

Employment News No.

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## The Job Reporting Obligation Will Become More Important in 2021:

In 2020, the average unemployment rate in Switzerland has risen significantly compared to previous years due to the corona crisis and despite short-time work. As a result, in 2021 more vacant jobs will have to be reported to the regional job placement offices. The responsible federal department has now published the list of professions affected by the reporting obligation in 2021.



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Since July 2018, employers are obliged to notify the regional job placement offices ("RAV") about vacancies regarding professions with a certain level of unemployment throughout Switzerland. The Federal Council has reduced the triggering rate of unemployment from 8% to 5% as of January 2020. While the threshold for 2021 remains at 5%, due to higher unemployment in 2020 the Federal Department of Economics, Education and Research ("EER") extended the list of professions subject to a reporting obligation and included numerous new professions to it.



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**Principle**

In order to implement a federal popular initiative, which was adopted by the Swiss electorate in February 2014, the legislator in art. 21a of the Swiss Foreign Nationals and Integration Act ("FNIA") established an obligation to report vacant positions for professions with particularly high unemployment rates ("**Reporting Obligation**"). This measure provides for a prioritization of local workers (including EU-27/EFTA nationals residing in Switzerland) who are registered with a RAV and are seeking an occupation in a category in which a high level of unemployment exists. The ultimate goal is that job seekers registered with a RAV shall have an advantage in knowledge due to the Reporting Obligation.

	2019	2020
January	2.7%	2.6%
February	2.6%	2.5%
March	2.4%	2.9%
April	2.3%	3.3%
May	2.2%	3.4%
June	2.1%	3.2%
July	2.1%	3.2%
August	2.1%	3.3%
September	2.1%	3.2%
October	2.2%	3.2%
November	2.3%	3.3%

Quelle: SECO, Arbeitslosenzahlen

**Amendments to List of Affected Occupations per 1 January 2021**

As the following overview shows, the unemployment rate in Switzerland in 2020 compared to the previous years has risen in every month since the outbreak of the corona pandemic:

As a result of this increase in the unemployment rate, a Reporting Obligation will come into force for the first time for several professions on 1 January 2021. All categories which currently already are subject to the Reporting Obligation, will remain subject to it in 2021. From January 2021, in particular the following vacant positions will have to be reported to the RAV:

- Managers in sales and marketing
- Sales specialists (e.g. field service representatives, sales experts)
- Conference and event planners
- Heads of cleaning and housekeeping and cleaning and housekeeping staff in offices, hotels and other facilities
- Various positions in gastronomy such as cooks, chefs de service, service auxiliary staff in restaurants, barkeepers, chefs de cuisine, their deputies and sous-chefs
- Cleaning staff and support staff in offices, hotels and other facilities
- Security service personnel
- Various handicraft occupations such as roofers, welders, metal polishers, floor layers and tilers, watchmakers

The complete list, applicable as of 1 January 2021, is available (German only) under the following link:  
<https://www.arbeit.swiss/secoalv/en/home/menue/unternehmen/stellenmeldepflicht/stellenmeldepflicht-ab-1--januar-2021.html>

### Compliance with Reporting Obligation in Case of Vacancy

If the unemployment level of 5% is reached or exceeded in a particular profession and the latter accordingly appears on the list published by the EER, the employer must report any vacancy to the competent RAV before it is advertised in any other way. The vacancy may be reported online (<https://www.job-room.ch/job-publication>), by telephone or in person. Only after expiration of 5 working days may the employer publish the vacant position in another way.

Within three working days after the RAV has been notified regarding the vacant position, it has to provide the employer

with relevant application dossiers or announce that there are no such. In accordance with applicable directives for public employment services, dossiers are considered to be "suitable" if a jobseeker matches the job profile reported on the basis of the profession learned or practiced, professional experience, required stint, place of work, etc. The employer is obliged to invite candidates which it considers to be suitable for the job to an interview or to a screening test. It must then inform the RAV as to which proposed candidates were considered suitable for the vacant position and were therefore invited for an interview, whether such a candidate was hired or whether the position is still vacant.

The employer is *not* obliged to provide the RAV with a reason as to why a candidate whose dossier was provided by the RAV was not considered to be suitable for the vacancy. However, as a consequence of the obligation of the employer to provide information to the unemployment insurance (art. 56 of the Unemployment Insurance Act) in the event of the competent insurance suspecting that an insured person has not accepted a reasonable job or has thwarted an employment (which may lead to the imposition of suspension days), the employer has a disclosure obligation.

### Exceptions from Reporting Obligation

In the following constellations the employer is not subject to the Reporting Obligation despite the threshold having been reached in the respective profession:

- The vacant position is filled directly with an applicant who is already registered with the RAV;
- the candidate who will be hired is married to or a registered partner of a representative of the company, or related to such person by lineal kinship (blood or marriage) or by collateral kinship in the first degree;

- the position is filled with a worker who has been employed already for six months without interruption with the same company or with an affiliated company;
- the vacant position concerns a short assignment of a maximum of 14 days; or
- the vacant position concerns an apprenticeship.

### Sanctions in Case of Non-Compliance with Reporting Obligation

In order to ensure the employer's compliance with the Reporting Obligation and to implement the objective of prioritizing domestic workers, an efficient sanctioning mechanism exists: If the employer chooses a foreign candidate who is not registered with a Swiss RAV the application for a work permit in accordance with the applicable directive issued by the State Secretariat for Migration must enclose proof of the previous registration of this specific vacancy with the RAV. If an employer has failed to duly register a vacant position which is subject to the Reporting Obligation, the work permit will not be granted.

In addition, failure to comply with the Reporting Obligation constitutes a criminal offence and according to art. 117a FNIA may be sanctioned by a fine of up to CHF 40,000 (in case of willful offence) or up to CHF 20,000 (in case of negligence). Within the meaning of art. 29 of the Swiss Criminal Code not only the employer as a legal entity but also its organ or any other person with the corresponding decision-making power may be exposed to criminal liability. According to Swiss criminal statistics, there had been over 100 convictions in 2019 regarding breaches of the Reporting Obligations or requirements related with it.

### **Conclusion and Recommendation**

The effort required to comply with a Reporting Obligation is relatively low and the employer is provided with considerable discretion in assessing whether or not a proposed candidate is suitable for a vacant position. In view of the possible far-reaching consequences of a breach of the Reporting Obligation, it is recommended that (i) the positions to be reported in the event of a vacancy be determined within the company on an annual basis, (ii) the relevant list of positions which are subject to a Reporting Obligation be kept at hand and (iii) the vacancy be duly registered even if a concrete candidate has already been considered for it.

Employment News reports on current issues and recent developments in Swiss labor law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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