Dear clients and business friends,

The entry into force, on 1 January 2012, of the decree of the Federal Council expanding the scope of application of the collective bargaining agreement of the temporary employment sector (hereinafter the “CBA”) has resulted in some important changes.

For the first time, the Swiss government has expanded the scope of application of a collective bargaining agreement for the area of temporary employment. Thus, this CBA is mandatory for all Swiss companies of a certain size located in Switzerland and having a permit to engage in loan staff services. Per the entry into force of this CBA, the Federal Council has granted a special transition period of three months in order to allow affected companies to adjust to the newly applicable rules.

In this issue of Legal News, we shall review the scope of application as well as a number of the CBA’s provisions, before finally examining the sanctions it lays out for non-compliance.

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1. Scope of Application

1.1 In General

The Collective Bargaining Agreement for the temporary employment sector (hereinafter the «CBA») applies throughout the entirety of the Swiss territory and to all companies which meet the following three cumulative conditions:

- They hold a (federal and/or cantonal) permit to conduct loan staff services in compliance with the Act on Employment Agencies and Loan Staff Services;
- They are insured with SUVA under section 70C (in compliance with Art. 66 Accident Insurance Act); and
- They have at least CHF 1,200,000.– per annum in aggregate salaries of loan staff employees.

As a result, the scope of the said CBA generally tends to cover medium and large scale companies which hold a permit to engage in loan staff services.

1.2 Other collective bargaining agreement

The CBA applies to those companies that meet the requirements for its application even where another collective bargaining agreement applies to these companies. Nevertheless, if the other collective bargaining agreement is also an extended collective bargaining agreement or mentioned in Annex 1 to the CBA, the latter shall incorporate the provisions of the initial collective bargaining agreement with regard to salary terms, working hours, vacation, public holidays as well as, where applicable, any provisions governing «flexible» retirement.

2. CBA Provisions

In addition to improving conditions for employees, namely with regard to the length of the trial period, military service, night-work, sickness, remuneration and occupational social security, the CBA shall henceforth formally govern the following issues:

2.1 Wages

The CBA imposes a minimum wage for all employees covered by it. Moreover, the minimum hourly wage lies between CHF 16.46 and CHF 23.59 per hour based on a person’s vocational training.

2.2 Vacation

Pursuant to the CBA, employees who are less than 20 years old or more than 50 years old have the right to 25 days of vacation per year, whereas other employees have 20 days of vacation per year.

2.3 Daily allowance in the case of sickness

The CBA contains provisions applicable in the context of the right to receive a daily allowance in the event of sickness. Thus, the provisions of the CBA cover payment of an employee’s salary by a collective insurance scheme (80% of the employee’s last salary as paid on an hourly basis), the issue of premiums (extent to which
the employer covers this, the amount covered, deferred payment, etc.) and the minimum insurance terms.

2.4 Short absences
The issue of how much time to allow employees for short absences (marriage, deaths, births, moving house etc.) is formally governed by the CBA. For example, the CBA provides that employees have the right (following completion of the trial period) to three days off in the event of a marriage or death in the family (Art. 15 CBA).

2.5 Working hours
The maximum number of weekly working hours is set at 42 hours and any hours between the 43rd and the 45th hour (overtime hours) are either remunerated without extra pay or compensated with time off in lieu. On the other hand, pursuant to the CBA and subject to any provisions of the Employment Act, the 10th to the 12th hours of daily work and the 46th to the 54th hours of work per week at most shall be compensated with extra pay at the rate of 25% on weekdays and 50% on Sundays.

3. Sanctions
3.1 Principle
3.1.1 Minor breaches
The joint committee (SPKA/RPKA) shall decide on invoicing verification costs in the case of minor or negligent breaches of the CBA. To this effect, the fact shall be taken into account whether any irregularities noted were corrected and whether the obligations of the company in question were followed up on.

3.1.2 Major breaches
In the event of a major breach by the implementing bodies of the sector, the joint committee may, in addition to the costs of proceedings and of verification, impose penalties up to the amount of CHF 50,000.-.

3.1.3 Transition Period
The authorities decided nevertheless to grant the affected companies a transition period of 3 months from the entry into force of the CBA, granted so that the companies would be in a position to take the necessary steps in order to comply with the provisions set forth in the CBA.

4. Entry into force
The CBA entered into force on 1 January 2012 and shall remain in force until 31 December 2014.

5. Conclusion
This extended CBA imposes far-reaching changes to the working conditions of loan staff employees (temporary workers) by companies that have a permit to engage in loan staff services.

The working conditions relating namely to the minimum wage, vacation, working hours and daily allowances are henceforth explicitly and formally governed by the CBA which no longer leaves a very broad margin for workers and employers to determine their own working conditions.

Finally, it is worth noting that the affected employers therefore have the obligation to take all necessary measures in order to comply with and observe all the provisions set forth in the CBA.