

NewsLetter

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Switzerland Opens Up to Foreign Labour Force

In 1999, the European Union (EU) and Switzerland signed seven bilateral Agreements including the Agreement on the Free Movement of Persons (the "Agreement"). Since the Agreement had been ratified by all EU member states and Switzerland, it entered into force and became effective on 1 June 2002. The Agreement simplifies progressively the requirements for EU nationals to take up residence and/or a professional occupation in Switzerland.

Access to the Swiss Labour Market for Nationals of EU Member States

The right of free movement of employees and self-employed persons is subject to a twelve-year transition period. Over this period the scope and extent of the freedom will be increased step by step. Accordingly, the Swiss labour market will open to EU nationals gradually over a period of twelve years that started on 1 June 2002.



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The different stages applying for employees and self-employed persons are shortly described hereafter.

Employees

As of the entry into force of the Agreement, there have been the following categories of residence and work permits in Switzerland:

- Residence permit;
- short-term residence permit;
- cross-border commuter permit;
- trainee permit; and
- settlement permit.

The last two categories have not undergone any changes with the introduction of the Agreement. Residence permits are issued to EU nationals upon presentation of an employment contract with a Swiss employer running for more than one year. The duration of such permits is five years.

Short-term residence permits are issued to EU nationals upon presentation of an employment contract with a

Swiss employer running for less than one year. The validity of the permit will be the same as the duration of the contract.

Cross-border commuter permits are issued upon presentation of an employment contract with a Swiss employer. If the duration of the employment stipulated in the employment contract is less than one year, the permit expires at the end of the employment. If the duration of the employment stipulated in the employment contract is more than one year, the permit will be valid for five years. Cross-border commuters have to return to their home at least once a week. During the first five years of the transition period, border commuters must live within geographically defined border zones of neighbouring countries.

For EU nationals entering into the Swiss labour market for the first time, Switzerland will continue to privilege the Swiss labour force and control remuneration and working conditions during the first two years of the transition period to fend against "social dumping". Further, during the first five years of the transition period, a quota system applies for the allocation of residence permits. Only short-term residence permits (valid for four months or less) will be exempt from the quota system.

EU nationals having received a Swiss residence permit before the Agreement entered into force may extend their existing permits provided they are still employed by a Swiss employer. Further, such EU nationals are set on an equal footing with Swiss employees. No quota or preference applies and there is no adequacy control of remuneration and working conditions.

After five years since the entry into force of the Agreement, the quotas for permits, and the border zones for cross border commuters will be abolished. Further, the free movement of persons will be introduced on probation. Switzerland will at this time have the option to reintroduce quotas for permits if the immigration of workers from the EU would have risen massively.

Two years later, that is as of 1 June 2009, the EU member states as well as Switzerland will be free to decide whether the Agreement shall continue or expire. After the lapse of the twelve-year transition period, the possibility of reintroducing a quota system for controlling the immigration of EU employees into the Swiss labour market expires.

Self-employed Persons

The Agreement provides that as of 1 June 2002 and during the initial stage of an independent activity carried on by an EU national in Switzerland only residence permits limited to six months are issued. As soon as the self-employed EU national can make a showing of a sustainable independent activity carried on in Switzerland a residence permit will be issued. Such permit is valid for five years and can be renewed upon its expiry.

After the lapse of the five-year transition period the system of at first issuing a six months residence permit for self-employed EU nationals carrying on an independent activity in Switzerland is abolished. Accordingly, a (long-term) residence permit will be issued right away if a showing of an independent activity carried on in Switzerland can be made.

Persons out of Work

Based on the Agreement, Swiss residence permits are issued to persons not engaged in any professional activity (whether as an employee or as a self-employed person) disposing of adequate financial resources to make a living, having adequate health and accident insurance and abstaining from claiming social assistance in Switzerland. There are no criteria in relation to age.

Labour Force from Non-EU Member States

The Agreement does not apply with respect to foreign labour force from non-EU member states. Accordingly, the following categories of Swiss residence permits for employees continue to apply:

- Annual residence permit;
- short-time residence permit;
- seasonal permit;
- cross-border commuter permit;
- trainee permit; and
- settlement permit.

Since the entrance into force of the Agreement on 1 June 2002 Switzerland for the first time applies a preference system for EU citizens entering into the Swiss labour market. Such preference granted to EU citizens constitutes a significant disadvantage for US and other

non-EU citizens willing to enter the Swiss labour market. In order to receive an annual or short time residence permit for the employment of a qualified non-Swiss and non-EU employee, a Swiss employer has to make a showing that he cannot find an equally qualified Swiss or EU employee being fit for the job offered.

The following additional requirements must be met for non-EU employees seeking employment in Switzerland:

- Adequate annual income;
- highly qualified professional having at least five years of professional experience; and
- holder of a master or equivalent university degree.

In general, one can state that it is very difficult for self-employed persons not being EU nationals to obtain a work permit although the requirements seem somewhat blurry in practise.

For Persons out of work, a Swiss residence permit will in general only be issued if all of the following requirements are satisfied:

- Adequate financial resources;
- adequate coverage by a health and accident insurance;
- over 55 years of age;
- close personal ties to Switzerland; and
- shift of centre of vital interests to Switzerland.

NewsLetter

The ww&p NewsLetter provides comments on new developments and significant issues of Swiss 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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