
DUTY TO REPORT OPEN POSITIONS - IMPLEMENTATION IN THE CANTON OF ZUG AND FIRST EXPERIENCES

Principles

On 1 July 2018, the duty for employers to report their open positions came into force. The obligation to report open positions implements the mass immigration initiative adopted by the Swiss electorate four years ago.

The obligation to report open positions essentially obliges employers, firstly, to report vacancies to the competent regional job centre (RAV) if unemployment in the relevant occupation exceeds a threshold value. Secondly, employers may not otherwise publish or even fill the vacancy during five working days after receipt of the confirmation of receipt from the job centre. Thirdly, the employer must carry out an aptitude test on the candidates notified to him by the job placement centre and provide the job placement centre with appropriate feedback.

If these obligations are breached, a fine of up to CHF 40,000.00 may be imposed upon the employer.

List of professions affected by the reporting obligation

The obligation to register open positions only applies to occupations or types of occupations for which a certain unemployment threshold is exceeded.

The current threshold is set at 8 %. Based on this threshold, the State Secretariat for Economic Affairs (SECO) has published a list of professions for which this threshold is exceeded. At present, this list primarily includes occupations with manual work,

such as agricultural assistants, kitchen staff, service personnel or other occupations in the main construction trade, but also PR specialists, telephone operators and actors.

The current list is valid until the end of 2019. From 1 January 2020, the reporting threshold will be lowered to 5 % and the SECO will provide a new list of occupations subject to reporting requirements. This new list is to be published in the fourth quarter of 2019.

Exemptions from the reporting obligation

In the following circumstances, vacancies are exempted from the duty to report, i.e. even if the vacancy to be filled is included in the list of occupations subject to reporting requirements, there is no obligation to report in the following cases:

1. Positions within a company which are filled by internal persons who have been employed by the company for at least six months at the time of the change and for whom the change takes place without interruption. This applies, among other things, to apprentices who are taken on within the framework of a regular employment relationship after completing their apprenticeship.
2. Positions with a maximum employment period of 14 calendar days.
3. Filling vacancies with persons who are already registered with a regional job centre.
4. Filling vacancies with persons who are related or related by marriage or registered partnership to authorised signatories in the company concerned, or who are related or related by marriage or registered partnership in a straight line or up to the first degree in the side line.
5. Filling positions for internships, which are mandatory for educational institutions, as well as generally filling apprenticeship positions.

The filling of vacancies via temporary employment agencies is not exempt from the reporting requirement.

Reporting procedure

The easiest way to register a job is via the SECO's online portal, which can be reached at the Internet address www.arbeit.swiss. Alternatively, reports can also be submitted by e-mail, telephone, in writing or verbally.

Upon receipt of the notification, the responsible regional job centre checks the notification and publishes it in the protected area of the so-called "Job Room", an area of the portal to which only registered job seekers and job brokers of the job centres have access.

The waiting period of five working days (excluding Saturdays and Sundays), during which the employer may not advertise the job elsewhere, begins on the day after the job has been listed in the "Job Room".

Once the job is listed in the "Job Room", the placement agents of the job centres may submit suitable candidate dossiers to the employer within three days.

The employer is then obliged to examine the dossiers sent to him and to inform the respective job placement centre whether and, if so, which of the candidates it considers suitable and has invited to an aptitude test or an interview. The employer is not obliged to justify its decision as to why it considers a candidate to be unsuitable. After the waiting period has expired, the employer is entitled to advertise the position elsewhere or to award the position directly.

Implementation in the Canton of Zug and first practical experience

In the Canton of Zug, the contact point for employers at the regional job centre is the first point of contact for all questions relating to the obligation to register open positions. In cases of doubt, the regional job centre decides whether or not a position is subject to the registration obligation. This should guarantee rapid and reliable implementation and keep the additional costs for employers as low as possible. First experience has been positive.

Apart from the additional work that employers incur as a result of the obligation to register, and the still widespread ignorance of the new regulation, the following two problems have arisen for employers when implementing the obligation to register in practice:

It is sometimes difficult for the employer to decide whether a specific vacancy to be filled is subject to registration duty based on the SECO's list. This is particularly the case because certain occupations on the list are described only generically and unspecifically (example: "Workers with non-definable manual occupation"). In

addition, employers often advertise jobs with activities that can be attributed to two or even more occupations. If only one of these occupations is subject to registration, it is unclear whether the specific vacancy is subject to registration or not. In such cases, it is advisable in the Canton of Zug to contact the contact point for employers at the regional job centre in order to clarify these questions in individual cases.

A further problem is that the obligation to register generally delays the conclusion of the respective employment contract for ten to fourteen days. This can lead to problems if there is an urgent need for manpower - especially in industries with strongly and rapidly fluctuating manpower requirements, such as the gastronomy. In practice, these can be partially mitigated by either directly employing persons already registered with regional job centres, or by temporarily employing other persons for a fixed term of fourteen calendar days and going through the registration procedure for the duration of this fixed-term employment relationship.

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