



Memorandum on provisions concerning the Hiring of Services in the Federal Act on Employment Services and the Hiring of Services (AVG) of October 6th 1989

1. Who is deemed to be offering services for hire?

Employers are deemed to be offering services for hire if they make available their employees' services to a firm (the hirer's business) unconnected with them. The decisive point is that the employer transfers to the hirer substantial rights to give the worker instructions. This is the case if the hirer issues directions on the nature of the work to be carried out, and chooses the means or resources required. An important criterion may be constituted by whether there is a mere counting of hours or whether the employer guarantees that his or her employees will provide a certain standard of performance, and loses part of his or her payment if they fail to reach that standard, or provides services to correct the fault without charge.

2. Who requires a licence?

Licences are required for the professional hiring of services in the form of temporary work or work on contract within Switzerland or between Switzerland and abroad.

a) The various forms of hiring of services:

- Temporary work: The employer engages workers exclusively for the purpose of hiring them out, and does not himself run a business involving production or providing services. The contract of employment relates to a single assignment.
- Work on contract: Here too the purpose of engaging workers is that they should be supplied to hirers. But here the employer usually has his or her own business in which he or she can use the workers. The contract of employment is concluded for a period independent of the individual assignments.
- Occasional hiring The services of staff are deemed to be hired out occasionally if this occurs only **rarely, for a short period and is not specially planned**, and hire is not a service normally offered by the employer, thus is not habitual. It may occur e.g. if a business can no longer find work for all of its employees because of a fall in turnover, and therefore makes them available temporarily to another business rather than dismissing them. **Hiring out services occasionally does not require a licence.**

b) Hiring of services on a professional basis (Article 29 AVV)

Hiring of services on a professional basis means the habitual, profit-oriented hiring of services. Hiring of services is habitual if ten or more hire contracts are concluded in twelve months with an individual worker or group of workers. Any agreement relating to an assignment counts as a contract. Hiring of services is assumed to be profit-oriented if the hirer is called on to pay more than the direct wage costs plus incidental wage costs plus a share of administrative costs not exceeding 5%. Hiring of services is also deemed to be professional if it generates a turnover in excess of CHF 100,000.

3. What legal provisions apply to all hiring of services, whether or not the providers require a licence?

- When advertising vacancies every business offering services for hire must give its name and exact address. The advertisement must clearly indicate that the staff are to be engaged for the purpose of hiring of services.
- Special rules apply in respect to data protection: information concerning job-seekers and vacancies which would make it possible to deduce the identity of the job-seeker or the hirer's business may be passed on only with the agreement of those concerned. Such information may be put on file at the end of the hire period only with the written agreement of those concerned, and this agreement can be withdrawn at any time
- The employment contract between the business offering services for hire and the job-seeker must be drawn up in writing. The issues to be covered in the contract are specified in the law, as are mandatory special minimum periods of notice in respect of temporary work contracts (Article 19 AVG).
- Expenses must be clearly identified as such and supported by vouchers; they will otherwise be treated as wages and social security contributions become payable on them. On principle, no flat-rates are allowable and the exact sums must be set out. Under no circumstances will the social insurance authorities accept a percentage of the overall gross income amount of the temping firm as reimbursement. As a rule, reimbursements apply to the usual journey to and from the usual place of work and for meals at the usual place of work, not as expenses but as part of income.
- Any clause in a contract prohibiting an employee from taking up a job with the hirer after the end of the assignment is void (Article 19, paragraph 5 b, AVG; see also Article 22, paragraph 2 AVG).
- If the hirer's business is subject to a generally binding collective agreement the provisions contained in the agreement relating to pay and working hours must be respected by the staff provider (Article 20 AVG)
- The hire contract between the business offering services for hire and the hirer must be drawn up in writing. Matters to be dealt with in it are stipulated in the law (Article 22 AVG).
- Foreign nationals may be engaged by a business offering services for hire only if they are authorised to take paid employment and entitled to change their job and profession. This generally precludes the engagement for the purpose of hiring out their services of persons with a seasonal or short stay authorisation, and of those with leave to stay a year with authorisation restricted to a specified activity (exceptions can be made in the case of specialists). Different regulations apply to EU/EFTA citizens, who are holders of permanent residency or short-term residency permits or a frontier working permit or those who are newly arrived. They can be engaged for hire during the first two years following the entry into force of the agreement on the free movement of persons with the EU and the corresponding amendment of the EFTA convention - bearing in mind the priority for Swiss nationals and the local and professional labour regulations - and in the first five years bearing in mind applicable quota limits. Following the agreement, frontier workers may be hired out in the entire frontier region during the five year transition period. Asylum seekers are prohibited from taking work for three months, and this period can be extended by the canton. They may thereafter be allowed to work in specific branches.
- In case of litigation between the business offering services for hire and the worker arising from the employment relationship, jurisdiction over any suit brought by the worker lies with the courts where he or she usually works (Article 24, paragraph 1, Act on Jurisdiction in Civil Matters, GestG) or with the courts at the location of the branch office of the business offering services for hire with which the contract was concluded (Article 24, paragraph 2, GestG), or with the courts where the head office of the business offering services for hire are to be found (Article 24, paragraph 1, GestG). For suits brought by the business offering services for hire, jurisdiction lies with the courts at the place of residence of the worker (Article 24, paragraph 1, GestG) or with the courts where the worker usually works (Article 24, paragraph 1, GestG)

4. What additional regulations apply to businesses offering staff hiring services that require a licence?

- To secure a trading licence the business and the persons responsible for its management must satisfy certain conditions. The business must be registered in the Swiss Commercial Register, it must have suitable offices and may not engage in any other commercial activity which could put at risk the interests of employees or hirers.
- Those responsible for management must be Swiss citizens or foreigners with a residence permit (except for EU/EFTA citizens due to the agreement on the free movement of persons), must be qualified to offer services for hire on a professional basis, and be of good reputation (having no previous convictions, no recovery proceedings against them, no bankruptcies, no outstanding tax liabilities, etc.). Article 9 AVV provides that they are held to have the necessary professional skills if they have completed a professional apprenticeship or equivalent training, have been active professionally for several years and in particular
 - a. have received recognised training in staff placement or hiring services; or
 - b. have several years professional experience in placement, hiring services, personnel, organisation or business consultancy, or in the personnel management field.

The person responsible for management of a business can generally only provide hiring of services to professional standards if he or she is present at the business for at least 50% of the working day. Accordingly he or she can be responsible for at most two businesses at different addresses.

- In the case of placement from and to foreign countries the person responsible for management must further ensure that there is sufficient knowledge available in the business concerning conditions in the relevant countries, in particular concerning entry, hiring of services and taking up gainful employment. In the case of the hiring of foreign staff newly arriving from abroad (which is allowed only in exceptional cases), knowledge of Swiss legislation concerning foreign nationals is required.
- A business offering services for hire must lodge a deposit with the cantonal licensing authority as a guarantee that its workers' wages will be paid. This will amount to between CHF 50,000 and CHF 150,000 depending on business activity (CHF 50,000.- below 60,000 hours of hiring a year, over that figure CHF 100,000, and where federal approval has been granted an additional CHF 50,000).
- The business offering services for hire must furnish the licensing authority on request with all necessary information, and submit any documentation required. An annual report on the business's activity involving the offer of services for hire must be submitted to the licensing authority. The licensing authority must furthermore be immediately informed if changes occur to the information provided in the business's licence application (e.g., change of address, change in the person responsible for management, change in the corporate status, change in the deposit, adaptation of contracts, etc.).
- Hiring of services from abroad to Switzerland by a foreign business offering services for hire is in principle not allowed (Article 12, paragraph 2, AVG).
An exception is made if no Swiss business offering services for hire offers appropriate staff (Article 30 AVV).

5. The licence

- The licence, which is not limited in duration, is in the name of the business, the name of the person responsible for management being also stipulated. A charge is made for issue and amendment of the licence; this lies between CHF 700 and CHF 1,500 for issue and between CHF 200 and CHF 800 for amendment.
- Branches always require a separate licence. If they are in a different canton to the main office, they must obtain the licence before commencing business. If they are in the same canton as the main office they may commence before the licence has been issued as long as they are registered with the licensing authority.
- Application for a licence should be submitted in writing to the competent cantonal licensing authority, which can provide the forms required. An application for a federal licence can be lodged with the same authority at the same time.
- Hiring of services within Switzerland requires a cantonal licence. Businesses providing staff from Switzerland for hire abroad, or newly arriving foreign staff for hire in Switzerland require a federal licence in addition. A cantonal licence is a precondition in every case. A special regulation governs hiring of services involving the Principality of Liechtenstein.
- The licence can be withdrawn if it was obtained by the use of incorrect or misleading information or by the concealment of material facts, if the business offering services for hire has committed repeated or serious breaches of the legal provisions, or if the conditions of issue are no longer met. As supervising authority the licensing authority can carry out inspections.
- Where a business offering services for hire hires out staff to branches of industry covered by a collective agreement that has been declared to be generally binding, respect for the provisions of the agreement concerning wages and working hours is in principle supervised by the inspection bodies of the parties to the collective agreement. The business offering services for hire can nonetheless apply for an inspection to be carried out by a special inspection body independent of the parties to the collective agreement (Article 6 of the Federal Law on the Declaration of General Applicability of Collective Agreements). In this case however the business offering services for hire must bear the cost of the inspection, even if it cannot be proved that the business has breached the collective agreement.

The full German texts of the Federal Act on Employment Services and the Hiring of Services (AVG), the Ordinance on Employment Services and the Hiring of Services (AVV) and the Ordinance on Fees, Commissions and Sureties under the Federal Act on Employment Services and the Hiring of Services (GV-AVG) can be found at the following Internet addresses (Acrobat Reader is required):

AVG www.admin.ch/ch/d/sr/8/823.11.de.pdf
AVV www.admin.ch/ch/d/sr/8/823.111.de.pdf
GV-AVG www.admin.ch/ch/d/sr/8/823.113.de.pdf

French texts: www.admin.ch/ch/f/rs/8/823.11.fr.pdf, (...).111.fr.pdf, and (...).113.fr.pdf respectively
 Italian texts: www.admin.ch/ch/i/rs/8/823.11.it.pdf, (...).111.it.pdf, and (...).113.it.pdf respectively

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