



Posting workers to Switzerland

What is meant by posting workers?

A worker is posted when the employer sends them to a country other than the one in which they live and normally work to carry out work there in its name and on its behalf for a certain period, or to a branch office or operation that belongs to the employer's group. Posted workers always remain covered by the employment contract they entered into with their employer in the country of origin. They also remain covered by the social insurance arrangements in their own country. In order to protect the rights and working conditions of posted workers across the EU, a Posted Workers Directive was passed in 1996. Since 1999, foreign workers posted to Switzerland by their employer to perform work for them there have been covered by the provisions of the Federal Act on Accompanying Measures for Workers posted to Switzerland and on the Control of Minimum Salaries under Standard Employment Contracts (the Posted Workers Act; SR 823.20).

What is the purpose of the swiss posted workers act?

The Swiss Posted Workers Act aims to prevent orders being carried out in Switzerland by firms sending workers to Switzerland in a way that abusively undercuts salaries and working conditions in Switzerland. For this purpose the Posted Workers Act states that certain relevant regulations in force in Switzerland are applicable to posted workers from the EU and third countries.

What conditions must foreign employees in Switzerland comply with?

Under the Swiss Posted Workers Act, foreign employers who post workers to Switzerland for a specific period of time in order to perform work in Switzerland are required to guarantee that these workers will benefit from at least the same wages and working conditions that are laid down in Federal Acts, Ordinances issued by the Federal Council, collective agreements deemed to be universally valid and standard contracts of employment in Switzerland. The list of standards to be complied with and the areas affected correspond to those in the European Posting of Workers Directive. The areas concerned are: minimum wages, work time and rest period, minimum duration of holidays, occupational safety and health protection at the workplace, the protection of pregnant women, new mothers, children and young people, as well as equality of treatment for women and men.

MCH Group
Global Live Marketing

MCH Group AG
CH-4005 Basel
+41 58 200 20 20
info@mch-group.com
www.mch-group.com

What wages, expenses and bonuses should be paid?

If employees are covered by a Collective Bargaining Agreement (GAV) declared to be generally applicable, then the employer is obliged to pay the wages, expenses and bonuses outlined in the respective GAV. The Collective Bargaining Agreements (GAV) declared to be generally applicable in Switzerland are listed under www.seco.admin.ch.

What does the collective liability mean for the main contractor?

The Posted Workers Act makes provision for the joint and several liability of the main contractor. This means that the main contractor can be made liable for their sub-contractors' non-compliance with the working and wage conditions. Exhibition stand construction work comes under the construction and construction-related sector. If work is carried out by subcontractors in this sector, then the main contractor is also liable under civil law for the subcontractors' non-compliance with the net minimum wages and the working conditions. The main contractor is jointly and severally liable for all the subcontractors who come after them in the order chain. The main contractor can only exempt themselves from this liability if they can show that, each time work is passed on, they have taken all due care required by the circumstances with regard to the observation of the wage and working conditions. This is the case, in particular, if the main contractor:

- has the subcontractor show him, in a credible manner, that the subcontractor is observing the minimum working and wage conditions;
- in the contract for work concluded with the subcontractor, makes any subcontracting to second and third subcontractors subject to his agreement and specifies that he is entitled to information on the working and wage conditions;
- takes organizational measures to ensure that, in the event of work being further subcontracted, he is entitled to check, in advance, each subcontractor who will be performing the work (building site check).

Further information may be found at: www.seco.admin.ch

What information must the foreign employer report?

Nationals of the EU-27/EFTA member states who are performing independent services and workers posted to Switzerland from companies having their head office in a EU-27/EFTA member state do not require a stay- or work-permit for

stays of less than 90 days per calendar year. No later than eight days prior to workers being posted to Switzerland, however, the employer must notify the relevant office (Amt für Wirtschaft und Arbeit – Office of Economy and Labour) in writing of the following details insofar as the work lasts more than eight days per calendar year (for certain types of work, notification is required irrespective of the duration of the work):

- the identity of the people being sent to Switzerland;
- the gross hourly wage of the persons being sent to Switzerland;
- the start and duration of the work;
- the type of work to be carried out in Switzerland;
- the location at which the work is being performed;
- the address of a contact person appointed by the employer.

Croatian Nationals may also benefit from this regulation under certain circumstances. Nationals of third-party states must also provide details of their residency status in the country from which they are being posted. An online notification form is available on the following website:

https://www.bfm.admin.ch/bfm/de/home/themen/fza_schweiz-eu-efta/meldeverfahren.html

How can self-employment be proven?

Self-employed service providers are not bound by the minimum working and wage conditions as per the Posted Workers Act. Foreign service providers who state that they are self-employed must provide proof of this to the competent inspection body upon request. The concept of self-employment is determined in accordance with Swiss law. The Directive issued by the State Secretariat of Economic Affairs, SECO, on 1 January 2013 "Procedure for Verifying the Self-Employment of Foreign Service Providers" is decisive here (www.seco.admin.ch). In the event of an on-the-spot inspection, a self-employed service provider must always be able to produce the following documents:

- a copy of the notification as per Article 6 of the Swiss Posted Workers Act or a copy of the permit issued, if the exercise of the gainful activity in Switzerland is subject to the notification process or requires a permit as per the legislation governing foreigners;
- EU/EFTA member states: a certificate as per Article 19 Paragraph 2 of Directive (EU) No. 987/2009 of the European Parliament and Council ("Form A1"); third countries: confirmation from the state in question, respectively its social insurance scheme, that the service provider is recognised as a self-employed person;

- a copy of the contract with the client or party ordering the work, or written confirmation from the client or party ordering the work, for the job or the work contract that is to be executed in Switzerland (in German, French or Italian).

The inspection body can demand additional information and documents. The following additional documents are suitable for furnishing proof of self-employment:

- Confirmation from the Tax Office of the country in which the service provider is based to the effect that the service provider has a VAT or turnover tax number;
- Proof of insurances (e.g. business liability insurance, accident insurance, loss of earnings insurance);
- List of other or previous clients or parties who have ordered work from them (with a copy of the invoice, if possible);
- Statements of expenses paid by the service provider (accommodation, food, travel costs);
- Business registration, entry in the register in the state in which the service provider is based, internet presence, advertising material;
- Vouchers for rented business premises, own company vehicles, etc.

Are controls and sanctions in place?

Compliance with these requirements and obligations is subject to strict checks by special commissions. In the event of violations, fines of up to CHF 5000 can be imposed on the guilty stand construction company, together with inspection costs, penalties, back payment of wages, work interruptions and a ban of up to 5 years on the provision of services in Switzerland. The State Secretariat of Economic Affairs, SECO, keeps a list of employers who have violated the provisions of the Swiss Posted Workers Act and who have been banned from providing services in Switzerland. This list can be consulted by the public at www.seco.admin.ch

Important addresses

We recommend the following addresses for further information on the above topics:

- Swiss Federal Administration (www.entsendung.admin.ch)
- State Secretariat for Economic Affairs SECO, Holzikofenweg 36, CH-3007 Bern (www.seco.admin.ch)
- The Basel Office of Employment and Labour: Amt für Wirtschaft und Arbeit Basel-Stadt (AWA), Utengasse 36, CH-4005 Basel (www.awa.bs.ch)
- The Zurich Office of Employment and Labour: Amt für Wirtschaft und Arbeit Zürich (AWA), Walchenstrasse 19, CH-8090 Zürich (www.awa.zh.ch)
- The Central Joint Committee for the Carpentry Trade: Zentrale Paritätische Berufskommission, Geschäftsstelle, Gladbachstrasse 80, CH-8044 Zürich (www.zpk-schreinergerwerbe.ch)

Basel, August 31, 2018

MCH Group Ltd.
Messeplatz
CH-4005 Basel