

Revision of Federal Act on Foreign Nationals

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The revision of the Federal Act on Foreign Nationals is under consideration by the Federal Council. Due to recent developments, notably in relation to the jurisprudence and decisions of the Federal Council, some of the act's regulations must be revised. The proposed revision is not connected to the ongoing revision of the act regarding the implementation of Article 121a of the Federal Constitution on the avoidance of mass immigration.

According to the proposed revision, the compensation of expenses of deputed employees will be discussed.

Based on the long-term practice and analogue application of Article 327a of the Code of Obligations, (1) expenses for housing, boarding and travelling of a deputed foreign worker must be borne by the employer. This obligation is being reviewed and enforced during the application process for long-term but also short-term deputation using the notification procedure according to the Agreement on the Freedom of Movement between Switzerland and the European Union. However, neither the Federal Act on Foreign Nationals nor the Act on Deputed Workers has explicit regulations regarding this obligation. Therefore, in order to find a consistent regulation and to provide legal security, both acts require adaptation.

Further, in practice, the duration of the employer's obligation to reimburse a deputed worker for all costs related to housing, boarding and travel has been questioned. The idea of the obligation is, in principle, to reimburse a deputed employee for all living expenses during the time that he or she is working away from his or her normal residence. However, employees on a long-term deputation in Switzerland must:

- take residency in Switzerland;
- often apply for a family reunification; and
- relocate to Switzerland.

Under these circumstances, it is questionable whether expenses for housing, boarding and travelling should still be reimbursed by the employer.

Thus, a time limitation of the employers' obligation to reimburse a deputed worker for these costs is envisaged. The draft of the revised Federal Act on Foreign Nationals mentions that the Federal Council can release regulations on the duration of the costs for long-term deputations. One idea is to limit the employer's obligation to reimburse a deputed worker for all costs related to housing, boarding and travelling to one year. This would dramatically reduce the costs of deputation. However, this question must still be debated with experts and cantonal authorities.

Consideration of the act's revision is planned to continue until October 13 2016.

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Endnotes

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(1) Article 327a of the Code of Obligations:

"The employer must reimburse the employee for all expenses necessarily incurred in the performance of the work and, in the case of work done off the employer's premises, for his necessary living expenses."

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