
CHAMBERS GLOBAL PRACTICE GUIDES

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Switzerland: Law and Practice

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SWITZERLAND



Law and Practice

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1. Policy

1.1 Immigration Policy

Immigration policy in Switzerland follows a dual approach, and is governed by two main sets of rules, one for EU/EFTA nationals and one that applies to so-called third-country nationals (ie, non- EU/EFTA nationals).

In particular, EU/EFTA nationals generally directly benefit from the Agreement on the Free Movement of Persons between the European Union and Switzerland of 1 June 2022 (AFMP), as amended, and the related ordinance. On this basis, they have the right to set up residence in Switzerland in order to work, either as employees or on a self-employed basis. EU/EFTA nationals also have the right to set up residence without working in Switzerland. This requires proof of sufficient financial means to ensure that applicants are not dependent on social assistance. In addition, their family members (mainly their spouse and children up to the age of 21) have the right to set up their residence with them in Switzerland (see **7.1 Recognised Family Relationships**).

Third-country nationals, as a general rule, do not benefit from the free-movement-of-persons regime. Rather, they are subject to the Federal Act on Foreign Nationals and Integration of 16 December 2005 (FNIA), as amended, and the related ordinance. In principle, they do not have the right to take up residence in Switzerland, be it with employment or without. If third-country nationals are allowed to establish their residence in Switzerland, their family members (spouse and children up to the age of 18) can also be permitted to set up their residence with them in Switzerland, provided that they meet specific conditions (in particular, that they have a suitable accommodation and do not depend on social assistance; see **7.1 Recognised Family Relationships**).

Swiss immigration policy appears to be fairly well received by Swiss nationals. There are, however, regular political motions asking for stricter rules in terms of immigration, notably by challenging the rights granted to the EU/EFTA nationals under the AFMP.

1.2 Upcoming Policy Changes

As mentioned, the Swiss political arena is regularly active on issues of immigration, particularly in view of the significant increase in the number of Swiss residents over the last decade. That said, no major specific changes are being discussed currently, although such discussions are likely in the next few years.

There are, however, regular policy updates on minor technical matters (eg, costs, procedural aspects).

In addition, a revision of Swiss law is under consideration by the Swiss Parliament with a view to exempting third-country nationals who have completed studies in Switzerland from applicable yearly quotas if they start work in Switzerland after their studies. This exception would apply only to third-country nationals with a diploma from a Swiss high school and for whom working in Switzerland would confer an overriding scientific or economic benefit.

2. Visa Options

2.1 Sponsor-Based Employment Visas

For EU/EFTA nationals hired by employers in Switzerland, the following work permits are available, depending on the duration of the employment relationship.

- *Online Notification Procedure*: For employment of up to three months per year. Under this procedure, Swiss employers are only required to submit a notification form online (no permit needed).
- Employment of less than one year:
 - (a) *L Permit* when EU/EFTA nationals take up residence in Switzerland. The L permit is a short-term work (and residence) permit

valid for the duration of the employment;
or

- (b) *G Permit* when EU/EFTA nationals set up/keep residence in an EU/EFTA country; the G permit is a cross-border commuter work permit valid for the duration of the employment.

- Employment relationship of one year or more:
 - (a) *B Permit* when EU/EFTA nationals set up residence in Switzerland; the B permit is a long-term work permit valid for five years;
or
 - (b) *G Permit* when EU/EFTA nationals set up/keep residence in an EU/EFTA country. The G permit is a cross-border commuter work permit valid for five years.

Swiss employers hiring third-country nationals in Switzerland (local hire) can apply for the following work permits, depending on the duration of the employment (see **3.3 Minimum Thresholds: Sponsor-Based Employment Visas** for the minimum requirements to be met):

- *L Permit* employment of up to two years; the L permit is a short-term work permit valid for the duration of the employment or for a maximum of 12 months, renewable for up to 12 additional months; or
- *B Permit* employment of more than two years; the B permit is a long-term work permit valid for 12 months, renewable (although the Swiss authorities remain free to issue an L permit first).

Swiss employers who wish to hire third-country nationals who do not reside in Switzerland can apply for a G permit, which is a cross-border commuter work permit, under strict conditions only (see **3.3 Minimum Thresholds: Sponsor-Based Employment Visas** for minimum required thresholds to be met).

Employers seconding employees in Switzerland can mainly apply for the following work permits, depending on the duration of the secondment (see **3.3 Minimum Thresholds: Sponsor-Based Employment Visas** for minimum requirements to be met):

- *Online Notification Procedure*: For secondment of employees for up to 90 days per year (only available for EU/EFTA and UK employers). Under this procedure, employers have to submit a notification form online (no later than eight days prior to commencement of work, except in case of emergencies).
- *120-Day Permit* for secondment of up to 120 days per 12-month period; the 120-day permit is a work permit valid for 120 days within a 12-month period;
- *L Permit* for secondment of up to two years; the L permit issued in this scenario is a short-term work permit valid for the duration of the secondment or for a maximum of 12 months, renewable for 12 additional months (or more for EU/EFTA nationals); or
- *B Permit* secondment of more than two years; the B permit issued in this context is a long-term work permit, initially typically valid for 12 months (or more for EU/EFTA nationals) and renewable in principle for up to a maximum of five years (although the Swiss authorities remain free to issue an L permit first).

Note that seconded employees are not hired by a Swiss employer but remain employed by their original employer in their home country. Also, seconded employees can, depending on the circumstances, remain affiliated to the social security system in their home country.

2.2 Un-sponsored Work and Investment Visas

Foreigners who are not employed by a Swiss employer or seconded to Switzerland can apply for a work permit if they engage in a self-employed activity in Switzerland.

EU/EFTA nationals must only demonstrate that they are engaged in a self-employed activity to receive a work permit without being sponsored by a Swiss employer.

Third-country nationals, by contrast, must demonstrate that they meet all applicable requirements to receive a work permit. In particular, they must show that the self-employed activity to be performed is in the interests of the Swiss and local economy as a whole (eg, creation and maintenance of jobs on the local market, diversification in the regional economy, substantial investment, new mandates for the Swiss economy).

Generally speaking, Switzerland does not issue work and residence permits based on investments made in a particular sector.

2.3 Restrictions on Visitors

Visitors (ie, foreigners who do not hold a Swiss work or residence permit) must have a valid passport or ID, as applicable, and in certain cases also a valid Schengen area visa to enter Switzerland. In addition, visitors must not stay in the Schengen area (which includes Switzerland) for more than 90 days in any 180-day period.

Visitors are, as a rule, not permitted to work in Switzerland. This said, they can (with only a few exceptions) work in Switzerland for a maximum of eight calendar days per year without having to obtain a work permit in advance.

2.4 Remote Working

Generally, remote work can only be performed if an official Swiss work permit is held. Foreigners who work remotely from Switzerland could be viewed as performing a gainful activity in Switzerland, in particular if the activity carried out has an impact on the Swiss labour market (and/or, depending on the case, if the clients are located in Switzerland).

Even if foreigners who work remotely from Switzerland are not viewed as performing a gainful activity on Swiss soil, they could still be required to obtain a Swiss residence permit in case they exceed the duration they can spend in Switzerland as visitors (see **2.3 Restrictions on Visitors**).

Finally, working remotely from Switzerland can have consequences from a social security and tax standpoint. It therefore remains advisable to assess these aspects on a case-by-case basis.

3. Visa Requirements

3.1 Prerequisite Language Requirements

With only a few exceptions, there are no language requirements for obtaining a Swiss work (and residence) permit.

However, language requirements can apply in specific sectors at the time of the first renewal of a Swiss work (and residence) permit (eg, in the catering sector for specialised chefs). Language requirements also apply to third-country family members (usually a spouse) at the time of the first renewal of their Swiss work/residence permit.

In addition, language requirements apply to obtain a C permit (Swiss permanent residence

permit), as well as to obtain Swiss citizenship. Generally, foreigners can apply for a C permit if, inter alia, they have been living in Switzerland for a minimum of five or ten years, depending on their nationality.

3.2 Medical Certificates or Vaccinations

Currently, there are no requirements for medical vaccination certificates in order to obtain a permit in Switzerland.

3.3 Minimum Thresholds: Sponsor-Based Employment Visas

There are generally no minimum thresholds for Swiss work (and residence) permits applicable to EU/EFTA nationals hired by employers in Switzerland.

When it comes to Swiss work (and residence) permits applied for by Swiss employers hiring third-country nationals, the main following minimum thresholds apply:

- *Quotas*: quotas must be available; only a limited number of Swiss work (and residence) permits can be issued to third-country nationals per calendar year for work permits exceeding a duration of four months.
- *Local priority*: the Swiss employer must prove that no other candidate matching the job vacancy has been found on the local labour market and European labour market (this is so-called “domestic precedence” or *Inländer-vorrang*); to this effect, a job advertisement must be placed on the relevant hiring platforms for at least one month.
- *Salary*: the salary offered to third-country nationals must be in line with that which a Swiss national would receive (with the same background and with a similar position in the same region).

- *Personal qualification:* the third-country national to be hired must be a senior executive, a manager or a highly qualified worker.
- *Benefit to Switzerland:* the hiring of the third-country national must be in the interests of the Swiss and local economy as a whole.

The above requirements (except for the local priority requirement and, depending on the permit type, the quota requirement) apply *mutatis mutandis* when it comes to employers seconding employees (EU/EFTA nationals or third-country nationals) to Switzerland. In this case, in addition to the regular salary payment (at least for the first 12 months of the secondment), the employer must also cover expenses linked to travel, board and lodging in Switzerland.

The above thresholds (except for the first and third) also apply *mutatis mutandis* when it comes to Swiss employers hiring third-country nationals who do not reside in Switzerland. In addition, in this case, the third-country national must have been residing close to the Swiss border in an EU country (having a permanent right of residence) for at least six months, and must work within the Swiss border zone.

3.4 Employment-Based Visa Limitations

G permits (cross-border commuter work permits) are generally tied to an employer. Otherwise, Swiss work permits for EU/EFTA nationals hired by a Swiss employer are not limited to a specific employer.

Swiss work permits applied for by Swiss employers for third-country nationals can be limited to an employer, depending on the circumstances.

Finally, Swiss work permits issued in a secondment context for both EU/EFTA as well as third-

country nationals are always limited to a certain project or local secondee entity.

4. Immigration Process

4.1 Visa Processing Times

There are two levels of immigration authorities in Switzerland, cantonal and federal. As Switzerland is a federation consisting of 26 cantons, there are numerous cantonal immigration offices, for which both processing times as well as specific practical technicalities may differ. This said, the substantive requirements are formally the same throughout Switzerland, and the Swiss State Secretariat for Migration (SEM) regularly publishes written guidelines on certain topics.

Generally speaking, permit processing times depend on the type of permit to be issued. For EU/EFTA nationals taken on by a Swiss employer, the process is fairly rapid. EU/EFTA nationals are allowed to start working and take up residence in Switzerland as soon as they have submitted their complete application to the competent authorities. No formal approval is required and, typically, the EU/EFTA nationals are able to initiate their employment on the day following their registration in Switzerland. In all cases, they have to register with the competent Swiss authorities within 14 days of their arrival in the country.

The permit processing time for third-country nationals hired by a Swiss employer or for foreigners seconded to Switzerland is usually longer, and may require dual approval (both from the competent cantonal as well as the federal authorities). However, it rarely exceeds four months. In such cases, foreigners are not permitted to start working, and take up residence in Switzerland during the permit application pro-

cess. This is because, unlike EU/EFTA nationals taking up a local employment in Switzerland, they have no legal entitlement to work there, and therefore formal prior approval is required.

4.2 Travel Restrictions Once Application Filed

EU/EFTA nationals recruited by a Swiss employer can freely travel to and in Switzerland while their permit application is being processed.

Third-country nationals recruited by a Swiss employer or foreigners seconded to Switzerland remain free to travel to Switzerland while their permit application is being processed, but only as a tourist. Further, they must ensure that they hold a valid Schengen area visa to do so (if applicable) and not stay in the Schengen area (including Switzerland) for more than 90 days in any 180-day period. They also are not permitted to formally set up their residence and/or start working in Switzerland. In this scenario, it is often advisable that the relevant individual does not travel to Switzerland while the permit request is still pending.

4.3 Expedited Visa Proceedings

It is generally not possible to expedite permit processing times in Switzerland as there is no “fast track” provided for by law. However, in practice, the competent Swiss authorities might agree to take on an application as a priority in an emergency or a situation of proven urgency. Given their significant discretion, with sufficient evidence, the authorities can also agree to waive a certain requirements, although this is rare.

4.4 Post-visa Requirements

Once a foreigner has arrived in Switzerland in compliance with their permit terms, they must announce their arrival to the competent authorities as well as their place of residence. They are

also required to take out Swiss health insurance within three months of their arrival (unless the option to be exempt from this rule is available and used).

Foreigners holding a Swiss work and residence permit should avoid prolonged periods of absence from Switzerland (three or six consecutive months, depending on the type of permit held), and should not depend on social assistance and/or constitute a threat to the security of Switzerland.

5. Immigration Costs

5.1 Typical Cost of a Sponsored Employment

Costs in relation to the issuance of a Swiss work (and residence) permit may vary depending on the canton of work and/or residence, as well as on the type of permit issued.

As a guideline, estimated administrative costs in relation to Swiss work permits issued to EU/EFTA nationals amount to approximately CHF110–CHF500, while the cost of Swiss work (and residence) permits issued in favour of a third-country is approximately CHF500–CHF1,000. This does not include any fees applicants may incur for seeking legal advice and assistance with required procedures.

Additional costs may also apply in case of extraordinary or particular complex matters.

5.2 Payment of Visa Costs

According to Swiss immigration law, employers are not required to cover the financial costs associated with obtaining work permits for their employees. However, depending on the applicable laws and contractual regime, coverage of

such costs may be required under employment law rules.

6. Enforcement

6.1 Enforcement Action Against Individuals and/or Sponsors

The Swiss authorities may implement enforcement actions against individuals and/or employers with respect to immigration under various circumstances, including but not limited to the following.

- Violation of immigration laws: An individual or employer can be subject to enforcement actions if they are found to violate entry regulations, such as overstaying a visa, working without the proper permit or providing false or incorrect information or documents to the competent authorities.
- Failure to meet permit conditions: The individual or the employer might be required to fulfil certain obligations (eg, market standard salary or proof of language skills). If these obligations are not met, the authorities might initiate enforcement actions. More likely, they will refuse to issue a permit at all.
- Employers' violations: Employers who violate Swiss law might face enforcement actions from the authorities. Companies exploiting foreign workers by paying salaries below the applicable minimum wage, failing to comply with notification requirements (*Meldeverfahren*) or failing to comply with the mandatory provisions of Swiss labour law, employment law or the Posted Worker Act (*Entsendegesetz*), might be liable to criminal or administrative sanctions and sanctions set out in the generally applicable collective bargaining agreement.

- Criminal offences: Non-Swiss nationals convicted of serious crimes such as murder, theft in connection with illegal entry into Switzerland, or tax fraud may face revocation of their permit or expulsion for up to fifteen years. For less serious offences, the authorities will consider various factors, including public interest, personal circumstances, and integration into Switzerland, which may result a permit being revoked or a ban on entering Swiss territory.

6.2 Employer Obligations

Employers sponsoring employment-based visas in Switzerland have different obligations, which include the following.

- Work permit application: The work permit application must be initiated by the employer. In this situation, the employer has to comply with Swiss immigration regulations (see **3.3 Minimum Thresholds: Sponsor-Based Employment Visas**) and provide documents and information as requested by the authorities.
- Employment contracts: Employers are required to provide employees with written employment contracts outlining terms such as salary, working hours, benefits and termination clauses.
- Compliance: Employers must comply with Swiss law (in particular with employment law, labour laws and the Posted Worker Act) and ensure minimum wages comply with working hour regulations and maintain a safe working environment.
- Reporting requirements: Employers may be required to report relevant changes in employment status or significant changes in an employment relationship (eg, a dismissal) to the Swiss authorities. In addition, employers are required to provide truthful information to the authorities at all times.

Failure to comply with these obligations may result in penalties and consequences for the employer, including:

- legal proceedings (administrative and criminal);
- fines;
- revocation of work permits;
- prohibition of non-Swiss employees from entering Switzerland; and
- loss of the ability to take on employees from abroad (eg, failure to comply with the reporting procedure).

6.3 Right to Work Check Requirements

Employers must comply with Swiss immigration laws and regulations, in particular by ensuring that any non-Swiss national with whom an employment relationship is to be established holds a valid Swiss work permit. Employment contracts with non-Swiss nationals are thus typically subject to the employee's right to work in Switzerland and to the competent authorities issuing and renewing the relevant work permit.

With regard to the verification of the work permit, a distinction should be made between the initial check and the periodic check.

- *Initial check:* When intending to hire a foreign national, employers must: (i) for EU/EFTA nationals, ensure that the employee is registered or their employment has been notified to the authorities; or (ii) for third-country nationals, submit a work permit application. If an employee is already working in Switzerland, their work permit must be reviewed to assess whether any special conditions apply, eg, restrictions on changing employers.
- *Periodic checks:* When an employee is hired, HR will typically request a copy of the employee's work permit if they are not a

Swiss citizen. Before expiry of the permit, the employer will usually: (i) enquire whether the employee has initiated the renewal process for EU/EFTA nationals (of which the employer should in any event learn from the employee, as renewal requires employer confirmation); or (ii) apply for renewal (for third-country nationals).

It is therefore important for employers in Switzerland to ensure that they are hiring and employing individuals who are legally authorised to work in the country.

7. Accompanying Family Members/Dependants

7.1 Recognised Family Relationships

In principle, Swiss nationals and foreign nationals legally residing in Switzerland can apply for a Swiss residence permit for their family members for the purposes of family reunification (*Familiennachzug*).

In particular, Swiss nationals may apply for a Swiss work and/or residence permit for:

- their spouse, ie, their legally married partner;
- their children under the age of 18 (or above, depending on the circumstances); and
- their parents (depending on the circumstances).

The right to family reunification is subject to the condition of cohabitation.

EU/EFTA nationals holding a Swiss work and/or residence permit may apply for a Swiss residence permit for:

- their spouse, ie, their legally married partner;

- their children and grandchildren under the age of 21; and
- their parents, also including parents-in-law (independent of their nationality).

Apart from a spouse, children and grandchildren under the age of 21, the EU/EFTA applicant must demonstrate that they have been supporting the family member prior to their arrival in Switzerland and will continue to do so once in the country.

Additional requirements, such as adequate housing, must be fulfilled in order to obtain a Swiss work/residence permit through the family reunification process.

For students, the right of subsequent immigration is limited to spouses and dependent children.

Third-country nationals holding a Swiss work and/or residence permit may apply for a Swiss residence permit for:

- their spouse, ie, their legally married partner; and
- their children under the age of 18.

Further conditions, such as cohabitation, basic knowledge of the language spoken at the place where the permit is requested, and adequate housing must also be met.

The right to family reunification by Swiss nationals or third-country nationals must be exercised within five years or within 12 months for children over the age of 12, starting as of: (i) the granting of the Swiss work/residence permit; or (ii) establishment of the family relationship (eg, marriage or birth).

7.2 Dependant Visas

Family members of Swiss nationals admitted under the family reunification provisions may engage in self-employment or employment anywhere in Switzerland without requiring an additional permit.

The spouse (and children) of an EU/EFTA national have the right to work in Switzerland regardless of their nationality, even if the EU/EFTA national only has a residence permit (without authorisation to work). By contrast, relatives in the ascending line do not have the right to work without a proper work permit.

The spouse (and children) of a third-country national do not always have the right to work in Switzerland. In this situation, the following scenarios may occur:

- The third-country national holds an L permit. In this case, the spouse has no right to work in Switzerland, and can be authorized to work under the following conditions:
 - (a) there is a job offer from an employer;
 - (b) the salary offered is similar to that which a Swiss national with a similar background and position would receive;
 - (c) personal qualification requirements are met (see **3.3 Minimum Thresholds: Sponsor-Based Employment Visas**).
- The third-country national holds a B permit or a C permit. In this case, the spouse has the right to work without additional authorisation.

The validity of a spouse's (work) or child's permit is linked to the validity of the permit of the principal holder, ie, the EU/EFTA national or third-country national who brought their family to Switzerland.

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