance 2 relating to the Labour Act; any applicable collective labour agreements).

Responsibility for compliance with the provisions of the Labour Act lies with the employer, who must therefore ensure that the above-mentioned maxima are not exceeded.

D. Some exceptions

Certain legal or contractual provisions restrict an employee's ability to engage in an ancillary activity.

This applies in particular to Confederation employees, who are required to disclose any ancillary activity pursuant to Art. 91 of the Ordinance on Confederation Employees (OPers, RS 172.220.111.3).

The Federal Supreme Court recently had occasion to rule on the possibility for a member of the Swiss Army to engage in an ancillary activity and concluded that the employee's duty of care and loyalty had been breached by his failure to declare his ancillary activity, even though it was significant and carried out over a long period (TF 1C_595/2023 of 26 March 2024).

An employee in a senior management position may also be prevented by the employer from pursuing a parallel remunerated activity if this creates a degree of confusion with the public. This would be the case where a third party acting in good faith is unable to identify the capacity in which the employee is acting.

E. Conclusion

In other words, employees have the possibility of pursuing an activity that is ancillary to their employment, provided that this is not restricted by law, by a contractual provision or by the employee's function itself.

[Wilhelm Gilliéron Avocats SA](#) will be pleased to answer any questions you may have on this subject.

Source :

<https://www.wg-avocats.ch/en/actualites/is-it-possible-to-have-a-secondary-activity-in-parallel-with-your-salaried-activity-and-what-do-you-have-to-keep-in-mind/>