



REPUBLIQUE ET CANTON DE GENEVE
Département de la sécurité et de l'économie
Office cantonal de l'inspection et des relations du travail
Office cantonal de la population et des migrations

CERN

Posted workers

Implementation of the principle of foreseeable preponderant share

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I. PREPONDERANT SHARE

On 18 October 2010, agreements were concluded between Switzerland, France and CERN regarding the law applicable to contractors operating on the CERN site. These agreements have applied since 18 January 2014 to contracts concluded on the basis of calls for tender issued by CERN since 18 January 2014 (contracts signed before this date continue under the old arrangements).

When CERN issues a call for tender, it informs bidders of the location of the preponderant share of the services to be provided. **This location is fixed in the contract** and determines whether Swiss or French law applies.

If the preponderant share is in France, French law applies to the contract in its entirety. In this case, firms should contact the competent French authorities.

If the preponderant share is in Switzerland, Swiss law applies to the entire contract, even to any part of the contract being carried out on the French part of the CERN site.

The term **EU-30/EFTA firm** means a firm that has its headquarters in one of the EU countries to which the agreement on the free movement of people concluded between Switzerland and the EU applies without limitation, or in one of the other three members of EFTA. This covers the following countries:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

The term EU-1 firm means a firm that has its headquarters in Croatia. For this country, limitations on the free movement of people will apply until 31 December 2023 at the latest. After this date, firms and nationals of this country will be treated in the same way as those from the EU-30/EFTA countries.

Third country means any other country.

Given the restrictive conditions applicable to non-European personnel, a favourable response is likely only for highly qualified and specialised workers.

Note: In the following text, OCPM denotes *Office cantonal de la population et des migrations* (cantonal office for population and migration), OCIRT denotes *Office cantonal de l'inspection et des relations du travail* (cantonal office for labour inspection and relations) and SEM denotes *Secrétariat d'Etat aux migrations* (secretary of state for migration).

It is important to note that, if the preponderant share of an activity takes place on Swiss soil, Swiss/Geneva salary and employment conditions must be applied for all of the work carried out on the CERN site by the workers concerned, including any work carried out on the French part of the CERN site.

The salaries paid to workers must therefore comply with the minimum salaries, including supplements, set out in the collective employment agreements declared to be compulsory as well as in the model employment contracts as defined in Article 360a of the *Code des Obligations* (CO).

In addition, the employment conditions contained in federal laws and ordonnances, in particular in the *Loi sur le travail* and the CO, as well as in the collective employment agreements declared to be compulsory and in the model employment contracts as defined in Article 360a of the CO, must be guaranteed for workers in the following respects:

- working time and rest time;
- minimum length of holidays and leave;
- health, safety and hygiene at work;
- the protection of pregnant women, new mothers, children and young people;
- non-discrimination, in particular equal treatment for men and women;
- the conditions under which temporary labour firms make workers available.

In general, in all cases where a work permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***The CV of each worker;***
- ***The employment or secondment contract between the worker and your firm;***
- ***Form A1 for freelance workers : https://www.ge.ch/moe/doc/formulaire_a1.pdf.***

It is also important to note that checks may be carried out at any time by inspectors from the works councils (*commissions paritaires*) of the sectors concerned. They have the right to halt an activity in certain cases. Works councils have the authority to fine firms that do not comply with legislation and, in addition, firms may be required to pay **salary adjustments** if they fail to pay their employees adequately with regard to Swiss law.

II. MISSIONS OF LESS THAN 90 DAYS (THE PRINCIPLE OF PREPONDERANT SHARE ALSO APPLIES IN THIS CASE)

a. For EU-30/EFTA firms: the declaration principle

- i. EU-30/EFTA firms must use the declaration procedure: https://www.sem.admin.ch/sem/fr/home/themen/fza_schweiz-eu-efta/meldeverfahren.html
- ii. Who must make the declaration? The firm must declare those of its own workers who are being posted to work on the CERN site.
- iii. In general, the firm must declare its posted workers (online declaration procedure) if the activity lasts for more than eight days per calendar year.
- iv. The declaration must be made at least eight days before the start of the activity.
- v. **NOTE**, in the **construction, catering and hospitality, industrial and domestic cleaning, and security** sectors, posted workers must be declared on the first day of the activity.

It is also important to note that checks may be carried out at any time by inspectors from the works councils (*commissions paritaires*) of the sectors concerned. They have the right to halt an activity in certain cases. Works councils have the authority to fine firms that do not comply with legislation and, in addition, firms may be required to pay **salary adjustments** if they fail to pay their employees adequately with regard to Swiss law.

PLEASE NOTE: Nationals of third countries may be posted to Switzerland using the declaration procedure if they have previously been integrated into the labour market of one of the EU-30/EFTA countries on a long-term basis, i.e. for at least one year.

FREELANCE WORKERS who are nationals of an EU-30/EFTA country may also be declared. They must be able to prove their freelance status at all times by producing a fully completed form A1.

b. For EU-1 firms: the declaration principle

- i. In general, the firm must declare its posted workers (online declaration procedure) if the activity lasts for more than eight days per calendar year, except in the catering and hospitality sector, where the declaration must be made on the first day of the activity.
- ii. The declaration must be made at least eight days before the start of the activity.
- iii. **NOTE:** In the sectors of **construction, civil engineering and finishing work, services associated with horticulture and landscaping, industrial cleaning and security**, posted workers require a work permit from the first day of the activity (see the procedure applicable to missions of more than 90 days on page 7).

In such cases, the application must be submitted to the OCPM at least six weeks before the start of the activity. The following documents are required:

- a. <http://www.ge.ch/moe/doc/OME-C1.pdf>
- b. http://ge.ch/population/media/siteofficielpopulation/files/imce/Formulaires/formulaire_td_travailleurs_detaches.pdf
- c. <http://www.ge.ch/moe/doc/OME-E1.pdf>

In general, in all cases where a work permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***The CV of each worker;***
- ***The employment or secondment contract between the worker and your firm.***

It is also important to note that checks may be carried out at any time by inspectors from the works councils (*commissions paritaires*) of the sectors concerned. They have the right to halt an activity in certain cases. Works councils have the authority to fine firms that do not comply with legislation and, in addition, firms may be required to pay **salary adjustments** if they fail to pay their employees adequately with regard to Swiss law.

EU-1 FREELANCE WORKERS must also be declared at least eight days before the start of the activity. If the activity is in the **catering and hospitality** sector, it must be declared on the first day. Freelance status will be verified by the OCIRT.

NOTE: In the sectors of **construction, civil engineering and finishing work, services associated with horticulture and landscaping, industrial cleaning and security**, posted workers require a work permit (see the procedure applicable to missions of more than 90 days on page 7).

- a. In such cases, the application must be submitted to the OCPM at least six weeks before the start of the activity. The following documents are required: <http://www.ge.ch/moe/doc/OME-C1.pdf>
- b. http://ge.ch/population/media/siteofficielpopulation/files/imce/Formulaires/formulaire_td_travailleurs_detaches.pdf
- c. <http://www.ge.ch/moe/doc/OME-E1.pdf>

In general, in all cases where a permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***Your CV;***
- ***A completed form A1.***

c. For firms headquartered in third countries

- i. Firms headquartered in third countries must apply for a work permit (*autorisation de travail*) from the OCPM for each worker.
- ii. Applications must be submitted at least six weeks before the start of the mission.
- iii. The following documents are required:
 - a. <http://www.ge.ch/moe/doc/OME-C1.pdf>
 - b. http://ge.ch/population/media/siteofficielpopulation/files/imce/Formulaires/formulaire_td_travailleurs_detaches.pdf
 - c. <http://www.ge.ch/moe/doc/OME-E1.pdf>

In general, in all cases where a permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***The CV of each worker;***
- ***The employment or secondment contract between the worker and your firm;***
- ***Proof of freelance status in the case of freelance workers.***

It is also important to note that checks may be carried out at any time by inspectors from the works councils (*commissions paritaires*) of the sectors concerned. They have the right to halt an activity in certain cases. Works councils have the authority to fine firms that do not comply with legislation and, in addition, firms may be required to pay **salary adjustments** if they fail to pay their employees adequately with regard to Swiss law.

- iv. The OCIRT examines the working, salary and housing conditions of posted workers, as well as their status as salaried or freelance. It submits the applications to the competent works councils.
- v. Once the decision has been taken, the OCIRT sends the file to the OCPM, which, depending on the type of permit requested, submits it to the SEM for approval.

Work may begin as soon as the permit is received from the OCPM.

III. MISSIONS OF MORE THAN 90 DAYS

a. For EU-30/EFTA and EU-1 firms

- i. Firms must apply for a work permit for each posted worker.
- ii. They must submit their application to the OCPM at least six weeks before the start of the activity, accompanied by the following documents:
 - a. <http://www.ge.ch/moe/doc/OME-C1.pdf>
 - b. http://ge.ch/population/media/siteofficielpopulation/files/imce/Formulaires/formulaire_td_travailleurs_detaches.pdf
 - c. <http://www.ge.ch/moe/doc/OME-E1.pdf>

In general, in all cases where a permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***The CV of each worker;***
- ***The employment or secondment contract between the worker and your firm.***

It is also important to note that checks may be carried out at any time by inspectors from the works councils (*commissions paritaires*) of the sectors concerned. They have the right to halt an activity in certain cases. Works councils have the authority to fine firms that do not comply with legislation and, in addition, firms may be required to pay **salary adjustments** if they fail to pay their employees adequately with regard to Swiss law.

- iii. The OCIRT examines the working, salary and housing conditions, the nationality and the skills of the posted workers.
- iv. The OCIRT submits the full application to the works council concerned. Once the decision has been taken, the OCIRT sends the file to the OCPM.
- v. The OCPM writes to the firm to:
 - Inform it of the favourable decision;
 - Request any missing documents. In the event of the worker taking up residence in Switzerland, the employer must send the following duly completed documents to the OCPM by the first day of the activity:
 - The second page of the EU form;
 - The tenancy agreement for the accommodation;
 - 2 photos;
 - A copy of each worker's identity document;
 - If the worker concerned is married and has children, copies of the marriage certificate and the children's birth certificates.

Work may begin as soon as authorisation is received from the OCIRT.

b. For firms headquartered in third countries

The procedure is the same as in the case of activities of less than 90 days (see Section II c on p. 6), except that approval by the SEM is requested by the OCIRT for activities lasting more than four months according to the application.

Given the restrictive conditions applicable to non-European personnel, a favourable response is likely only for highly qualified and specialised workers.

IV. DOCUMENTS REQUIRED

- a. <http://www.ge.ch/moe/doc/OME-C1.pdf>
- b. http://ge.ch/population/media/siteofficielpopulation/files/imce/Formulaires/formulaire_td_travailleurs_detaches.pdf
- c. <http://www.ge.ch/moe/doc/OME-E1.pdf>
- d. https://www.ge.ch/moe/doc/formulaire_a1.pdf

In general, in all cases where a permit is required, the official forms should be accompanied by the following documents:

- ***A cover letter explaining the reason for your application;***
- ***The service contract or the job order issued by CERN;***
- ***The CV of each worker;***
- ***The employment or secondment contract between the worker and your firm (for employees).***

V. TYPES OF AUTHORISATION ISSUED

A. GCern PERMIT

- EU-30/EFTA nationals
- Third-country nationals who have lived in the French/Swiss border area for at least 6 months and hold a long-term residence permit.
- EU-1 nationals who live in the French/Swiss border area

The following residence permits are accepted as long-term residence permits in the case of applications for *frontalier* permits for non-Europeans:

Carte de résident (Resident card)

Carte de résident longue durée - CE (Long-term resident card - EC)

Carte de séjour "vie privée et familiale" ("Private and family life" residence permit for the spouses of Swiss and French nationals)

Carte de séjour temporaire "visiteur" (Temporary "visitor" residence permit)

A **one-year visa** serving as a residence permit **only** for the spouse of a French national ("**vie privée et familiale**") or for a person living on his or her own means in France who has agreed not to work there ("**visiteur**")

Proof of an application for a residence permit for the spouses of Swiss nationals.

B. Entry permit

- Third-country nationals, with the exception of those who have lived in the border area for at least six months and who are in possession of a long-term residence permit
- EU-1 nationals who live outside the French/Swiss border area

C. L permit

- For applications for work permits for those taking up main residence in Switzerland.

The entry authorisation conditions are the same as those for authorisations of less than 90 days per year for non-EU/EFTA service providers.

All applications must be submitted to the OCIRT. Those concerning nationals of non-EU/EFTA countries must also be submitted to the SEM for approval.

NOTE: Holders of a GCern permit are not entitled to professional mobility and may use their permit only for the authorised provision of services. These permits are only available for people working on the CERN site.

VI. USEFUL WEBSITES

Secrétariat d'Etat aux migrations (SEM - secretary of state for migrations)

<https://www.sem.admin.ch>

Office cantonal de la population

et des migrations (OCPM - cantonal population and migration office)

<http://ge.ch/population/>

Office cantonal de l'inspection

et des relations du travail (OCIRT - cantonal office for employment inspection and relations)

<http://www.ge.ch/ocirt/>

Service de la main-d'œuvre étrangère (MOE - foreign labour service)

<http://www.ge.ch/ocirt/moe/>