

WHAT COMPANIES SHOULD KNOW ABOUT SWISS IMMIGRATION: Q&A OVERVIEW

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Whether you are a company based in Switzerland, or a company based abroad hoping to send employees to Switzerland for work, understanding the applicable Swiss immigration requirements is crucial. We have taken some of the most common questions that arise in our area of work and put together a short Q&A blog to help companies understand some of the most key requirements under Swiss immigration law.

We have compiled an overview that touches upon the following questions:

- 1. Who needs work authorisation in order to carry out work activities in Switzerland?**
- 2. I work at a company based outside of Switzerland, and we would like to send one of our Non EU employees to Switzerland on assignment to work for a certain period of time at our company's Swiss branch office. What do we need to do?**
- 3. I work at a Swiss company, and we would like to hire a Non EU national on a local Swiss employment contract. What do we need to do?**
- 4. Is it true that for EU nationals wanting to work in Switzerland, no work permit application is required?**
- 5. What are the current immigration requirements with regard to Bulgarian, Romanian, and Croatian citizens?**

1. Who needs work authorisation in order to carry out work activities in Switzerland?

Any foreign national (EU citizen or Non EU citizen), requires work authorisation if they plan to carry out more than 8 days of work activities in Switzerland during the period of a single calendar year.

The actual form of work authorisation that a person requires will vary on a case by case basis depending upon the individual's specific needs.

It should be noted here as well that even if a person only plans to work a maximum of 8 days during a calendar year in Switzerland, depending upon the person's nationality, they may still be subject to an entry visa requirement in order to lawfully enter Switzerland. Additionally, for certain industries, this rule is not applicable and employees must have work authorisation from day one (examples of this include construction work, gardening and landscaping, as well as hotel, restaurant and catering).

2. I work at a company based outside of Switzerland, and we would like to send one of our Non EU employees to Switzerland on assignment to work for a certain period of time at our company's Swiss branch office. What do we need to do?

For Non EU Nationals on assignment in Switzerland (assignment meaning that the employee stays on the home country employment contract), a work permit application needs to be filed by the sending company employer with the immigration authorities in the canton of planned work. The application will then be processed by three separate authorities: The Cantonal Labour Market Authority, the State Secretariat for Migration (SEM), and then finally the Cantonal Migration Authority. Depending upon the canton of work, the processing time for the application to be approved by all three of these authorities can vary from approximately four weeks to ten weeks.

Once a final approval is issued by the Cantonal Migration Authority, the employee can collect his or her Swiss entry visa at the Swiss representation competent for their place of residence outside of Switzerland, travel to Switzerland, and then complete local registration with their commune of residence. Once the employee has completed local registration as that final step, they may start working. Local registration needs to be completed before the employee starts work, but in any case within 14 days of their arrival in Switzerland.

It is worth noting that in order to be sent to Switzerland on assignment, it is necessary that the employee have already been employed for one full year by the home sending company as of the date of filing of the work permit application.

For Non EU nationals, the Swiss work and residence permit is issued in the form of a small card containing biometric data (the size of a credit card). Each canton has its own procedure for the collection of the required biometric data and photo, but once both the local registration is completed and the biometrics are submitted, the actual physical work and residence permit card will either be sent to the employee's Swiss residential address or their local commune will contact them and ask them come personally pick it up.

3. I work at a Swiss company, and we would like to hire a Non EU national on a local Swiss employment contract. What do we need to do?

There are generally quite strict requirements in Switzerland around Non EU nationals obtaining work permits for work on local Swiss employment contracts. This is due to a policy in Switzerland of economic safeguarding that essentially prioritises job seekers in the local job market (i.e. Swiss nationals, EU nationals and certain Non EU nationals who are already residing in Switzerland).

The exact immigration process will depend upon the future canton of work, however it is generally required that the Swiss company have made a thorough and good faith search in the Swiss and EU job markets to try to fill the position first with a local worker. Only after the completion of such a search, and if no suitable candidate is found, may the company proceed to hire and file a work permit application for a locally hired Non EU national. It should be noted that even if search proof is successfully submitted with the work permit application, it is fully in the discretion of the Swiss authorities to approve such a case, and thus a positive outcome cannot be guaranteed. Once such an application is filed, the approval process itself is essentially the same as under question 2 above.

4. Is it true that for EU nationals wanting to work in Switzerland, no work permit application is required?

It unfortunately is not this simple. Swiss immigration law makes a distinction between EU nationals who are hired by Swiss companies locally, and EU nationals who will come to Switzerland to work on assignment (i.e. while remaining employed by their home country contract). In either situation, there are immigration requirements, however for EU nationals who are locally employed in Switzerland, the process is simplified. Here below is a short explanation of the immigration requirements in each of these two situations.

a. Locally Employed EU nationals

EU Nationals may start working in Switzerland on a local Swiss contract as soon as they have completed local registration with their commune of residence. There are over 2500 local communes in Switzerland, and each one has its own exact practice regarding registration, but typically the employee will need to present a signed Swiss employment contract as well as a signed lease agreement, among other documents. At many local communes, when the individual goes to register it is possible to request a registration receipt document (in French this is commonly referred to as the "attestation d'arrivée" and in German as the "Anmeldebestätigung").

Depending upon the canton of residence, the processing time for the actual physical permit to be issued can vary from approximately four weeks to ten weeks. However, as mentioned above, the employee may start work once he or she has completed local registration and does not need to wait for the physical permit to be issued in order to start work. Once the physical permit booklet is created, it will normally either be sent to their Swiss residential address or their local commune will contact them and request that the employee pick it up personally.

b. EU nationals on assignment in Switzerland

The answer to what steps need to be taken for EU nationals on assignment will depend upon how long the employee's planned assignment in Switzerland will be, where the home company is located, and also the planned canton of work. The important thing to remember here is that it is the responsibility of the home country employer to file the needed work authorisation request in the canton where the work will take place. The employee will need to wait for a corresponding approval to be issued, and depending upon the length of the assignment, the employee may also need to then register with his or her local commune of residence before starting work.

There tends to be a lot of confusion around this area of immigration law, because many people make the mistake of thinking that all EU nationals, regardless of whether they will be locally employed in Switzerland or on assignment, will benefit from the Agreement on the Free Movement of Persons (AFMP). This is not the case. The AFMP does not apply to workers sent to Switzerland on assignment.

For employees to be assigned for work in Switzerland, sent by companies that are based in an EU-or EFTA country, a helpful option for short-term assignments is to make use of the so-called online notification procedure. A sending company has the possibility to register employees online for a short-term form of work authorisation. It is day specific, and allows a sending company legal entity to send workers to Switzerland for up to 90 days per calendar year. The online notification must be filed at the latest 8 days before the anticipated start date in Switzerland. Although this

option is a convenient way to obtain quick work authorisation without having to file a full work permit application, it is important to note that the Swiss minimum salary requirements still apply. This notification procedure option is available also to Non EU nationals, if they have already been legally working in an EU or EFTA country for at least one year.

For assignments that are over 4 consecutive months in duration (or for sporadic work that will exceed 120-days in the period of one year), a full work permit application will need to be filed and approval is subject to the availability of limited quotas. Permits in this category are thus limited to a certain number per quarter of the calendar year. This means that if the Swiss authorities have already run out of quotas for the relevant quarter by the time that they process an application, it is very likely that the approval will be delayed. Depending upon the canton, the authorities may even return the application and ask that it be re-filed at a later date once new quotas are released. Additionally, the Swiss immigration authorities generally do not approve quota permit applications for EU nationals for assignments of less than one year in duration. Some exceptions to this may apply on a case by case basis.

If work in Switzerland will be sporadic and can be limited to a maximum of 120 days within the period of one year, a full work permit application can be filed and no quota would apply to this category.

5. What are the current immigration requirements with regard to Bulgarian, Romanian, and Croatian citizens?

With regard to citizens of Bulgaria and Romania, the Federal Council decided to invoke the "safeguard clause" that was provided for in the Agreement between Switzerland and the EU on the free movement of persons. This means that even though free movement was essentially extended to Bulgarian and Romanian nationals, as of 1 June 2017, B permits granted to citizens from Bulgaria and Romania became subject to limited quotas. There are a total of 996 B permits available to this group, and this limitation measure will be in force for one year.

With regard to Croatian citizens, Switzerland and the EU have negotiated an extension of the AFMP to Croatia and formulated protocol III, which came into force as of 1 January 2017. During the first part of the implementation period, special transitory measures that include both quotas and restrictions regarding the access to the labour market are applied to Croatian nationals. These quotas applicable to Croatian citizens are released quarterly, and they will be increased each year. For the year 2017, there are 543 L permit quotas and 54 B permit quotas available for the whole of Switzerland.

This means that for the moment, for purposes of Swiss immigration, Croatian nationals are still treated as Non EU nationals with regard to access to the Swiss labour market. Full free movement for Croatian nationals is planned for 2024.

One important change to note is that Croatian nationals are no longer subject to an entry visa requirement when travelling to Switzerland. They may simply produce a valid passport or personal ID. For purposes of the online notification procedure used for employees on assignment in Switzerland, Croatian nationals sent by companies based in Croatia qualify for this, and no distinction is drawn in this case between Croatian nationals and other EU nationals.

We hope this information has been useful for you, and should you have any questions please feel free to reach out to us.

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