



REPUBLIC AND CANTON OF GENEVA

Department of Security and Economy

Cantonal Office for Work Inspection and Labour Relations (OCIRT)

Guide for International Organizations

Terms and conditions applicable to the construction industry

Effective 1 June 2016

Updated on 29.07.2016

TABLE OF CONTENTS

I.	OBJECTIVE OF THE GUIDE	p.1
II.	SWISS LABOUR LAW	p.1
	A. Legal provisions	p.1
	B. Contractual provisions.....	p.2
	C. Other legal provisions.....	p.3
III.	CONSTRUCTION LAW.....	p.4
	A. Collective labour agreements in the construction sector.....	p.4
	B. Standard contracts in structural building works.....	p.4
	C. Links for more information	p.5
IV.	CORPORATE OFFENCES.....	p.5
V.	RULES AND REGULATIONS APPLICABLE TO FOREIGN NATIONALS (WORK PERMITS)	p.6
VI.	CONTROLS	p.9
VII.	CONTACT INFORMATION.....	p.10
VIII.	LEGAL AND DOCUMENTARY REFERENCES.....	p.10

This translation is provided for information purposes only and has no legal force.

I. OBJECTIVE OF THE GUIDE

International Organizations (IO) may choose to renovate by enlarging or transforming their existing premises, or by constructing new buildings.

They may utilize Swiss firms as well as firms based in other countries provided that those firms meet certain terms and conditions.

The chosen firm must comply with the current Swiss legal framework, notably in the areas of labour law, employee health and safety, and the law on foreign nationals.

The status granted to international organizations by the host agreements that were concluded with the Federal Council states that site inspections conducted by the competent authorities shall be jointly organized with the International Organization with its prior consent.

This guide aims to give a general overview of the regulations and of the various inspections employers may be subject to.

II. SWISS LABOUR LAW

A. Legal provisions

The distinction between private law and public law

The law is divided into two sources, comprised of:

- public law, which covers all norms and standards governing the relationships in which the state and public law entities or institutions are vested with public authority and act in the general interest, and
- private law, which can be defined *a contrario* as encompassing all standards which do not fall under public law and governs the relationships between persons, who are equal under the law.

It is important to understand the distinction between these two sources of law. Public law sets minimum peremptory norms that must be observed. However, it is important to note that under certain conditions, some private law norms may also be imperative (see sections about the extended collective agreement and the standard employment contract).

Code of Obligations

Private labour law is governed by various norms. One of these is the Code of Obligations (SR 220 – CO), in which the 10th heading (articles 319-362) defines the provisions applicable to the employment contract. However, there are other legal, regulatory, or contractual norms that govern the relationships between employer and worker.

Among these other private law provisions are the collective labour agreement (CLA) and the standard employment contract (SEC). In principle, they both contain provisions that are more favourable to workers than the minimum requirements of the Code of Obligations (CO) and the Federal Labour Act (LTr).

Federal Labour Act

Public labour law is mainly governed by the Federal Labour Act for work industry, craft, and commerce (SR 822.111 – Labour Act (LTr)) and its thirteen implementing ordinances (OLT, SR 822.111- 822.117).

These norms include the provisions on the protection of workers' health and safety. Responsibility lies with the employer to comply with these legal provisions.

Among the provisions of the Federal Labour Act and its implementing ordinances, compliance with the following should be specifically observed:

- Prescriptions regarding working hours (e.g. length of breaks, daily leisure time, overtime);
- A temporary permit by the Cantonal Office for Work Inspection and Labour Relations (OCIRT) with advance notice to the joint commission and the construction inspection authority is required for temporary night work and occasional work on holidays and Sundays (e.g. for up to three months of night work and six Sundays, public holidays included, per company per calendar year). [Application form for temporary permits](#)
For permanent or regularly recurring night or Sunday work, permits are delivered by the State Secretariat for Economic Affairs (SECO). [SECO application form for permanent permits](#)

The standards for workplace safety in the strict sense of the word are contained in several legal acts in addition to the Labour Act and its ordinances, specifically the Federal Accident Insurance Act (LAA - SR - 832.20) and the Federal Ordinance on the prevention of occupational accidents and diseases (Ordinance on the Prevention of Accidents, OPA - SR – 832.30) which aims to prevent occupational accidents.

At the cantonal level, the standards regulating building sites can be found in the Act on constructing buildings and other installations (LCI - L 5 05) and its implementing regulations on building sites (RChant - L 5 05.03).

B. Contractual provisions

The collective labour agreement: a general definition

A collective labour agreement (CLA) is an agreement between employers (or employer associations) and labour associations. It aims to regulate employment conditions as well as the relationship between the contracting parties.

A CLA usually contains provisions concerning the establishment, content, and termination of the employment relationship, provisions regarding the rights and obligations of the contracting parties, as well as provisions on the application and regulation of the CLA.

All of these provisions are part of the individual contract of employment. They automatically apply to the workers who are members of one of the contracting associations, provided that the employer is part of the CLA. It should be noted that most employers who take part in a CLA extend the terms of this agreement to workers who are not part of a labour association.

Among the provisions contained in CLAs, it is particularly important that the following be observed:

- Requirements related to working hours (e.g. setting a weekly maximum number of work hours);
- Setting salaries with details about potential supplemental benefits (such as the 13th month salary as well as indemnities such as travel or meal allowances, etc.);
- Holiday entitlements, which are often more generous than the provisions set out in the Code of Obligations;
- Continuity of income in the case of illness, maternity leave, or military service;
- Regulations related to termination of employment (e.g. termination notice).

The role of joint commissions

Joint commissions ensure that collective labour agreements are enforced in a particular sector. They take all necessary steps to achieve that end, notably by:

- Ensuring that the CLA is enforced in their sector;
- Defending the general interest of their profession;
- Imposing sanctions which fall within their jurisdiction when it is determined that a CLA has been breached;
- Collecting professional association fees and managing joint funds;
- Promoting the sector as a career option to others and supporting skill development of workers.

The extended collective labour agreement

By decree, the State Council can extend the scope of application of a CLA thus rendering the agreement applicable to all employers and workers of an economic sector or an occupation. In the case of an extension, membership to a worker association becomes unnecessary, as the CLA automatically applies. **As the application of the provisions of an extended collective labour agreement is automatic, these provisions become mandatory in the sector concerned.**

These agreements are listed on the website of The State Secretariat for Economic Affairs (SECO):

Extended CLA	SECO website
--------------	------------------------------

C. Other legal provisions: standard employment contracts

Article 360a of the Code of Obligations states:

“¹ Where the wages that are customary for a geographical area, occupation or industry are repeatedly and unfairly undercut within a particular occupation or economic sector and there is no collective employment contract laying down a minimum wage that may be declared universally binding, on application by the tripartite commission as defined in Article 360b, the competent authority may issue a fixed-term standard employment contract providing for a minimum wage varied by region and, where applicable, by locality in order to combat or prevent abusive practices.

² Such minimum wage must not conflict with the public interest or damage the legitimate interests of other economic sectors or sections of the population. It must have due regard to the minority interests of the affected economic sectors or occupations that stem from regional and business diversity.”

In accordance with article 360a of the Code of Obligations, a standard employment contract (SEC) sets mandatory minimum wages, which cannot be departed from to the detriment of workers. It constitutes an instrument to regulate the labour market in cases of repeated and abusive wage dumping practices.

In accordance with the principle of proportionality, the mandatory nature of wage provisions is time-limited, as they are repealed when the sector concerned is no longer at risk of wage dumping.

Therefore, it is necessary to remain aware of standard employment contracts, which can be found on the website of the Cantonal Office for Work Inspection and Labour Relations (OCIRT):

Standard employment contracts	Current standard contracts
-------------------------------	--

The State Secretariat for Economic Affairs (SECO) lists the standard contracts applicable in Switzerland:

Standard employment contracts setting mandatory minimum wages	SECO website
---	------------------------------

III. CONSTRUCTION LAW

A. Collective labour agreements in the construction sector

The construction sector is specifically regulated by extended collective labour agreements both at the national and cantonal level. It should be noted that in addition to an extended national collective labour agreement, there can also be cantonal regulation. Therefore, cantonal regulation must always be considered even if the sector is nationally regulated.

In order to ensure that companies working on construction sites comply with the construction sector regulation, the contractual provisions of the sector must be respected in addition to the mandatory legal provisions (such as those contained in the Code of Obligations, the Labour Act and its Ordinances).

The national extended collective labour agreements, the federal decrees on the extension of the scope of application of CLAs, and the cantonal labour agreements can be accessed through the website of the Cantonal Office for Work Inspection and Labour Relations (OCIRT).

Collective labour agreements	Current legislation
------------------------------	-------------------------------------

In the construction sector, particular attention should be paid to the collective labour agreements for structural building works, metalwork, second fix, and finishing trades. Structural building works and metalwork comprise the following (see the link on each CLA):

For the structural building works the sub-sectors are:

- [Builders, stonemasons, etc.](#)
- [Site managers](#)
- [White collar workers](#)
- [Prefabrication](#)

For metalworks:

- [Heating, ventilation, and air-conditioning](#)
- [Electricity](#)
- [Zinc and copper work \(flashings, coverings, etc.\) and sanitary installations](#)
- [Metalwork and structural metalwork](#)

For second fix and finishing works:

- [Finishing works](#)
- [Early retirement](#)

B. Standard contracts for structural building works

Since January 2016, a standard employment contract with mandatory minimum wages has been in place throughout Geneva for the structural building works sector (concluded on 15 December 2015). The scope of application of this standard employment contract must be examined to determine which workers it applies to.

This standard employment contract will be repealed as soon the structural building works sector is regulated by an extended collective labour agreement.

Standard employment contract for the structural building works sector	SEC _____
---	------------------------------

C. Links for more information

Link to the guide by the State Secretariat for Economic Affairs (SECO) on the Federal Labour Act: [Labour act: summary of key work and rest period provisions](#)

Link to the website of the federal administration on personnel management: [legal provisions, facts and useful information for personnel management: recruitment, personnel development, partial unemployment, social insurance, labour law, and occupational safety](#)

Applicable law: protection of workers		
Legal basis	LTr	Federal Labour Act (SR 822 11)
	OLT1	Ordinance 1 regarding the Labour Act (SR 822.111)
	OLT2	Ordinance 2 regarding the Labour Act (SR 822.112)
	OLT3	Ordinance 3 regarding the Labour Act (SR 822.113)
	LAA	Federal Accident Insurance Act (SR 832 20)
	OPA	Ordinance on the Prevention of Accidents (SR 832 30)

IV. CORPORATE OFFENCES

It should be noted that the Cantonal Office for Work Inspection and Labour Relations (OCIRT) documents companies that have committed infractions of Geneva's labour regulations and which are, therefore, not permitted to bid on government contracts for a certain period of time. This list, updated daily, is available here:

OCIRT blacklist (Art. 45 LIRT ¹ , 9 PWA ² , 13 LTN ³)	OCIRT Blacklist (45 LIRT, 9 PWA, 13 LNT)
---	--

¹ Cantonal Act on Labour Inspection and relations (LIRT)

² Federal Posting of Workers Act (PWA)

³ Federal Act on illegal employment (LTN)

The State Secretariat for Economic Affairs (SECO) also keeps updated lists of offending companies, available here:

SECO blacklist (Art. 9, par. 2, b., PWA)	SECO blacklist – PWA
SECO blacklist (13 LTN)	SECO blacklist - LTN

The joint commission of second fix and finishing works publishes two lists: one list of the names of companies which are not up-to-date with the payment of professional contributions and/or the payment of their contribution to the early retirement fund, and another list of the companies which have been ordered to pay an enforceable contractual fine and have failed to do so.

CPSO blacklist – professional and retirement contributions	CPSO blacklist - contributions
CPSO blacklist – unpaid enforceable contractual fine	CPSO blacklist - fines

These lists, which are regularly updated, enable international organizations to be aware of the companies who are not in compliance with the employment conditions applicable in Geneva.

V. RULES AND REGULATIONS APPLICABLE TO FOREIGN NATIONALS (WORK PERMITS)

In Switzerland, foreign nationals are subject to two different legal regimes: the Agreement on the Free Movement of Persons (AFMP) for the citizens of member states of the European Union (EU) or the European Free Trade Association (EFTA), and the Foreign Nationals Act (FNA) for the citizens of the rest of the world and for European citizens when planning to remain in Switzerland for more than 90 days.

To this day, the admission of Croatian nationals remains governed by the Foreign Nationals Act (FNA).

1. Legal basis:

The AFMP, in force since 1 June 2002, as well as its protocol regarding the participation of the Republic of Bulgaria and Romania (SR 0.142.112.681 and SR 0.142.112.681.1), regulate the working and residential conditions of EU and EFTA nationals in Switzerland.

The Foreign Nationals Act (FNA, in force since 1 January 2008 – SR 142.20), with its ordinances and implementing articles (SR 142.201- 142.299), regulates the entry, residence, and gainful employment of non-EU/EFTA nationals in Switzerland.

2. There are **two categories of workers:**

- Posted workers, and
- Workers employed by Swiss employers.

A posted worker is a worker who, for a limited period of time, carries out his or her work in Switzerland while being employed and paid by a company based in a foreign country.

The conditions for hiring a posted worker depend on the country in which the company that has been chosen for the contract is based, and also on the worker's nationality. ([click here for a list of countries](#))

Any foreign company contracted in Switzerland must **comply with the Swiss legal framework**. The construction sector applies the principle of joint and several liability of the main contractor in the case of subcontracting. In accordance with Article 5 of the Federal Posting of Workers Act (PWA – SR.832.20; [Link to PWA](#)), the contracting company is civilly liable if the sub-contractors do not comply with the net minimum wages and the conditions of employment referred to in article 2, paragraph 1 of PWA. Consequently, the Cantonal Office for Work Inspection and Labour Relations (OCIRT) recommends that International Organizations clearly stipulate the conditions under which sub-contracting is acceptable in their service agreements and explicitly draw the attention of the service providers involved to the principle of joint and several liability.

Workers from non-EU/EFTA countries may also be posted to Switzerland by European companies, provided they have been employed on a regular basis by a European company for over one year.

Companies located in non-EU/EFTA countries may also post workers to Switzerland, provided that they meet the conditions described hereafter.

3. Foreign companies may also choose to open **a subsidiary in Switzerland** and hire Swiss or foreign workers.

The nationality the worker hired by a Swiss company in Switzerland determines which law is applicable: the AFMP or the FNA. For specific cases, see the Cantonal Office of Population and Migration (OCPM) website ([link](#)) to clarify the applicable procedures.

REQUIREMENTS

NOTE: Croatian companies fall under the scope the FNA.

- a) **Companies based in the EU/EFTA**

Assignments up to 90 days:

In this case, there is no permit required, but a notification procedure (see p. 8) must be completed, and the rules and conditions described in sections II and III must be thoroughly complied with (Code of Obligations, Federal Labour Act, current collective labour agreements and standard employment contracts).

Employee housing, food, and travel costs must be borne by the employer, and the Swiss minimum wages must be applied.

Assignments over 90 days:

Employees are allowed to work if they obtain a permit, which is issued only if certain requirements are met:

- Employee wages must meet the requirements in effect for the region and also for the sector;

- Employers must fund housing in Switzerland (and Switzerland only) for employees during the full duration of their posting;
- Employers must pay a per diem food allowance;
- Employers must compensate workers for their transportation and travel costs;
- The entry of the workers must serve the economic interests of Switzerland.

b) Companies based outside the EU/EFTA (third country)

Regardless of the duration of the assignment, employees of non-EU/EFTA companies are allowed to work if they obtain a permit, which is issued only if the following requirements are met:

- Employee wages must meet the requirements in effect for the region and also for the sector;
- Employers must fund housing in Switzerland (and Switzerland only) for employees during the full duration of their posting;
- Employers must pay a per diem food allowance;
- Employers must compensate workers for their transportation and travel costs;
- The entry of the workers must serve the economic interests of Switzerland;
- The workers must be highly skilled.

Approval by the competent federal authority, the State Secretariat for Migration (SEM), is required for non-EU/EFTA States.

Given the restrictions that apply to non-European personnel, admission may only be granted to highly skilled and specialized workers.

c) Self-employed workers

Self-employed EU/EFTA nationals who are set up in an EU/EFTA country may either go through the notification procedure (for short-term assignments up to 90 days) or apply for a permit (for assignments lasting longer than 90 days).

They must provide proof of their self-employed status by following the procedure described below.

For assignments over 90 days, they must also provide proof that their activity serves the economic interests of Switzerland.

Self-employed individuals set up in a non-EU/EFTA country, or who are not EU/EFTA nationals, are not allowed to work in Switzerland.

PROCEDURE

a) Companies based in the EU/EFTA

EU/EFTA workers:

- Assignments up to 90 days:

Employers must complete the notification procedure for their employees no later than 8 (eight) days prior to commencement of work, through the [online notification procedure](#).

- Assignments over 90 days:

Employers who want to post workers must be granted a permit no later than one month prior to commencement of work. They must submit their application to the Cantonal Office of Population and Migration (OCPM), which will transfer it to the Cantonal Office for Work Inspection and Labour Relations (OCIRT). [Link](#)

b) Companies based outside the EU/EFTA

Employers who want to post workers, regardless of the workers' nationalities, must submit an application no later than six to eight weeks prior to commencement of work to OCPM which will transfer it to OCIRT ([link](#)). Then the permit must be approved by the State Secretariat for Migration (SEM).

Given the restrictions that apply to non-European personnel, admission may only be granted to highly skilled and specialized workers.

c) Self-employed workers

EU self-employed workers must provide form A1 or proof of their self-employed status ([link](#)).

For assignments up to 90 days, self-employed workers should use the notification procedure ([link to form](#)). For assignments over 90 days, they must be granted a permit by the OCIRT ([link to MOE](#)).

Applicable law: employment of foreign nationals		
Legal basis	AFMP	Agreement on the Free Movement of Persons (AFMP) SR 142.112)
	OFMP	Ordinance on the introduction of the free movement of persons ((SR 142.203)
	PWA	Federal Posting of Workers Act (SR 823.20)
	PWO	Ordinance on the Posting of Workers (SR 823.201)
	FNA	Foreign Nationals Act (SR 142.20)
	OASA	Ordinance on admission, residence, and gainful employment (SR 142.201)

VI. CONTROLS

Companies operating in the construction industry are regulated by the competent joint commissions to ensure compliance with the CLA.

OCIRT inspections should be expected at any time. The OCIRT ensures that the terms of employment conditions applicable in Geneva are respected. It also ensures the health and safety of workers and enforces the prohibition of illegal work.

SUVA and the construction site inspection authority also carry out inspections, notably regarding the enforcement of the Accident Insurance Act and of the cantonal legislation (RChant and LCI).

In accordance with the host agreement they benefit from, inspections at the sites of International Organizations require the prior authorization of the Organization. In order to foster optimal progress in their construction or renovation projects, the OCIRT encourages International Organizations to clarify, in advance, the terms of inspections with all involved parties.

VII. CONTACT INFORMATION

OCPM – Service étrangers (employment of foreign nationals)

Telephone: +41 22 546 47 95

Fax: +41 22 548 48 22

Email: emploi.ocpm@etat.ge.ch

Website: www.ge.ch/population

★★★★★

OCIRT – Service for the employment of foreign nationals (MOE)

Telephone: +41 22 388 74 00

Fax: +41 22 546 96 35

Email: smoe@etat.ge.ch

Website: www.ge.ch/ocirt/moe

VIII. LEGAL AND DOCUMENTARY REFERENCES

1. Labour law:

- [Applications for temporary work permits](#)
- [Applications for permanent work permits with SECO](#)
- [SECO: collective labour agreements](#)
- [Standard employment contracts applicable in Geneva](#)
- [SECO: employment contracts](#)

2. CLA:

- Builders, stonemasons, etc.
- Site managers
- White collar workers
- Prefabrication
- Heating, ventilation, and air-conditioning
- Electricity
- Zinc and copper work (flashings, coverings, etc.) and sanitary installations
- Metalwork and structural metalwork
- Finishing works
- Early retirement

3. Legal basis:

- LTr: Federal Labour Act for work in industry, craft and commerce (SR 822.111)
- OLT1: Ordinance 1 regarding the Labour Act (SR 822.111)
- OLT2: Ordinance 2 regarding the Labour Act (SR 822.112)
- OLT3: Ordinance 3 regarding the Labour Act (SR 822.113)
- LAA: Accident Insurance Act (SR 832.30)
- OPA Ordinance on the Prevention of Accidents (SR 832.30)
- PWA: Federal Posting of Workers Act
- AMFP: Agreement on the Free Movement of Persons
- OLCP: Ordinance on the introduction of the Free Movement of Persons
- PWO: Ordinance on the Posting of Workers
- FNA: Foreign Nationals Act
- OASA: Ordinance on admission, residence, and gainful employment

4. Blacklists:

- OCIRT Blacklist (45 LIRT, 9 PWA, 13 LTN)
- SECO Blacklist - PWA
- SECO Blacklist - LTN
- CPSO Blacklist-contributions
- CPSO Blacklist-fines

5. Form:

- Notification procedure for short-term gainful employment