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AVOCATS

DROIT DU TRAVAIL

WORKATION : qu'est-ce ? et que dit le droit suisse ?



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WORKATION: what is it? and what does Swiss law say?

With the festive season approaching, some employees may be tempted by the 'workation'. But what does this mean? Is it regulated under Swiss law, and how?

The term 'Workation' is a contraction of 'Work' and 'Vacation'. The principle of 'Workation' is to work, not in the office or at home (this is known as 'Home-office' or teleworking) but in another place, which may be in Switzerland or abroad, for example in a holiday home or hotel, in the mountains or by the sea, etc.

This contraction between 'Work' and 'Vacation' poses an initial problem from the point of view of Swiss law. Under Swiss law, the purpose of a holiday is rest, i.e. to allow the worker to recover from the fatigue caused by the work done during the year. In other words, employees must not work during their holidays. If they do work during their holidays (with a few exceptions, particularly if the duration of the work is very short and the employee has a managerial position), the employee is theoretically entitled to make up the hours worked, in other words to make up the hours or days of holiday. If the employee decides to do 'workation' (with the employer's agreement), it must then be determined whether this is considered as hours or days worked or as holiday.

If an employee wishes to 'workation', he or she must have the agreement of the employer. If an employment contract or staff regulations do not expressly authorise it, Swiss law - as is also the case for home-office work - does not confer any right for the employee to engage in 'workation'.

An employer is therefore under no obligation to accept that an employee engages in 'Workation'. If a Swiss employer nevertheless accepts that an employee engages in 'Workation', it is strongly advised to sign an agreement setting out the terms and conditions of the 'Workation'.

In this agreement, the undersigned advises to define clearly whether it is a time worked or holidays. One possible solution is to stipulate a minimum number of hours or days worked and/or daily working hours. But other solutions are also possible.

The undersigned also advises to set a time limit for the 'Workation', especially if it takes place abroad. If the employee goes abroad for a certain length of time, many questions arise, and the longer the 'stay', the more complex the issues and the greater the risks.

One of these questions is whether the employee will continue to be covered by Swiss social insurance. Employers are therefore advised to check with their AVS compensation fund before giving their consent.

If the 'Workation' is carried out abroad, the question also arises as to whether the employee is subject to the social security system of the foreign country. This is not a trivial matter, and a prudent employer should find out beforehand.

If there is a risk that the foreign country where the 'Workation' is carried out will consider that the activity is subject to its social insurance, the undersigned advises the Swiss employer against accepting.

The same applies if the foreign country considers that the entire employment relationship is subject to its national law.

Employers are also advised to check with their accident insurance. Some insurance policies do not cover an accident suffered by an employee abroad.

Again, if the 'Workation' takes place abroad, in addition to insurance issues, there are questions of immigration law and permits or visas, i.e. questions relating to the conditions of residence in the foreign country. The undersigned advises the employer to stipulate in the agreement that all steps must be taken by the employee himself/herself and under his/her responsibility.

Another question that may arise in the case of 'Workation' is that of data protection. Depending on the activity of the employee, who may have access to sensitive personal data, and depending on the foreign country, personal data may be transmitted abroad, and the employer may have to take certain measures to guarantee data protection and security.

So, while 'Workation' may sound 'dreamy', it raises a number of questions under Swiss law, and employers considering accepting it are strongly advised to find out more beforehand and to draw up an agreement governing the terms and conditions of 'Workation'. Employers should also bear in mind that the risks may be different and greater or lesser depending on where the workation is carried out and how long it lasts.

Source : <https://www.wg-avocats.ch/en/actualites/workation-what-is-it-and-what-does-swiss-law-say/>