

Expert Guide

www.corporativewire.com

Labour & Employment Law

April 2012

CORPORATE *LiveWire*



ELA IBA Jones Day Waller Lansden McGuireWoods and more...

Summary Overview on Certain Swiss Employment Law Aspects

By Adrian Kammerer, Michaela Zehnder, Laurence Uttinger & Allegra Sosso

NIEDERER KRAFT & FREY

1. The Law Firm Niederer Kraft & Frey Ltd.

Established in 1936, Niederer Kraft & Frey is a preeminent Swiss law firm with a proven track record of legal excellence and innovation. As a market leader in Switzerland, we have built long-standing relationships with the world's best international law firms. We attach great importance to combining a highly professional approach and persistence in pursuing our clients' goals with being easy to work with, even in the most demanding situations. We are straightforward and reliable and stand alongside our clients. Our offices are located on Bahnhofstrasse, near Paradeplatz, in the heart of Zurich's banking and financial district.

2. Swiss Labour Law in General

Swiss labour law, in particular when compared to most other European jurisdictions, can be summarised as being liberal and balanced even if in certain aspects favourable towards the employer. Swiss labour law contains only few basic mandatory provisions. Thus, limited and flexible regulation applies on the relationship between employer and employee(s). This is, amongst other things, a result of Swiss unions not having a major impact on the labour market. Also, Switzerland's unemployment rate has been and continues to be relatively moderate.

The actual unemployment rate (status March 2012) stands at 3.2% (<http://www.seco.admin.ch/themen/00385/00387/index.html?lang=de>) compared to a rate of 8.2% for the OECD area (status November 2011), 10.3% for the Euro area and 8.5% for the USA (http://www.oecd.org/document/22/0,3746,en_2649_37457_49404566_1_1_1_37457,00.html). Also, and yet again in comparison to its competing jurisdictions in particular, Switzerland's ranking of 5th worldwide in the global competitiveness rankings on "Government Efficiency Gap" continues to be extraordinary (<http://www.imd.org/news/IMD-announces-the-2011-World-Competitiveness-Rankings-and-the-results-of-the-Government-Efficiency-Gap.cfm>).

The Swiss employees, as a rule, are motivated, well qualified and happy with their jobs, which may also be a consequence of the stability and reliability of Switzerland's social security system and its overall social and political stability.



The most significant mandatory provisions of Swiss employment law aim at safeguarding the employee's health and safety. A Swiss law governed employment agreement requires no special form in order to be valid; it may be concluded in writing, verbally or even tacitly. Only certain types of employment relationships and certain particular clauses (mainly relating to remuneration, termination and non-competition) must be in writing to be validly agreed upon. It goes without saying that the parties are nevertheless well advised to conclude a written contract. Termination provisions are liberal and most flexible as well, notice periods (according to the law which can to a certain extent be modified by mutual agreement) are reasonable (7 days during the probationary period and 1 - 3 months depending on the term of service). For severe reasons the contract may be terminated with immediate effect, i.e. without observing a notice period. Statutory restrictions to terminating the contract only apply in case of termination for abusive reasons.

The predominant and most decisive legislation on employment relationships (in particular with a view to individual employment contracts) is the Swiss Code of Obligations (Obligationenrecht, CO). Under certain circumstances, the Federal Labour Act (Arbeitsgesetz) and the Federal Act Governing the General Applicability of Collective

Labor Agreements (Bundesgesetz über die Allgemeinverbindlicherklärung von Gesamtarbeitsverträgen) may apply. Specific regulation on whistle blowing is not (yet) available; however, respective legislation initiatives are in the pipeline. The respective guidelines of Transparency International may serve as a guideline of "best practice" in that regard until enactment of respective legislation (most likely in the frame of the CO in some years time).

3. Work Permits in particular

Switzerland offers four categories of residence permits, i.e. the so-called (i) "L Permit" (short term permit), (ii) "B Permit" (annual permit), (iii) "G Permit" (cross-border commuter permit) and "C Permit" (settlement permit).

Switzerland, not being a member state of the EU, has entered into bilateral agreements with the EU e.g. on the free movements of persons. Since the entering into force of the Bilateral Agreement on Free Movement of Persons Switzerland - EU, Switzerland applies a dual system for granting foreign nationals access to the Swiss labour market. Depending on whether the applicant is an EU/EFTA national or from a non-EU/EFTA country, the requirements and procedures for obtaining a work and/or residence permit vary.

As a rule, the only requirement to be observed for work assignments of EU/EFTA nationals (except for Romania and Bulgaria for which stricter rules continue to apply) is the availability of an employment agreement. If EU/EFTA nationals take residence in Switzerland without employment, proof of sufficient assets to cover the cost of living in Switzerland suffices.

Stricter regulation applies to non-EU nationals (so-called "third-country nationals").

Work permits are issued to third-country nationals when the criterion of quota availability is met and provided such third-country nationals are

considered qualified specialists, i.e. they have a university degree and at least two to three years of professional experience, or top executives. Furthermore, to qualify as intra-company transfer, employees should have been employed abroad with a company belonging to the group of companies for at least 12 months prior to the assignment to Switzerland. Otherwise, the priority status accorded to national manpower and workforce from EU/EFTA member countries does apply.

The most significant mandatory provisions of Swiss employment law aim at safeguarding the employee's health and safety.

As a general rule, the priority status does not apply in the case of executives or key staff of international companies who come to Switzerland as part of a company executive transfer or in the case of highly qualified specialists whose presence in Switzerland is vital for the fulfillment of special assignments and whose presence, furthermore, lie in an overall economic interest.

Exceptions from the specialist status may be granted in certain industries, e.g. the catering industry, domestic service, healthcare, tourism, top-class sports as well as culture and entertainment.

4. Social Security and Pension Schemes in particular

Switzerland's fairly high standard social security system aims at covering all major financial risks in connection with retirement, invalidity, death and unemployment.

It is based on three pillars. (i) The first pillar consists of several mandatory insurances that have to be provided for by the employer.

It amounts to approximately 14 % of the salary (depending on the latter's amount) approximately 6 % of which the employer may pass on to the employee. (ii) The second pillar (pension system) entails only a small mandatory core and can be expanded by the employer (which is the reason that a rough estimate of the amount cannot be given). As a rule, contributions to the first and the second pillar are borne equally by the employer and the employee. The third pillar allows for additional personal tax-exempted insurance and/or savings by the employee.

Adrian Kammerer studied law at the University of Zurich and worked as research assistant with the chair for Swiss and European Private and Commercial Law at University of Zurich as well as secretary at the county court of Uster. He finished his studies in 1997 with a PhD degree, was admitted to the bar in 1999 and joined Niederer Kraft & Frey Ltd. the same year. Adrian Kammerer became a partner in 2006. He frequently advises Corporates in the areas of Contract, Company and Commercial Law as well as M&A transactions and Litigation. He further focuses on national and international legal aspects of compliance in general and the prevention of money laundering in particular. Furthermore, he has devoted a substantial amount of time to advising in Aviation and Employment Law.



Adrian can be contacted on +41 (0)58 800 8000, or alternatively by emailing: adrian.kammerer@nkf.ch.

Adrian can be contacted on +41 (0)58 800 8000, or alternatively by emailing: adrian.kammerer@nkf.ch.

Michaela Zehnder studied law at the University of Zurich. In 2000 she joined Niederer Kraft & Frey Ltd. Michaela Zehnder is specialised in business relocation matters and private residence planning. Her activity is focused in advising foreign and Swiss employers as well as employees regarding location issues, work and residence permits, naturalisation as well as acquisition of real estate by foreign nationals. Furthermore, she practices as a trademark agent and advises clients from clearance to registration of trademarks as well as on the management of trademark portfolios.



Michaela can be contacted on +41 (0)58 800 8000, or alternatively by emailing: michaela.zehnder@nkf.ch.

Michaela can be contacted on +41 (0)58 800 8000, or alternatively by emailing: michaela.zehnder@nkf.ch.

Laurence Uttinger studied law at the University of Lucerne and worked as research assistant with the chair in social security law as well as the chair in tax law at the University of Zurich. She specialises in pension matters, general social security and tax law. She was admitted to the bar in 2009 and joined Niederer Kraft & Frey in 2011. She regularly publishes in her areas of expertise and is a member of the advisory committee on pension law to the Swiss Federal Council. She regularly advises corporations, pension funds and management employees regarding pension, social security and tax matters.



Laurence can be contacted on +41 (0)58 800 8000, or alternatively by emailing: laurence.uttinger@nkf.ch.

Laurence can be contacted on +41 (0)58 800 8000, or alternatively by emailing: laurence.uttinger@nkf.ch.



Allegra Sosso studied law at the University of St. Gallen and at Columbia University in New York (LL.M.). She was admitted to the bar in 2007 and joined Niederer Kraft & Frey Ltd the same year. Allegra Sosso regularly advises financial institutions and companies engaged in various other industries on a broad spectrum of corporate, commercial, banking and financial law as well as in mergers & acquisitions. Her practice also includes the counselling of corporate clients and management employees on diverse contractual aspects of employment law.



Allegra can be contacted on +41 (0)58 800 8000, or alternatively by emailing: allegra.sosso@nkf.ch.