

Spain

The Displacement/Transfer of Swiss workers for the provision of employment services in Spain

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Madrid, 07.08.2018

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The displacement/transfer of Swiss workers for the provision of employment services in Spain

The purpose of this report is to clarify basic concepts relating to labor relationship that are established between companies from different countries, analyzing more specifically the coordination of business activities between the states of Spain and Switzerland.

Swiss workers displaced or transferred to Spain must bear in mind that they will be governed by the Agreement between the European Community (EC) and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons on June 21, 1999, (hereinafter "the Agreement"), that establishes the right of Swiss companies to displace or transfer employees to Spain to provide employment services or to carry out their work duties.

Said Agreement guarantees the following rights associated with the free movement of persons, hence, granting them with:

- a. The right to equal treatment with nationals, and the pursuit of an economic activity, living, employment and working conditions.
- b. The right to occupational and geographical mobility, which enable to move freely within the territory of the host state and to pursue the occupation of their choice.
- c. The right to stay in the territory.
- d. The right of residence for members of the family, irrespectively of their nationality.
- e. The right for the member of the family to conduct an economic activity.
- f. The right to acquire properties.
- g. After the end of an economic activity or period of residence, the right to return to Spain for the purposes of pursuing an economic activity and the right to convert a temporary residence into a permanent one.

In the present document, we will analyze the most important and general conditions to be considered by persons and workers who would like to access to Spain as employed or self-employed persons, and as persons providing services. For the purpose of the present memo, within the movement of persons: a displacement is a move for a period of 90 days or less, a transfer is a move for more than 90 days.

1. - The right to displace Swiss workers to Spain in the framework of the provision of employment services.

Upon the provisions contained in the Agreement, there is a displacement of workers when a company based in Switzerland, displaces employees under its direction, in the framework of a provision of services. In this case, the employment contract is concluded between the Swiss company and the worker who is intended to perform his/her duties in Spain, during a limited work period.

Hence, there shall be an employment relationship between the Swiss company and the worker throughout the period of displacement.

1.1. Term of displacement.

Under Article 5 of the Agreement, the worker displaced to Spain will provide his/her employment services during a period, **which does not exceed 90 days of effective work per calendar year, whether it is a provision of uninterrupted services, or successive services.** The displaced worker to Spain shall also be entitled to the right of entry and residence.

1.2. Displacement communication.

The Swiss company must communicate the displacement, at the latest 8 days before the start of the activity, to the competent Labor Authority of the territory, where the service will be provided. This communication must be made electronically. Exceptionally, communication shall be done by postal mail or by fax.

The employer must provide the data of the company and workers information. He must also communicate the date of commencement, place and duration of the activity that is intended to be performed. The Swiss Company must also provide the details of a contact person that the Swiss authorities can contact during the length of the service.

2. - The right to transfer Swiss workers to Spain in the framework of the provision of employment services.

Upon the provisions contained in the Agreement, it is considered being a transfer when the period to provide employment services for a Company based in Spain, **exceeds 90 days of effective work per calendar year, whether it consists of uninterrupted services or successive services.**

The competent authorities of Spain may issue the worker with a residence permit which is valid for at least a period of 5 years when the duration of the employment is of one year or more. It shall be extended for at least five years. In cases where the duration of the employment contract is longer than three months (90 days) and less than one year, the residence permit shall be issued for the same duration as the contract. The residence permit of a worker who has an employment contract for a period of less than one year shall be extended for up to a total of 12 months period. Same rules apply in cases of self-employed persons, however to renew the residence permit, the worker must prove he/she is doing an economic activity, in such cases, a new residence permit shall be issued.

2.1. Residence permit.

The request of the special permit shall be submitted within the next following 3 months after the entry in Spain. This request must be done before the Immigration Office of the province where the employee will live, or in absence, before the corresponding Police Office. There are official application forms to complete.

With the said forms shall be attached the following documents:

- (i) Passport into force.
- (ii) Supporting documentation, translated and apostilled, about the family relationships.
- (iii) Employment contract.

3. - General provisions.

3.1. Respect to the working conditions in Spain.

Swiss companies that displace or transfer workers to Spain must respect the current national legislation as well as collective agreements of general application and offer said workers employment conditions equivalent to Spanish citizens, especially in terms of remuneration, working hours, rest time, annual leave, labor protection, equal treatment, etc.

The supplements, received by the displaced/transferred worker for providing the employment service, constitute part of the salary, to the extent that they are not paid as reimbursement for the expenses actually incurred and originated by the travel, accommodation or maintenance.

In those activity branches where there are no collective bargaining agreements and, therefore, minimum wages are not established, the displaced/transferred workers must receive salaries equivalent to those offered in the region for the profession performed.

3.2. Social Security system.

A. In the event of displacement, **upon Article 8 of the Agreement, Switzerland and Spain** will regulate the coordination of Social Security systems in order to guarantee in particular:

- Equal treatment;
- The determination of the applicable legislation;
- The accumulation, for the opening and retention of the entitlement to benefits, as well as for the calculation thereof, of all the periods taken into account by the different legislations;
- Benefits payment period to residents in Switzerland territory and Spain;
- Mutual aid and administrative cooperation between authorities and institutions.

Displaced Swiss workers to Spain continue to contribute to the Swiss Social Security and during the displacement they will be entitled to social benefits established in Switzerland in case of accident, occupational disease, unemployment, disability, etc. The worker and the employer must not contribute to the Spanish Social Security and accredit the payment of contributions in Switzerland.

Swiss displaced Workers, as well as members of the family who do not exercise an economic activity in Spain, will not have to join the Spanish Social Security and will receive healthcare, if necessary, through the European Health Insurance Card that they must request before leaving Switzerland.

The European Health Insurance Card is the document proving the right of its holder to receive

medical services that are necessary from a medical point of view, during a temporary stay in any of the member countries of the European Union, the European Economic Area and Switzerland, taking into account the nature of the benefits and the expected duration of the stay. This card is personal and non-transferable, so that, a card will be issued for each member of the family unit.

- B. However, **in the event of transfer**, the general provision estates that the worker transferred shall be subject to the Social Security Law applicable wherein is pursuing his/her employment services

In this respect, the worker shall join and contribute to the Spanish Social Security System.

3.3. Relevant Court in the event of litigation.

In the event of litigation regarding labor issues, the applicable Agreement to determine the relevant court in every claim is the Agreement of Lugano II.

The Agreement of Lugano II is signed between the European Community and its Member States, Norwegian, Switzerland and Iceland.

This Agreement is applicable when the residence of the defendant is located in one of the aforementioned States.

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