New Job Reporting Obligation for Employers

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1. Background

Within the context of the implementation of the mass immigration initiative, the Federal Act on Foreign Nationals (AuG) has been amended. New article 21a AuG mandates the Federal Council to take measures to strengthen the potential of Swiss domestic employees. One such measure is the introduction of a job reporting obligation for employers which is enshrined in the Federal ordinance on employment services and personnel lending (article 53a AVV ss.).

The new provisions of the AVV stipulate that as of 1 July 2018, employers must notify the Regional Employment Agencies (RAV) of vacancies in specific professional groups for which the unemployment rate reaches a threshold of 8% before the vacancy can be further advertised.

2. Prerequisite for the Job Reporting Obligation

The prerequisite for the job reporting obligation is the employer's intention to fill a position in a profession for which the unemployment rate within Switzerland reaches the threshold defined by the Federal Council.

The job reporting obligation only applies to specific professional groups defined by the Swiss State Secretariat for Economic Affairs (SECO). The SECO lists professional groups whose unemployment rate in Switzerland has reached or exceeded the threshold of 8%. The list shall be updated once a year. Primarily affected are professional groups from the watch industry, the hotel industry, construction, gastronomy, marketing, PR and agriculture. The reporting obligation is triggered if the vacant job can be classified as belonging to one of the listed professional groups. The requirements are regardless of the nationality of the hired person or the specific industry of the employer. Thus, even if an employer is offering services in a professional field not figuring on the list, it is obliged to inform the RAV prior to the public advertising if it intends to employ an employee for a job falling in one of the listed professional categories.

The Federal Council may adapt the relevant threshold at any time to suit the situation on the labour market. As of 1 January 2020 the threshold shall be reduced to 5%. The transition period of 18 months between the 8% threshold effective as from 1 July 2018 and the 5%

threshold effective as from 1 January 2020 is intended to allow employers to adapt their internal hiring process to the reporting obligation.

For the avoidance of doubt, the employer's job reporting obligation also applies to positions which are placed through (temporary) employment agencies or headhunters. In case of personnel lending, the reporting obligation applies to the personnel lending agency as the employer and not to the hiring company.

3. Procedure

An employer can report a job vacancy by telephone, internet registration or in person to the regional RAV. After reporting the open position to the RAV, the employer is not permitted to advertise said position further within the next 5 days. Therefore, the job vacancy is exclusively available for registered unemployed persons during this period. Within 3 days as from the reporting, the RAV can also submit suitable candidates for the vacant job to the employer. The employer is obliged to invite such proposed candidates to a job interview. Hence, at least in an early stage of the hiring process, the RAV will be involved. However, if the employer does not consider any of the candidates proposed by the RAV to be suitable for the vacant position, it is under no obligation to justify a negative decision vis à vis the RAV.

4. Exceptions to the job reporting obligation

There are some exceptions to the obligation to report vacancies to the RAV. Those exceptions intend to balance out potential negative side effects of the reporting obligation. Basically, there is no reporting obligation if:

- the employer fills the position directly with a unemployed person registered at the RAV;
- the employer fills the position with a person who has worked within the company or group for at least six months. This also applies to apprentices;
- the employer fills a temporary position for a maximum duration of 14 calendar days only;
- the employer employs a close relative (e.g. for succession purposes).

3. Penalties for Non-Compliance

Penalties are imposed on employers who do not comply with the reporting obligations and/or the obligation to invite candidates proposed by the RAV to a job interview. If an employer intentionally violates his reporting obligation, he will be fined up to CHF 40'000. A negligent offence is punished by a fine of up to CHF 20'000.

4. Prospect

It is to be expected that the new job reporting obligation will lead to considerable additional costs and efforts for employers. Not only will a high initial effort be required to establish all processes within a company, but also the continuous compliance with the job reporting obligation will bind existing resources of the employer. To avoid reporting mistakes and to keep the administrative effort small, it is recommended to standardize the internal employer processes as far as possible and to train the responsible HR personnel accordingly.

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