

HOW TO HIRE MY FIRST EMPLOYEE IN SWITZERLAND

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

1. Residence and work permits

1.1 EU/EFTA citizens

Since the establishment of the bilateral agreements between the European Union (EU) and Switzerland, EU citizens, residing in Switzerland for the purpose of gainful activities, generally have a legal claim to access the Swiss labor market as long as the respective legal conditions are met. The agreements also apply to the European Free Trade Association (EFTA). Each cantonal Office for Migration approves residence and work permit applications based on the submission of a signed working contract with a company in Switzerland.

For the new EU member states Bulgaria, Romania and Croatia the bilateral agreements apply, as well. Concerning the free movement of persons, a transition period is in place until no later than 2016. Further, Switzerland continues to provide priority to its domestic employees and applies a separate quota system.

1.2 Other citizens

Due to the bilateral agreements between Switzerland and the EU nationals of EU/EFTA countries are given priority over non-EU/EFTA nationals as far as immigration to Switzerland is concerned. The number of non-EU/EFTA immigrants is limited by a strict quota system.

Priority of domestic and EU/EFTA employees, high qualification, working conditions, job and salary levels are reviewed by the authorities.

2. Social Security

2.1 General

Social security in Switzerland is based on a 3-pillar principle covering old age, death and disability. The basic federal insurance (1st pillar) is supplemented by a compulsory occupational insurance (2nd pillar), and customized to individual needs by tax-privileged individual pension savings (3rd pillar).

2.2 Public insurance

Insurance services provided by the Swiss Federation include AHV (Old Age and Survivors Insurance), IV (Disability Insurance), EO (Income Compensation), ALV (Unemployment Insurance) and FAK (Family Equalization Fund). Contributions amount to roughly 14% of the gross salary and are for most insurances divided evenly between the employer and the employee. When hiring the first employee, the company has to register with the local social security office, where all the mentioned insurances are handled for all employees as a whole.

2.3 Company insurance

While also compulsory for most employment relationships, for BVG (Occupational Benefits Plan) and UVG (Accident Insurance) the company may choose an individual insurance company to set up the contracts. Contributions may range from 7% to 27%, of which the employer has to pay at least 50 percent. When hiring the first employee, the company has to find an insurance company to set up these contracts. The social security office will monitor compliance.

2.4 Private insurance

The 3rd pillar is completely up to the employee. The employer cannot participate in any tax breaks or benefits from this kind of insurance/savings.

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

1. Individual employment contract

Switzerland has a employer friendly labor market and legislation. Generally employment contracts can be terminated more easily than in neighbouring states, which facilitates the recruitment process. There are no formal requirements for an employment contract to come into effect. It may be concluded verbally. Usually, however, employment contracts are concluded in writing for reasons of proof.

A standard employment contract contains provisions for the commencement, duration and probationary period, the capacity in which the employee will be active, his duties, and his regular place of work. Working hours, handling of overtime and how to maintain timesheets are included together with the employee's salary and possible incentives and/or bonus eligibility and definition. Other standard content includes vacation, absence from duties (e.g. illness), reimbursement for expenses, inclusion in the employer's occupational benefits plan and termination provisions.

The employer may also be interested to include other components, such as the terms under which an employee is allowed a secondary activity, terms including the expected loyalty, diligence, independence, secrecy and the obligation to return any work product upon termination of the contract. Non-competition clauses, clauses on copyrights, inventions and designs may also be included and may call for a clause on contractual penalties.

2. Collective working agreements and master agreements

Even though labor peace is very strong in Switzerland, and trade unions therefore are not very prominent, a series of nationwide working agreements and master agreements exist. Especially in construction and manufacturing as well as in services they are very common. These agreements are binding for all employments in Switzerland, including local employers of foreign businesses.

Collective working agreements and master agreements usually strengthen employee's rights and set higher minima than generally applicable laws on employment contracts. They may include provisions on minimal salaries, early retirement, maximum working hours and many more. It is imperative for an employer to check for applicability of any such agreements, as a violation of such can lead to heavy fines.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

Switzerland knows a freedom of contract and local laws and regulations will generally allow a company to hire an agent or contractor rather than an employee. Such a contract is subject to other regulations than an employment contract and can generally be designed in a more flexible way and adapted to the principal's needs. The appeal of such a simplification of a contractual relationship is obvious and there are measures in place to prevent abuse.

If an individual shall do business for a company and not be considered an employee, the following criteria must be met. The individual must be active under his/her own name, for his/her own account, in an independent position and at his/her own commercial risk. As a rule the individual will have to present at least five different principals and will have to provide proof for as many of these aspects as possible: permanent establishment with usual installations and/or machines, significant maintenance or operating resources, invoices under own name and carrying of collection risk, employment of staff, investments under own name, market presence and business development, lack of reporting obligations to or directive authority by the principal as would be the case for an employment contract.

If these criteria are not met sufficiently, the individual will be classified as an employee and legal obligations for the principal will apply as if he were an employer (e.g. termination period, minimal salary, social security contributions).