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# Short Summary of the Labor Agreement in the Gastronomy Sector (L-GAV) 2017 (Version 2019)

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## Introduction

This is only a short summary of your rights in the gastronomy and should only be used as a small orientation. Though we are quite sure about the correctness of this summary, we cannot guarantee its correctness.

If you face a labor struggle, its best to get in touch with a labor union like the FAU Berne. If you fight on your own, it's quite dangerous to do so: Your bosses have a lot of money and power to fight and isolate you. Its best to have a group in your back, which can support you financially, emotionally and advisory.

**Together we are strong!**

Free Workers Union Berne

## Minimum Wage in NORMAL Businesses with 42h/Week

The stated monthly wages below are without additions for vacations and holidays<sup>1</sup> and are the gross wage (also without social taxes like unemployed tax). **Full-time students and minors below 18 are excluded from the minimum wage.**

### Level 1a (non-Skilled Workers)

**Monthly wage = 3470.-** (with the introductory reduction<sup>2</sup> 3192,40)

**Hourly wage= 19.07** basic tariff (17,57 with introductory reduction)

with vacations and holidays payment **21.53** (19,81) in total.

### Level IIIa (skilled<sup>3</sup>)

**Monthly Wage = 4195.-** (Introductory reduction 3859,40. only applicable if you come directly from your (swiss) apprenticeship or its your first time working in Switzerland<sup>4</sup>)

**Hourly wage = basic tariff 23,05** (21,21)

with vacations and holidays payment 26,02 (23,95)

## Minimum wage in seasonal Companies 43.5h/week

The stated Monthly Wages below are without additions for Vacations and Holidays<sup>5</sup> and are gross wage (before social taxes like AHV). **Full-time Students and Minors below 18 are excluded from the Minimum Wage.**

### Level 1a (non-Skilled Workers)

**Monthly Wage = 3470.-** (3192,40 with the introductory Reduction<sup>6</sup>)

- 1 Together, they make 12,92% if employed on Hourly Wage Contract. In this Model, you additionally get 8.33% on the Basic Tarif and Surcharges as Compensation for the 13<sup>th</sup> Monthly Wage.
- 2 The introductory period is set to 12 months max, if the Worker has not worked at least 4 Months in another Shop (Then its 3 months max. The 8% wage reduction has to be written explicitly in the contract, otherwise it is not binding.
- 3 Persons with Eidgenössisches Fähigkeitszeugnis EFZ or recognized equivalent, for example cooks.
- 4 If you work in the Swiss gastronomy regularly, this wage reduction can only be applied at your very first Job in Switzerland.
- 5 Together, they make 12,92% if employed on Hourly Wage Contract. In this Model, you additionally get 8.33% on the Basic Tarif and Surcharges as Compensation for the 13<sup>th</sup> Monthly Wage.
- 6 The introductory period is set to 12 months max, if the Worker has not worked at least 4 Months in another Shop (Then its 3 months max. The 8% wage reduction has to be written explicitly in the contract, otherwise it is not

**Hourly wage= 18.36** basic tariff (16,89 with introductory reduction) with vacations and holidays payment **20.74** (19.07) total

Level IIIa (skilled<sup>7</sup>)

**Monthly Wage = 4195.-** (Introductory reduction 3859,40. only applicable if you come directly from your swiss apprenticeship or its your first time in Switzerland<sup>8</sup>)

**Hourly wage = basic tariff 22,20** (20,42)

with vacations and holidays payment **25,07** (23,06)

## Further Remarks on wages

Participation in Sales:

Even with participation in sales, the minimum wage is mandatory. Your final income must not be smaller than your (proportion of the) minimum wage. Only the current month counts, Compensation with “good” months is not allowed.

Tips:

voluntary payments by the clients are yours or the team's, they cannot be included in any payments like pensions (Article 9 L-GAV). You as a team are entitled to the whole tips.

Other Minimum Wages

The minimum wages above are not all existing ones. Due to clarity, we did not include the minimum wages for level Ib, II, IIIb and IV. Those are listed on the official site of the L-GAV (German, French, Italian) under [www.l-gav.ch](http://www.l-gav.ch). Even better summaries can be found on the sites of the Bosses like Gastrosuisse.

## 13<sup>th</sup> Month Wage

Generally speaking, you are entitled to a 13<sup>th</sup> month wage, or to a proportion respectively if you dont work 100% or not the whole year. If your contract is on hourly basis, your

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binding.

7 Persons with Eidgenössisches Fähigkeitszeugnis EFZ or recognized equivalent, for example cooks.

8 If you work in the Swiss gastronomy regularly, this wage reduction can only be applied your very first time.

employer has to pay you 8.33% on your gross wage. Only exception: you get fired in your probation (see below). In this case, you are not entitled to a 13<sup>th</sup> month wage.

## Accidents and Illness

**Important: If you work less than 8 hours a week at the same company, you are not insured against non-work-accidents. That means: if you have an accident outside of your working place, you have to pay yourself. In that case, you have to additionally procure a private insurance against accidents.**

culpable negligence: if your accident or illness is based on your culpable negligence (e.g. driving drunk), your boss doesn't have to pay anything. In all other cases, your boss or his insurance is obliged to pay you.

In Case of Illness: You get 88% pre-tax of your average wage for 60<sup>9</sup> days max per calendar year. After that, you get 80% free of social taxes. These percentages should concern your boss more than you, because you always get about 80% of your wage in case of illness.

In Case of an Accident: Your Boss pays you 88% of the average wage for the first 2 days. After that, you get again 80%. Additionally, all costs for the treatment are paid by the insurer. If you are obliged to support your spouse, or children (also stepchild and foster child) you get 100% for the duration stated in the Bernese scale below.

### Bernese Scale (Berner Skala)

1 <sup>st</sup> year	
(Contracts above 3 months of duration)	→ 3 weeks
2 <sup>nd</sup> year	→ 1 month
3 <sup>rd</sup> + 4 <sup>th</sup> year	→ 2 months
5 <sup>th</sup> - 9 <sup>th</sup> year	→ 3 months
10 <sup>th</sup> - 14 <sup>th</sup> year	→ 4 months
15 <sup>th</sup> - 19 <sup>th</sup> year	→ 5 months
20 <sup>th</sup> - 25 <sup>th</sup> year	→ 6 months

**Medical Report**: Generally, after the 4<sup>th</sup> day of illness you are obliged to send your superiors a medical report in case of illness. Your Company may lower the amount of time down to the 1<sup>st</sup> day. Without a medical report made by a doctor, your employer can refuse the payments or reclaim already made ones.

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9 60 Days are normal, but depend on the contract between your company and the insurer, so it may vary.

**Pregnancy:** From the point of time, when you are seen “ill” due to pregnancy, you get paid as you were ill (see above). After the Birth of your child you get 80% of your average wage for 98 days. Social taxes get abstracted from that amount. After returning to work, you have the right to nurse your child at work and get paid for it (only between 30-90 minutes per day) or to pump milk (see also ARG V1 Art. 60)

If a close relative of yours needs emergent care, this care counts as hindrance without fault of your own. For example, if your child gets heavily ill, your company has to compensate you.

## **Working Plan, Control of Work and Time Sheets**

Your shifts have to be opened to you 2 weeks ahead of time. Your consent is needed to subsequent changes, except for “urgent” cases. Your wishes for free days may or may not be considered. Highest Interest in Swiss laws is the “Interest of the Company”, not yours.

You can demand information about your current amount of working time and your amount of holidays and vacation left anytime.

## **Vacations**

For a full year of work, you're entitled to 5 weeks of paid vacations (or 2,92 days/month). If your employer forces you to make vacations, he has to announce them 1 month ahead of time. Your boss can force you in the last 2 months of your contract for example in temporary contracts or your termination, though. After you get fired immediately, you get 1/30 of your gross wage on unused vacation days. It is forbidden to compensate vacations during an ongoing contract, yet this law only works for wages on a monthly basis<sup>10</sup>. On an hourly basis you get 10.65% on the basic tariff, this has to be listed separately on your payroll. You are entitled to two weeks vacations in a piece per year.

## **Working Hours**

Mealtime: Does not count as working hours, has to be at least 30 minutes. Wenn you are on standby at this time, it counts as working hours, to a reduced tariff though.

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<sup>10</sup> OR 329d Abs. 2.

Overtime: All working hours exceeding the contractual amount (e.g. 42h/43,5h/45h). Those need to be compensated “within reasonable time” with free time or money. The exchange rate is 100% as long as there is timekeeping according to the L-GAV.

Otherwise the rate is 125% e.g. when

- Overtime isn't communicated at the end of month
- Overtime gets compensated after the last payroll

The maximum amount of overtime is 200 hours, all hours exceeding that have to be paid mandatory.

Overtime work: is defined as an amount of work exceeding 50 hours a week. All hours above that have to be compensated at a rate of 125%. Compensation with free time are only allowed with the explicit approval of the Worker.

Rest Days: You are entitled to two rest days a week, best to be in one piece. Otherwise you have to be granted one full day and two half days (Either Until 12:00 or after 14:00 o'clock). Unused rest days have to be compensated within 4 weeks. Rest days cannot be monetarily compensated. People with families are entitled to 12 free Sundays a year.

Standby: is defined by labor law as standing by for an eventual work. It is a rather common thing for waiters. Especially right before lunch or dinner time, where it is unclear, how many workers are needed. A very important law is ARG VO1 Article 14+15: If you are on **standby right at the company, you have to be fully paid**. If you can wait outside of the company, you only have to be paid for your effective working hours and your way to work, if you have to work.

## **Paid non-working Days**

Only have to be paid, if it concerns working days.

- Marriage or registration of partnership: 3 days
- Marriage of parents, siblings and children: 1 day
- paid paternity leave: 5 days
- fatality of spouse, registered partner, child, parents, step-parents, grandparents or siblings. From the day of death to funeral: 1-3 days.
- Removal inside of close region: 1 day (e.g. from city to suburb)
- Removal within wider range: 1,5-2 days.
- After termination: up to 2 days to look for a new job.

# Clothing

As work clothes count:

- clothes with the company's logo
- clothes for cooking
- Vests and aprons

Pants or shirts without a logo are not considered work clothes, even though you are obliged to wear a certain color or style.

The company is no obliged to clean, wash or iron your work clothes. If it doesn't offer this service, it has to compensate you on a monthly basis (and based on a 100% position, otherwise proportionately):

clothes for cooking and vests: 50 CHF/month

waiters aprons: 20 CHF/month

# Sexual Harassment

The Swiss Equality Act says:

“Discriminating is all harassing action of a sexual nature or another action based on gender, which impairs the dignity of women and men at the workplace. These especially include threats, promises of benefits, the enactment of pressure with the goal to obtain concessions of sexual nature”.

There's a whole lot of forms of sexual harassment, which unfortunately aren't a rarity in the gastronomy. They may be exercised by clients, colleagues or even your bosses.

Your Boss is obliged to guarantee your person's integrity. Further, your superior has to do all things possible, to prevent sexual harassment or to prevent further drawbacks for an affected person<sup>11</sup>.

Internal harassment: Speak to the culprit directly (best with at least another person, then you have a witness and maybe more important, a person who can support you). Make clear to the culprit, where your boundaries are, how those have been crossed and that this behavior has to stop immediately. Generally it is good to have an exchange about sexism in your company with colleagues. If you are affected by sexist behavior, you most likely

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11 Based on the obligations law Obligationenrecht OR 328

aren't the only one. If a confrontation doesn't help, send a complaint to your boss, best in written form (e.g. mail or letter). If it comes to a charge, it's best to have proof. If you could get sacked with "no reason", and it's obvious it's due to your complaint, your dismissal counts as abusive dismissal.

If your superiors don't react to your complaint or are even harassers themselves, you can turn to the cantonal arbitration board. The lawsuit itself is free of cost, but if you lose the case, you may have to pay your own and your superior's lawyer's expenses.

You can also go to court directly. But there you have to plausibly prove, that sexual harassment happened (that's why you have to gather proof in written form or in form of a witness). If you succeed, your superiors have to prove, that they have done everything possible to end or prevent further harassment.

Further informations: [www.sexuellebelaestigung.ch](http://www.sexuellebelaestigung.ch) (you can change the language to French, Italian and English).

## Termination

Terminations can generally spoken – inside the periods of notice – also be in oral form. It is yet advised to make a termination in form of a registered letter.

Periods of notice are (if not otherwise listed in your contract)

- probation: 7 days (standard), 3 days (L-GAV)
- 1<sup>st</sup>- 5<sup>th</sup> year: 1 month
- after the 6<sup>th</sup> year: 2 months

The termination needs to be received at the last of month. If you exceed the period of notice, it may be that your superiors just send you a termination with a shorter period (e.g. you wanna leave in 6 months, they terminate you in 2 months).

Temporary contracts cannot be terminated, if not explicitly written down in the contract.

Terminations don't need to be justified, but you can demand a justification. In certain cases, there exist blocking periods, where you cannot be terminated, but only after you passed the probation:

- Illness and accident (not due to your own fault)

1<sup>st</sup> year in the company: 30 days

2<sup>nd</sup> - 3<sup>rd</sup> year: 90 days

after the 6<sup>th</sup> year: 180 days

- during your whole pregnancy and 16 weeks after the birth

if you get fired during those blocking periods, the termination renders void and has to be repeated. If you get fired before, the termination gets extended according to the blocking period. (e.g. if you get fired in your first year and have an accident 2 weeks after the termination, the termination gets postponed for at most 30 days)

### **Abusive Terminations**

Basically a termination is abusive if the reason is one of the following

- age
- gender
- sexual orientation
- religion
- political beliefs (sometimes not prohibited)

**not affected by this law** are so-called “tendency companies”. They stand for certain beliefs and can terminate someone due to the reasons above. e.g. Greenpeace or the Salvation Army.

Termination due to constitutional rights are abusive as well. So, if your superior sacks you for participating a demonstration or due to a membership in a union, this would be a case of abusive termination, as long as its not affecting your working obligations.

In reality, there are also terminations out of revenge: e.g. when you criticize mobbing or sexual harassment. The problem is, that it’s hard to prove, that this was the motivation behind it. You have to prove, that the reason behind your termination was abusive. If you complain or have another form of labor struggle with your boss, always make sure you have written evidence of it.

But even though you might win the case and your boss is charged with abusive termination, this doesn’t mean you can continue working there. **It only means you get a compensation.**