

# Foreign employers face penalties for non-compliance with working and wage conditions regarding notification procedure

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### **Introduction**

Under the Agreement on the Free Movement of Persons, nationals of EU and European Free Trade Association (EFTA) states have the right to freely choose their place of work or residence within the territories of the contracting parties. Cross-border services from EU and EFTA states to Switzerland may be provided for a maximum of 90 working days per calendar year without a formal work permit.

Accompanying measures have been introduced to protect workers from the risk of non-compliant working and wage conditions that could occur with the free movement of persons. The measures are largely regulated by the Federal Act on Posted Workers and its ordinance, and impose various obligations on foreign employers and companies, which are subject to appropriate penalties.

### **Foreign employer duties**

In case of an assignment, the foreign employer has the following duties:

- Notification obligation – assigned employees must be notified at least eight days before the start date of the assignment in Switzerland.
- Minimum working and wage conditions – the minimum working and wage conditions foreseen by Swiss law must be guaranteed for the entire duration of the assignment.
- Housing, boarding and travel costs – in addition to the minimum Swiss salary, all housing, boarding and travel expenses of the assigned employee must be borne by the employer.
- Proof of self-employment for self-employed service providers – must provide proof that they are self-employed.

### **Penalties**

#### ***Administrative penalties***

According to the Federal Act on Posted Workers, administrative penalties for violations include penalties of up to Sfr30,000 and a ban to provide services in Switzerland for a period of one to five years. The infringements are listed on a public list on the State Secretariat for Economic Affairs' [website](#).

Competent authorities may impose the following administrative penalties for violations of the obligations contained in the Federal Act on Posted Workers:

- violation of the notification obligation – up to Sfr5,000;

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- violation of the documentation obligation for self-employed workers – up to Sfr5,000;
- violation of the minimum working and wage conditions – up to Sfr30,000 or a one to five-year ban on providing services. For serious offence against minimum working and wage conditions, a penalty and a ban can be cumulated; and
- violation of housing regulations – up to Sfr5,000.

Where minimum wage conditions are violated, penalties may be adjusted based on whether the employer has subsequently paid the wage difference to the employee.

### ***Criminal penalties***

According to the Federal Act on Posted Workers, a fine of up to Sfr40,000 will be imposed on whoever:

- knowingly provides false information or refuses to provide information;
- opposes the control of the competent authority or in any way hinders the control;
- does not comply with a legally binding ban to provide services; or
- employs workers in Switzerland and systematically and profitably violates the minimum wage requirements.

In addition, a fine of up to Sfr1 million may be imposed for systematic violations against minimum working and wage conditions.

### **Consequences**

The penalties apply primarily to foreign employers. In addition to fines, such employers may also be banned from providing services in Switzerland for a limited time and risk appearing on the public list of service bans.

In the past five years alone, the cantons have penalised companies for violations of the abovementioned accompanying measures in over 19,200 cases – in approximately 1,400 cases, a ban to provide services for a limited time in Switzerland was imposed.

### **Comment**

For clarity's sake, providing services from an EU or EFTA state to Switzerland for a period of more than 90 working days per calendar year is not regulated by the Agreement on the Free Movement of Persons. The Federal Act on Foreign Nationals and its ordinance determine the admission to work in Switzerland. The admission is subject to prior labour market review and, if necessary, quota allocation. The usual requirements are also examined, including Switzerland's overall economic interest, the employee's personal requirements and working and wage conditions.

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