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Corporate Immigration 2024

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Switzerland: Trends and Developments

Rayan Houdrouge and Kathryn Kruglak
Walder Wyss



Trends and Developments

Contributed by:

Rayan Houdrouge and Kathryn Kruglak
Walder Wyss

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Authors



Rayan Houdrouge is a partner at Walder Wyss, advising Swiss and multinational companies, among them disruptive technology companies, as well as international organisations on

employment-related matters. He has extensive experience in executive transfers, litigation, internal investigations, restructurings, business transfers and compensation packages, including for blockchain companies. Rayan also advises individuals, particularly on residency and philanthropic matters, and has specific expertise assisting HNWIs. Rayan studied at the University of Lausanne (lic. iur.) and the New York University School of Law (LL.M. Corporate Law). He holds the Swiss Federal Certificate in Labour Law and is an accredited social security expert.



Kathryn Kruglak is an associate at Walder Wyss, advising on employment, data protection and immigration law, as well as social security and pension matters. Kathryn's areas of

expertise also include Diversity Equity and Inclusion, and blockchain and AI, particularly with respect to data protection. She has specific experience with the drafting employment contracts, termination agreements, personnel regulations, data protection regulations and privacy notices, conducting internal investigations, assisting international organisations and treating cross-border situations. Kathryn studied at the University of Neuchâtel (BLaw, MLaw) and King's College London (LL.M. transnational law).

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Walder Wyss

Walder Wyss Ltd.

Seefeldstrasse 123
P.O. Box
8034 Zurich
Switzerland

Tel: +41 58 658 58 58
Web: www.walderwyss.com

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A Pragmatic Approach to Corporate Immigration

Introduction

Traditionally, immigration policy in Switzerland has reflected a common-sense, flexible approach that allows companies to operate effectively there.

This approach to corporate immigration continues in 2024, and the Swiss immigration authorities remain pragmatic when it comes to issuing work permits, particularly permits for the highly skilled employees and specialists that companies require in order to carry out their business in Switzerland. Moreover, the number of work permits that can be issued (ie, the Swiss “quotas”) has not been reduced this year (see “Swiss Immigration System”, below).

Further, Switzerland as a country remains stable, despite general worldwide uncertainty linked to the current geopolitical framework. Given its backdrop of solid continuity and low volatility, it is easy to do business there.

That said, since ongoing global and regional crises do tend to result in politicised discussions and increasingly inflamed rhetoric around immigration, it remains to be seen whether, generally, stricter measures will be put in place, which also

could lead to restrictions with regard to work permits.

In this context, this article provides an overview of: (i) the current Swiss immigration system; (ii) new trends and developments; and (iii) trends and developments anticipated for the future.

The Swiss Immigration System

Context

In order to work in Switzerland, non-Swiss citizens generally need one of two main work permit types:

- a short-term permit (L permit), which is issued for up to one year but can be extended or transformed into an ordinary permit; or
- an ordinary permit (B permit), which usually is issued for at least one year, and may be renewed.

In some cases, a short-term 120-day work authorisation also can be issued, which allows the holder to work in Switzerland for a maximum of 120 days per calendar year without residing in Switzerland.

Moreover, with the exception of certain sectors (eg, construction, cleaning, security and hospitality), eight days of work per calendar year are

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permitted without any type of work permit or authorisation.

It should be noted that the line between what constitutes work and what does not is not always clear. However, ordinarily, work implies the exercise of a gainful activity, which, in particular, may include: (i) attending events where key decisions are made; and (ii) negotiating or signing contracts. In this context, in practice, Swiss border guards may ask individuals about their reasons for coming to Switzerland, especially when the individual has stamps in their passport indicating that they frequently travel to Switzerland.

In any case, regardless of whether the eight-day exemption applies, and regardless of whether the activity constitutes work, depending on their nationality, some individuals still may need a visa to enter Switzerland (ordinary or business, depending on the situation) – see “Visas”, below, for future changes with regard to this point.

EU citizens and EFTA citizens

On 1 June 2002, the Agreement on the Free Movement of Persons (AFMP) concluded with the European Union (EU) and the European Free Trade Association (EFTA) entered into force.

Since then, a dual immigration system has existed in Switzerland, with a stark difference between the requirements for issuing work permits to: (i) EU citizens and EFTA citizens, who generally have a right to work in Switzerland; and (ii) third-country citizens (ie, everyone else), who typically do not have a right to work in Switzerland (with certain exceptions, such as for individuals with settled status or those who benefit from family reunification).

This is because, under the AFMP, EU citizens and EFTA citizens benefit from special rights,

including, in principle, the right to work in Switzerland without additional conditions needing to be fulfilled. They may also start working as soon as the work-permit application has been submitted, without waiting for approval.

Moreover, if they live in a neighbouring State (ie, cross-border employees), EU citizens and EFTA citizens may receive a cross-border permit (G permit) to work in Switzerland.

It should be noted that other, temporary rules currently apply to Croatian citizens, as special quotas for Croatian citizens were reintroduced in 2023. These quotas remain in place in 2024. Therefore, for 2024, the number of work permits that can be issued to Croatian citizens is as follows:

- short-term permits (L permits): 1,053; and
- ordinary permits (B permits): 1,204.

Further, the above rules for EU citizens and EFTA citizens (ie, the right to work in Switzerland) do not apply with regard to posted workers, as the AFMP does not fully cover cross-border services.

As mentioned above, the number of permits that may be issued was not reduced for 2024; therefore, for 2024, the number of permits that may be issued to EU citizens and EFTA citizens posted to Switzerland is as follows:

- short-term permits (L permits): 3,000; and
- ordinary permits (B permits): 500.

Third-country citizens (ie, non-EU citizens and non-EFTA citizens)

In general, the following conditions must be fulfilled in order for third-country citizens to be granted a work permit:

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- the employment is in the economic interests of Switzerland (ie, it creates new jobs, it will increase the company's taxable revenue, etc);
- a Swiss employer makes a request;
- the quotas are respected;
- no suitable candidates exist on the local market (which includes Switzerland, the EU and other EFTA countries) – in order to demonstrate that this condition is fulfilled, the employer will have to show proof that a job search was carried out;
- the person is a manager, executive, specialist or is otherwise qualified (ie, has the appropriate degrees, linguistic qualifications, additional training, etc, for the position);
- the employee's remuneration and working conditions will be standard for the place where the employee will be carrying out their employment activity; and
- the employee shall have appropriate housing.

However, it should be mentioned that exceptions exist for sectors that are experiencing a shortage of skilled employees. Employers recruiting employees in these sectors do not need to show that no suitable candidate can be found on the local market, and enjoy more flexibility with regard to the authorities' review of employees' qualifications.

The list of sectors benefitting from these exceptions is updated regularly by the federal immigration authorities, in conjunction with the State Secretariat for Economic Affairs (SECO), based on current market conditions. Currently, the list includes the fields mentioned below:

- Managers in the following areas:
 - (a) research and development;
 - (b) health;
 - (c) education;
 - (d) information technology and communica-

- tions;
- (e) consulting;
- (f) finance and insurance;
- (g) machinery;
- (h) electrical equipment and metallurgy;
- (i) chemical and pharmaceutical production; and
- (j) the food industry;
- Business economists and business management and organisation analysts;
- Engineers (technical production and industrial engineers, civil engineers and electrical engineers), technical specialists and information and communication specialists (computer engineers, systems analysts, software designers, application programmers and database and network specialists);
- The following health specialists:
 - (a) medical specialists;
 - (b) medical assistants;
 - (c) physiotherapists;
 - (d) specialised nursing staff; and
 - (e) medical technicians (eg, radiology assistants); and
- Teaching staff at universities and institutes of higher education.

Further, as the number of permits that may be issued was not reduced for 2024, the number of work permits that may be issued to non-EU citizens and non-EFTA citizens, with the exception of British citizens, is as follows:

- short-term permits (L permits): 4,000; and
- ordinary permits (B permits): 4,500.

With regard to British citizens, British citizens who were not exercising rights under the AFMP on 31 December 2020 do not enjoy the special rights afforded to EU citizens and EFTA citizens under the AFMP, and must fulfil the conditions applicable to third-country citizens. However,

separate, special quotas exist for British citizens. These also were not reduced in 2024. Therefore, for 2024, the number of work permits that can be issued to British citizens is as follows:

- short-term permits (L permits): 1,400; and
- ordinary permits (B permits): 2,100.

It also should be noted that, in principle, third-country citizens may only receive a cross-border permit (G permit) to work in Switzerland if certain very strict conditions are met. In particular, they must:

- have held a valid residence permit in the neighbouring State for at least six months;
- fulfil the local market conditions mentioned above; and
- live in certain bordering regions of the neighbouring State.

New trends and developments

Ukraine

Individuals who fled the war in Ukraine and were granted special protection status in Switzerland (Protection Status S) also benefit from certain exceptions regarding work permits. One of the primary exceptions is that it is not necessary to show that no suitable candidate can be found on the local market. However, the duration of Protection Status S and the situation of individuals benefitting from it after it is lifted are not entirely clear, which has made some employers hesitant to employ individuals with Protection Status S.

That said, on 1 November 2023, the Swiss Federal Council announced that Protection S Status would remain in place until at least 4 March 2025. In this same announcement, the Swiss Federal Council set a goal of having 40% of individuals with Protection S status, who are capable of working, employed by the end of 2024.

Moreover, in late 2023, the federal immigration authorities submitted a draft paper to the Swiss Federal Council outlining different scenarios for managing the transition period after Protection S Status is ended. This paper contemplates two alternative scenarios: (i) staggered departures based on the individual situation (ie, longer departure period for people with jobs, children in school, etc.); or (ii) a uniform departure period. The immigration authorities indicated a preference for the second approach, with a uniform departure period of six to nine months. Moreover, it is proposed that if, during the transition period, it can be demonstrated that the conditions applicable for receiving an ordinary work permit are fulfilled, an ordinary work permit may be granted.

Home office and cross-border employees

Although largely outside the scope of this article, it should be noted that new international agreements have entered into force regarding: (i) social security affiliation; and (ii) taxation of cross-border employees.

In particular, as from 1 July 2023, cross-border employees coming under the scope of Regulation 883/2004 (ie, EU citizens, EFTA citizens, refugees residing in an EU State or an EFTA State and stateless persons residing in an EU State or an EFTA State) may carry out up to 50% (ie, no more than 49.9%) of their employment activity by remote working in their State of residence, provided that both: (i) the State in which their employer is located; and (ii) their State of residence have signed the new Framework Agreement on the application of Article 16 (1) of Regulation (EC) No 883/2004 in cases of habitual cross-border telework (the Framework Agreement). Switzerland is a signatory of the Framework Agreement. Previously, these cross-border employees could only remain affiliated with the

Swiss social security system if they carried out less than 25% of their employment activity from their State of residence, although special rules allowing for a flexible application of Regulation 883/2004 were applied during the COVID-19 crisis through 30 June 2023.

Moreover, specific tax agreements have been reached with certain neighbouring States, such as France, which address issues around the taxation of cross-border employees remote working from their State of residence.

Data protection

Although also beyond the scope of this article, it bears mentioning that revamped personal data protection rules entered into force in Switzerland on 1 September 2023, under the revised Federal Act on Data Protection (FADP).

These rules introduced more stringent obligations for data controllers (ie, employers) coming under the scope of Swiss data protection rules, particularly concerning information to be provided to data subjects (ie, employees). These new rules also provide for reinforced penalties. Further, the FADP brings Swiss data protection rules more into line with the EU data protection rules contained in the General Data Protection Regulation (GDPR).

Future Trends

Visas

2024 is the last year during which third-country citizens from visa-exempt States, including the US and the UK, will be able to enter the Schengen Zone (which includes Switzerland) without any formalities.

Starting from 2025, third-country citizens from visa-exempt States will need an ETIAS travel authorisation in order to enter 30 European countries, including Switzerland.

This means that companies bringing over such employees will have to ensure that these individuals have an ETIAS travel authorisation (or a business visa, as the case may be), even when they do not need a work permit or authorisation (see “Introduction”, above).

Students

Switzerland continues to examine the possibility of making it easier for foreign graduates (non-EU citizens and non-EFTA citizens, as EU citizens and EFTA citizens may already do so) of Swiss universities to remain in Switzerland to work after graduation.

In late 2023, the Swiss Parliament requested that the Swiss Federal Council provide it with a new bill addressing this issue. Effectively, the Swiss Parliament has indicated a willingness to provide for such a possibility, but expressed concerns over the constitutionality of certain aspects of the initial bill drafted by the Swiss Federal Council.

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