

# REBER

## **Destination of workers and quarantine: Is there any pay due during the quarantine and if so, which amount?**

According to Art. 2 of the Covid-19 Ordinance on Measures to Combat Coronavirus in International Passenger Traffic<sup>1</sup>, all persons entering Switzerland who have been in a risk country according to the FOPH's list<sup>2</sup> within 14 days of entry must go into quarantine. This regulation is therefore also applicable to persons who are sent to Switzerland from a risk country in order to perform work. Such workers must therefore enter Switzerland and be placed in quarantine 10 days before the actual start of their work. The first question is therefore whether they are entitled to a salary during quarantine.

There are no provisions on this in the relevant provisions of the Covid19 Regulation 3<sup>3</sup> in its version of 14 September 2020. Nor does the website of the Federal Social Insurance Office provide any indication as to whether posted workers are entitled to compensation for loss of earnings during quarantine<sup>4</sup>. However, as they are by nature not affiliated to the AHV or other Swiss social insurance schemes, and as there are no special regulations in this respect, such a claim for compensation must be rejected.

This is therefore a challenge for employers. After all, they are the ones who send the employees to Switzerland. The employees must then be quarantined in order to later fulfil their contractual obligations in Switzerland. Since it is well known that wages abroad are significantly lower than in Switzerland, the question arises whether foreign employers must pay their posted employees the wages of the country of origin during the quarantine period or whether they must already pay the minimum wages applicable in Switzerland to be calculated in accordance with the Posting of Workers Act<sup>5</sup> (Entsendegesetz, EntsG) and the applicable collective labour agreements (CLA or GAV), even though no work has yet commenced in Switzerland.

The purpose of the relevant provisions of the EntsG is to prevent abusive dumping wage and working conditions on the Swiss labour market. According to Art. 2 of the EntsG, posted employees should be subject to the same minimum requirements of Swiss labour law, including the generally binding CLA, as Swiss employees in the same industry. Whether Swiss employees who have to go into quarantine are obliged to continue to be paid by their employer is highly controversial and has not yet been conclusively clarified<sup>6</sup>.

One argument against payment of the minimum wages under Swiss law is that the posted workers do not carry out any professional activity during the quarantine and therefore do not intervene in the Swiss labour market and no Swiss wages at the workplace are undercut. In our opinion, the protective purpose of the provisions of the EntsG is therefore not affected. Pragmatically speaking, it would probably have to be assumed that during quarantine only the wages of the country of origin are to be paid, plus the costs of travel, board and lodging for the employee. After the end of the quarantine and when the employee starts working in Switzerland, the wages applicable in Switzerland under the EntsG

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<sup>1</sup> <https://www.admin.ch/opc/de/classified-compilation/20201948/index.html>

<sup>2</sup> <https://www.bag.admin.ch/bag/de/home/krankheiten/ausbrueche-epidemien-pandemien/aktuelle-ausbrueche-epidemien/novel-cov/empfehlungen-fuer-reisende/quarantaene-einreisende.html#-2060676916>

<sup>3</sup> <https://www.admin.ch/opc/de/classified-compilation/20201773/index.html>

<sup>4</sup> <https://www.bsv.admin.ch/bsv/de/home/sozialversicherungen/eo-msv/grundlagen-und-gesetze/eo-corona.html#-426425304>

<sup>5</sup> <https://www.admin.ch/opc/de/classified-compilation/19994599/index.html>

<sup>6</sup> <https://www.kfmv.ch/ueber-uns/blogartikel/coronavirus-arbeitsrechtliche-situation>

would then have to be paid. However, the requirements of the EntSG must be fulfilled in advance, namely the notification of the activity in Switzerland with at least 8 days' notice<sup>7</sup>.

An enquiry to the SEM<sup>8</sup> could not be conclusively answered. Apparently this question is currently being intensively discussed by various federal offices, namely SEM, SECO<sup>9</sup> and BSV<sup>10</sup>. As long as the wages in the home country do not differ exorbitantly from Swiss wages and as long as the expenses during the quarantine are fully covered by the foreign employer, the payment of the home wages could in our opinion be a pragmatic compromise<sup>11</sup>. However, as the legal situation is unclear, we recommend that you specifically enquire with the relevant labour market authorities in the Cantons where the posted workers are to carry out their work. A list of the competent labour market authorities is published here<sup>12</sup>.

If you have any further questions in connection with the posting of employees, we will be happy to assist you.

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<sup>7</sup> Art. 6 para. 3 EntSG

<sup>8</sup> Staatssekretariat für Migration

<sup>9</sup> Staatssekretariat für Wirtschaft

<sup>10</sup> Bundesamt für Sozialversicherungen

<sup>11</sup> This is our preliminary and personal assessment due to the currently unclear legal situation. We accept no responsibility for this non-binding opinion. Clarification with the cantonal authorities until clarification by the federal authorities therefore seems essential.

<sup>12</sup>[https://www.sem.admin.ch/sem/de/home/ueberuns/kontakt/kantonale\\_behoerden/adressen\\_kantone\\_und.html](https://www.sem.admin.ch/sem/de/home/ueberuns/kontakt/kantonale_behoerden/adressen_kantone_und.html)