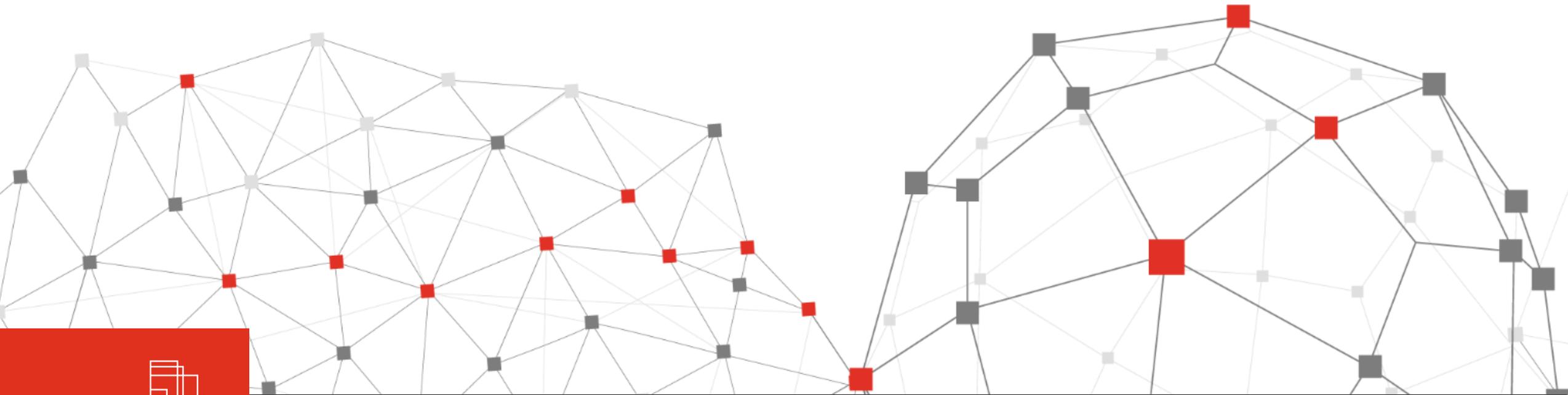


COVID-19

Deep-dive for the HR community:
Legal employment advice



April 2020

Topics we will cover today

Introduction:

Jose Marques

Partner People and Organisation, PwC Switzerland

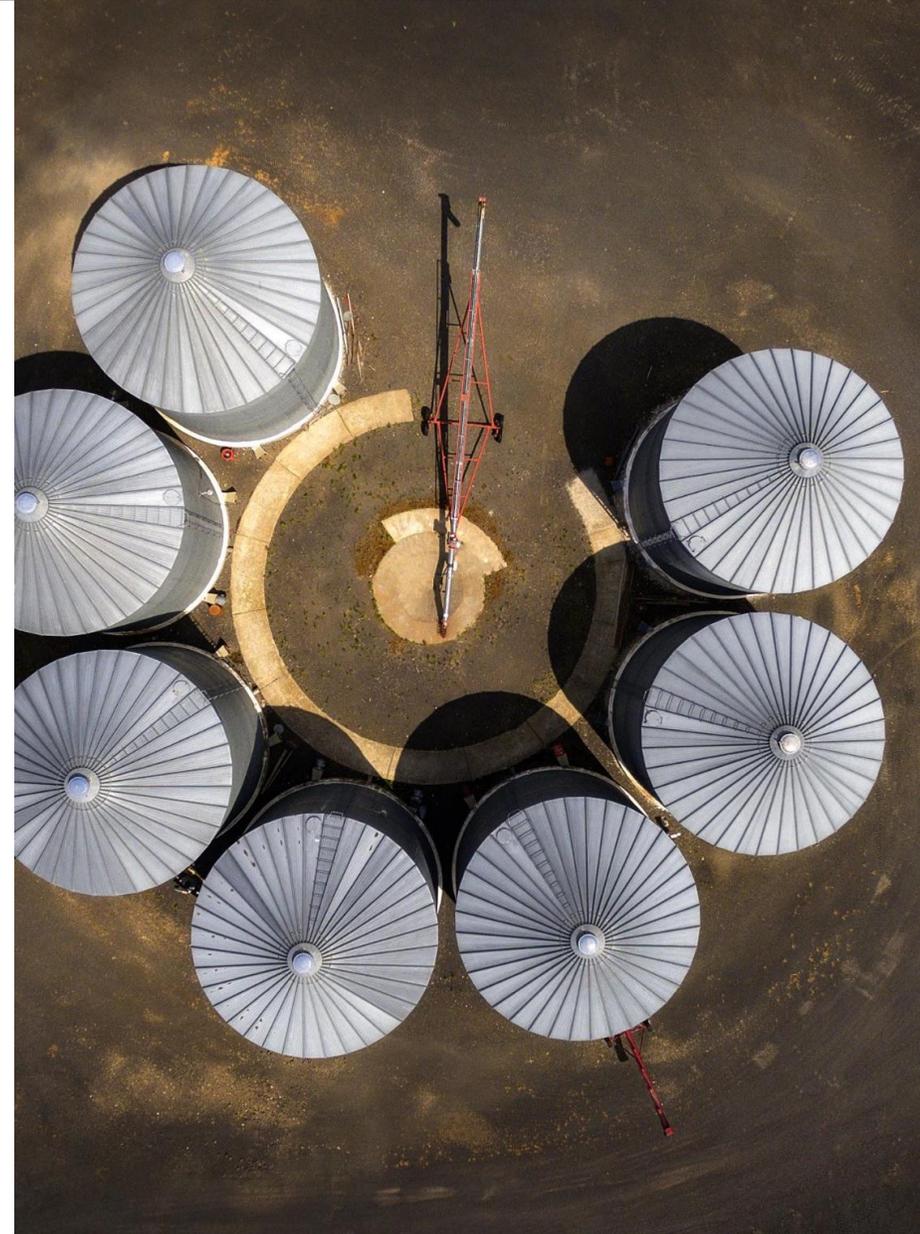
Legal advice on employment

Stephen Ammann and Ivana Vidakovic

Employment Law, PwC Switzerland

- Short-time Work
- (Voluntary) Salary cuts
- Problematic Nature of Termination of Employment
- Alternative Working Time Solutions

Q&A



Introduction

COVID19 is driving unprecedented disruption, raising numerous complex (and exciting) questions for organisations - the Future of Work is happening now.

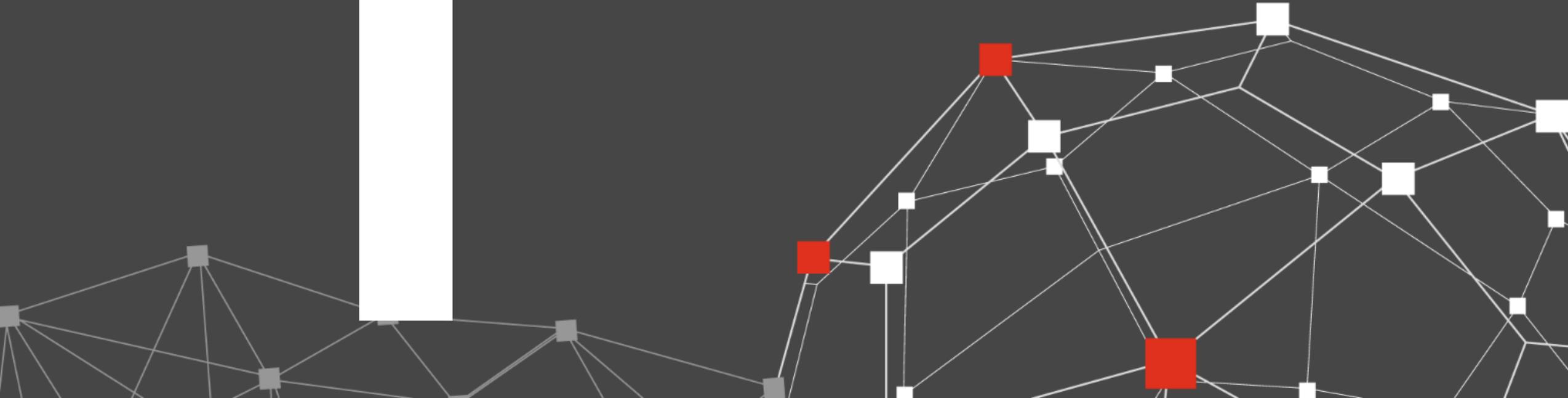
Current COVID19 climate is presenting a lot of challenges to organisations every day and our ways of working are rapidly evolving.

How to stabilize the current situation and respond to legal requirements that we are facing?





Short-time work



Short-time work



Definition / Purpose

- Temporary **reduction** or **complete suspension** of work performance by the employee while **maintaining the employment relationship** with the employees.
- Intended to **preserve jobs**.



Compensation

- Public insurance pays **80% of the salary costs** that employees would be entitled to had the working time not been reduced / suspended.



Limitation

- The short-time work compensation is paid for a maximum of **12 months within two years**.
- Compensation amount per employee is capped (148'200 per year or 12'350 per month)

Requirements to qualify for short-time work compensation

Pre-Registration: Submission of request for short-time work compensation to the relevant **cantonal authority**.



Lack of work likely to be **temporary** and the governmental support can be **expected to preserve jobs**.



Reduction of working hours corresponds to **at least 10%** of the total hours normally worked.



Need of an adequate causal **relationship** between the **reduction of the working hours and COVID-19**. A general reference to COVID-19 is not sufficient to be entitled to get compensation.



The Company has to **keep a time record showing the extent of the employee's lack of work**.



Employees **have to consent** to short-time work; they must in particular accept a reduction in salary.

Employees generally **entitled** to short-time work compensation

1

Employees who are liable to **contribute to the unemployment insurance** (aged over 18 / not yet reached the OASI retirement age).

2

Any employee in an **ongoing** employment relationship whose working hours are temporarily reduced or completely drop to zero.

3

Foreign employees are also entitled to short-time work compensation as long as they are affiliated to the Swiss social security system.

Special entitlements due to COVID-19

1

Employees in an employment relationship **for a certain duration** (so called **fixed-term employment**).

2

Apprentices.

3

People employed by an **organisation for temporary work.**

4

Employees who determine the decisions taken by the employer / employees **similar to employers** as well as their spouses

5

Employees in **on-call employment** relationships

Employees **not** entitled to short-time work compensation

1

Employees under **notice of termination**.

2

Employees who **did not agree** to short-time work.

3

Employees who have reached **retirement age**.

Procedural simplifications due to COVID-19



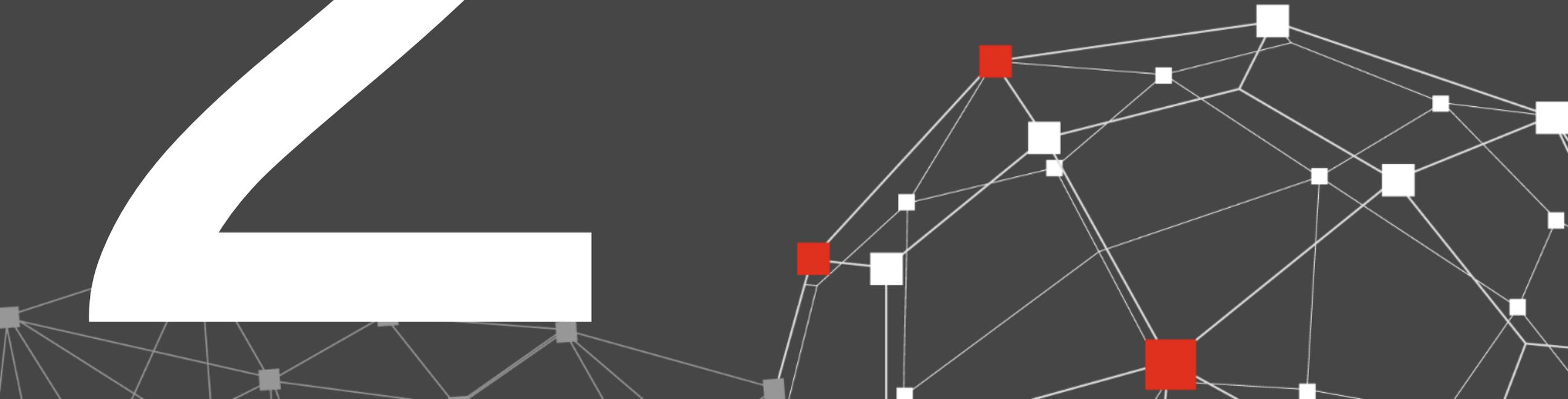
Goals of the Federal Council

Reduction and
simplification of
administrative burdens
&
Quick support for
employers

- **Registration waiting period: Abolished**
- **High-level answers**
- Public insurance can make **upfront payments**
- **Payment waiting period: Abolished**
- Employees **no longer have to reduce their overtime**
- **Approval period: Extended from 3 to 6 months.**
- Restriction to a **maximum period of 4 months** compensation in case of 85% loss of working hours: Abolished
- **Additional categories of work force also entitled**

2

(Voluntary) salary cuts



Voluntary salary cuts at executives and top management



Legal Framework

- Legally the employer **may not unilaterally reduce the salary**
- The employee has to **provide consent** to the change.

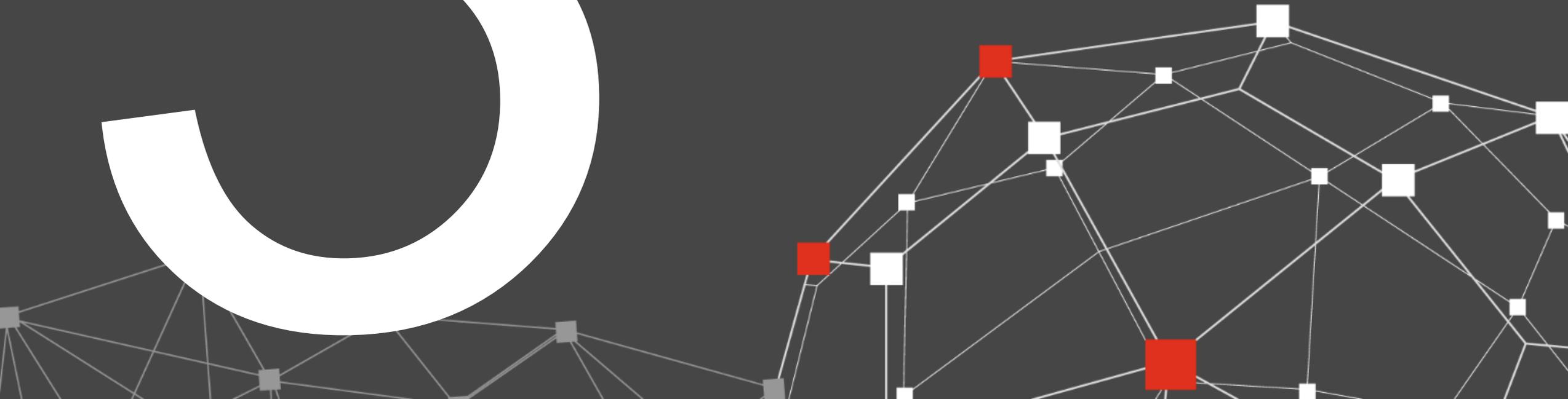


Trend

- A trend has been observed that Employees with high salaries take **voluntary pay cuts** out of solidarity.
- **Positive effect on image of the employers** for those who do and danger of a negative effect for those who don't.

3

Termination of employment



Termination of employment

Employees who have been registered for short-term work

1

If the employer terminates the contract of an employee who has been registered for short-time work, the employee **no longer has any claim to the short-time work compensation.**

2

The employee who has been terminated while on short-time work can still **reclaim the loss of earnings sustained** during the whole duration of the short-time work from the employer

3

The goal of short-time work is to **avoid terminations**

Termination of employment

Provisions for Dismissal Protection (336c OR)

1

The termination of an **incapacitated employee** without own fault due to sickness is **null and void**

2

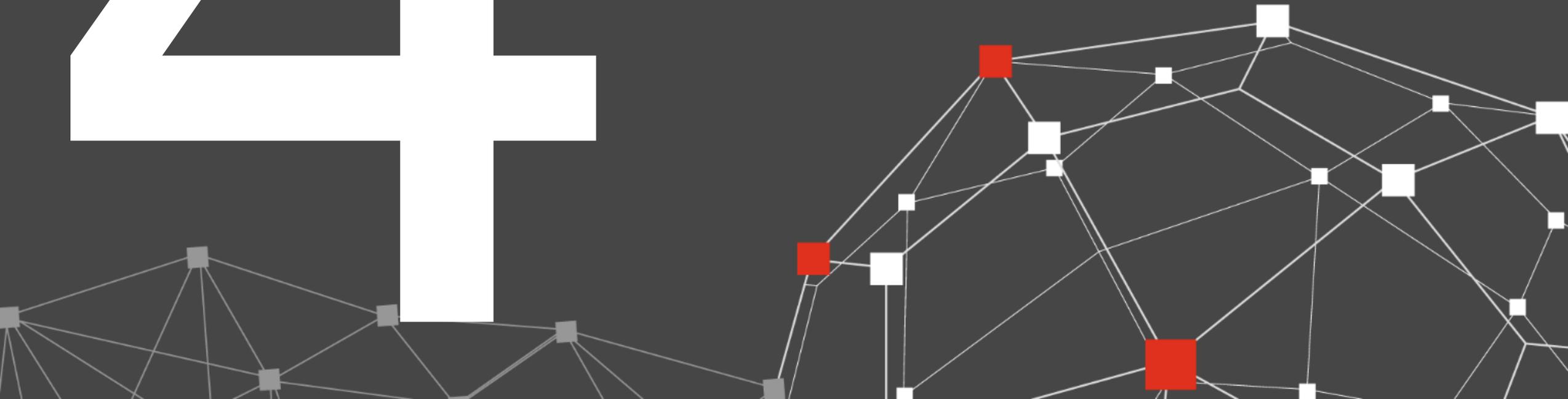
- Employees in **self isolation** (with symptoms) cannot be terminated
- Employees in **self quarantine** (no symptoms) because of contact with an infected person may be seen as incapacitated

3

Difficult case: termination of an employee who is considered **“high risk”** as could be seen as partially incapacitated

4

Alternative working
time solutions



Alternative working time solutions

1. Vacation Order

- OR 329c: The **employer decides** when vacation should be taken vs. in practice it's established that an order needs to be given with at least **3 months notice**
 - The SECO stipulates that the 3 month rule **also applies during the pandemic**
- 
- If the employee communicates that the **recreational purpose** is also given with a shorter notice this may be an option
 - The employer should also look at any **holiday balance carried over from the previous year**
- 
- Best option is always if **both parties are in agreement**

Alternative working time solutions

2. Compensation of Overtime

- OR 321c: Unilateral request for compensation through free time only if **contractually agreed**

- The Federal Council has waived the **necessity for overtime to be compensated** before short time work can be requested
- Could be requested unilaterally if **no short time work entitlement**

- Best option is always if **both parties are in agreement**

Alternative working time solutions

3. Unpaid Leave

- OR 324: The employer is **still obliged to pay** the employee's salary even if there is no / reduced work
- Current situation would be considered **operational risk**

- 
- No possibility to unilaterally request unpaid leave

- 
- Only if in the interest of the employee to take unpaid leave / mutual agreement

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Thank you

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