

New obligation to report job openings: What must employers do?

The Federal Council and Parliament have introduced a new obligation to report job openings in order to implement the federal public initiative "Against Mass Immigration" (Art. 121a Federal Constitution) with effect as of 1 July 2018. This requires scores of employers to make adjustments to their recruitment and hiring procedures. Employers are advised to examine the new legal requirements and make the necessary adjustments.

The new obligation to report job openings aims to better use the potential of the domestic labour force. Further, it should become easier to place job applicants which are registered with the public employment office [öffentlicher Arbeitsvermittlung (öAV)].

To reach its goals, legislation (Art. 21a of the Aliens Act and Art. 53a ff. of the Regulation on Placement Services) provides that employers must report any job opening to the competent Regional Employment Centre (REC), provided it figures in a professional category with an unemployment rate of at least 8% in Switzerland. For the period between 1 July 2018 to 31 December 2019, the Federal Council has issued a list of professional categories with accompanying job titles which must be reported and which are subject to the new reporting obligation if the threshold value is reached or surpassed. 19 professional categories, including marketing and PR professionals, employees in the food services and hotel sectors as well as various jobs in the construction industry will fall under the new obligation to report job openings. From 1 January 2020, the threshold value will be lowered to 5% with the result that additional professional categories, e.g. commercial occupations, may also be included.

The obligation to report job openings has no implications on residence and work permits and does not apply to postings.

A. How must employers proceed?

The new obligation to report job openings places an additional administrative burden on employers. In order to properly fulfil the new obligation, employers must observe the following four steps as of 1 July 2018:

Step 1: Review of the obligation to report job openings

If a specific position is to be filled, employers must first review whether such position in principle falls within the scope of the reporting obligation. They may consult the professional categories that require the reporting of job openings on the list published by the SECO on the www.arbeit.swiss web portal. If the designated occupation is included therein, employers are subject to reporting job openings as a matter of principle, even if they call upon a recruitment agency to fill a specific vacancy. However, the latter may agree to assume the administrative work related to the new obligation to report job openings for employers.

By way of exception, the obligation to report job openings does not apply if:

- a position is occupied by a person who has already been working for the company, the group of companies or corporate concern (this also applies for apprentices who are employed following their apprenticeship);
- a position is occupied by a person who is related to authorised signatories of the company by marriage or registered partnership or related by marriage in a direct line or up to the first degree in the collateral line;
- the job lasts no longer than 14 calendar days;
- the employer finds job applicants registered with the REC and employs them.

Step 2: Notifying the job vacancy to the REC

Should a reporting obligation arise, employers must notify the position to be filled to the competent REC either online via the www.arbeit.swiss portal, by telephone, email or in person. The following must be notified:

- occupation sought;
- activity, including specific requirements;
- place of work;
- workload;
- commencement date;
- type of employment contract: fixed or indefinite;
- contact address;
- name of employer.

The more precise the information, the better the REC will be able to propose suitable candidates to employers. Employers are thus well-advised to also attach a detailed job description in their notification to the REC.

Step 3: Observance of the blackout period of five working days (publication ban)

The REC does acknowledge receipt of the notification and will send the files of the most suitable candidates to employers within three working days following the acknowledgement of receipt of the employer's notification. At the same time, the open position requiring notification shall be subject to a blackout period of five working days (not counting Saturdays), beginning from the working day after the job's entry into the so-called Job Room (the REC's online job portal), which will also be confirmed to employers by the REC. The open position may only be publicly advertised following the lapse of the publication ban, even if the employer is informed earlier by the REC that no suitable applicants are registered for the open position.

Step 4: Review of the files assigned and response to the REC

Employers have to review the files submitted to them by the REC and decide at their discretion which candidates they find suitable. Electronic aptitude tests are admissible or may even be used on a larger scale in order to better cope with the additional administrative burden resulting from the new obligation to report job openings. When employers deem candidates proposed to them by the REC appropriate, they must invite them to a job interview or take an aptitude test, i.e. they must consider these candidates in their recruiting process. Employers are still free to decide whom they ultimately hire. In particular, employers are not obliged to hire applicants registered with the REC. However, with regard to the candidates proposed to them, employers must inform the REC as to which candidates they considered suitable and whether they have hired one of them, with no time limit for doing so.

B. Penalties for non-compliance

Employers who intentionally breach the obligation to report job openings or the obligation to conduct a job interview or an aptitude test are punishable by a fine of up to CHF 40,000. Acts of negligence carry a fine of up to CHF 20,000 (Art. 117a Aliens Act). In addition, employers face substantial reputational risks. However, failure to comply with the obligation to report job openings does not have any impact on the validity of the employment agreement.

C. Recommendation

It is of utmost importance that employers check as soon as possible whether they employ workers in professional categories falling under the new obligation to report job openings as of 1 July 2018. Should this be the case, they should review their internal procedures concerning recruitment and hiring of new staff and adjust them if necessary in light of the new job reporting obligation. If employers revert to the services of a recruitment agency to fill vacancies, they must also clarify whether the recruitment agency is capable of and will in fact

fulfill the employer's obligation to report job openings in the future.

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Kellerhals Carrard Practice Group
Employment and Social Security Law

Dr. Urs Marti and Dr. Christoph Zimmerli,
Certified Specialists SBA Employment Law

urs.marti@kellerhals-carrard.ch
christoph.zimmerli@kellerhals-carrard.ch

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Basel

Hirschgaesslein 11
P.O. Box 257
CH-4010 Basel
Tel. +41 58 200 30 00
Fax +41 58 200 30 11

Berne

Effingerstrasse 1
P.O. Box
CH-3001 Berne
Tel. +41 58 200 35 00
Fax +41 58 200 35 11

Lausanne

Place Saint-François 1
P.O. Box 7191
CH-1002 Lausanne
Tel. +41 58 200 33 00
Fax +41 58 200 33 11

Lugano

Via Luigi Canonica 5
P.O. Box 6280
CH-6901 Lugano
Tel. +41 58 200 31 00
Fax +41 58 200 31 11

Sion

Rue du Scex 4
P.O. Box 317
CH-1951 Sion
Tel. +41 58 200 34 00
Fax +41 58 200 34 11

Zurich

Raemistrasse 5
P.O. Box
CH-8024 Zurich
Tel. +41 58 200 39 00
Fax +41 58 200 39 11