

# **REGULATIONS**

of the

**Association for Bipartite  
Enforcement,**

**Continuing Training and the  
Social Fund**

**for Staff Leasing**

# REGULATIONS OF THE ASSOCIATION FOR BIPARTITE ENFORCEMENT, CONTINUING TRAINING AND THE SOCIAL FUND FOR STAFF LEASING

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In accordance with the Articles of Association of the Association for Bipartite Enforcement, Continuing Training and the Social Fund for Staff Leasing (Paritätischer Vollzug, Weiterbildung und Sozialfonds für den Personalverleih) ("PVP") of 5 July 2012, the General Assembly issued the following Regulations on the same day:

## ***FIRST PART: ORGANISATION OF THE OFFICES FOR ENFORCEMENT, CONTINUING TRAINING AND THE SOCIAL FUND***

### **Art. 1 Transfer of management responsibility**

<sup>1</sup> Securing enforcement tasks and promoting occupational health and safety protection are the tasks of the "Enforcement Office" at the headquarters of the UNIA trade union. The services provided by the "Enforcement Office" are charged to the profit and loss account of the Enforcement Fund in return for compensation, with the exception of occupational health and safety services, which are charged to the Social Fund.

<sup>2</sup> The "Continuing Training Office" at swissstaffing headquarters is responsible for promoting continuing training. The latter also determines the allocation of financial resources, in particular to the eligible training organisations and institutions. The services provided by the "Continuing Training Office" are charged to the profit and loss account of the Continuing Training Fund in return for compensation.

<sup>3</sup> The Social Fund for improving the social structuring of the collective daily sickness benefit insurance of the social partners is the task of the "Social Fund Office" at the headquarters of the swissstaffing Pension Fund. The services of the "Social Fund Office" are charged to the profit and loss account of the Social Fund in return for compensation.

### **Art. 2 Enforcement Office**

The "Enforcement Office" is run by the UNIA trade union.

- It ensures the implementation of the CBA on Staff Leasing in cooperation with the contracting parties, in particular conducting checks on compliance with the CBA on Staff Leasing. It delegates the tasks relating to the priority provisions of existing CBAs to the corresponding bipartite commissions of the sectors.
- It ensures the collection of contributions from employers, employees and all staff leasing companies that are not swisstaffing members (Arts. 23 and 25 of the Association's Articles of Association). The General Assembly of the Association issues implementing regulations for Arts. 23 and 25 of the Articles of Association and for Arts. 10-12 of these Regulations.
- It ensures reimbursements to the contracting parties of the CBA on Staff Leasing.
- It records the outsiders.
- It carries out investigations into allegations.
- It prepares the annual report for the attention of the Swiss Secretariat for Economic Affairs (seco), enclosing the Enforcement monitoring report.
- It ensures the maintenance and further development of the joint tempdata database in cooperation with the Board.
- It ensures the maintenance and further development of the tempcontrol website in cooperation with the Board.
- In cooperation with the contracting partners of the CBA on Staff Leasing, it provides legal information to members and outsiders on the CBA on Staff Leasing, on contracts declared generally applicable and on contracts under Annex 1.
- It is responsible for measures to prevent accidents and promote health.
- It keeps accounts of its activities as part of the budget approved by the General Assembly.
- It reports to the Board on an ongoing basis and to the General Assembly on an annual basis on all activities of the Enforcement Office, presenting the accounts and the budget.
- It supports the Board and the General Assembly in their work and deals with all administrative work relating to the Enforcement Office.
- It settles the attendance fees and expenses of the bodies and committees.
- It is responsible for the payment of the lump-sum compensation of the contracting parties to the CBA on Staff Leasing under Art. 27 of the Articles of Association.
- It requests the Board to carry out and delegate further tasks where it considers this to be reasonable within its area of competence.

### **Art. 3 Continuing Training Office**

The "Continuing Training Office" is run by swisstaffing.

- It is responsible for the promotion of continuing education and training and the dissemination of the continuing training provision.
- It is responsible for issuing the Continuing Training vouchers.
- It endeavours to make use of the continuing vocational training opportunities offered by the

various sectors. It may enter into contracts and invest in shareholdings for this purpose. At the same time, however, private providers' provision should also be open to employees who, at the request of an existing educational institution, have been found worthy of support by the Board.

- It gives priority to promoting training courses offered by the contracting partners of the CBA on Staff Leasing.
- It makes proposals to the Board for deciding on the further education institutions and provisions recognised by the Fund.
- It supports the Board and the General Assembly in their work and deals with all administrative work relating to the Continuing Training Office.
- It ensures the maintenance and further development of the temptraining website in cooperation with the Board.
- It keeps accounts of its activities as part of the budget approved by the General Assembly.
- It reports to the Board on an ongoing basis and to the General Assembly on an annual basis on all activities of the Continuing Training Office, presenting the accounts and the budget.
- It reports its attendance fees and committee expenses to the Enforcement Office.
- In justified exceptional cases, it may issue provisions that supplement and/or amend Art. 18 ff. of these Regulations, which must be approved by the Continuing Training Office of the Board Committee.

#### **Art. 4 Social Fund Office**

- The "Social Fund Office" is run by an institution appointed by the Board.
- It is responsible for implementing and running the CBA-compliant daily sickness benefit insurance (industry solution daily sickness benefit).
- It is responsible for the advisor-broker services of the Social Fund Office.
- It represents the interests of the PVP in the "Joint Commission Sector Solution Staff Leasing".
- It examines the subsidy claims of health insurance companies.
- It periodically ensures the payment of premium subsidies to the health insurance companies.
- On the basis of the data supplied by the insurance companies, it periodically draws up the evaluations required for monitoring the progress of the sector daily sickness benefit solution.
- It supports the Board and the General Assembly in their work and deals with all administrative work relating to the Social Fund Office.

- It keeps accounts of its activities as part of the budget approved by the General Assembly.
- It reports to the Board on an ongoing basis and to the General Assembly on an annual basis on all activities of the Social Fund Office, presenting the accounts and the budget.
- It ensures the maintenance and further development of the tempcare website in cooperation with the Board.
- It reports its attendance fees and committee expenses to the Enforcement Office.

## **SECOND PART: ACCOUNTING**

### **Art. 5 Funding**

After deduction of the lump sums paid to the social partners and the general CBA costs, 20% of the income of the PVP will be used for funding under Enforcement, 40% under Continuing Training and 40% under Social Fund.

### **1st SECTION: DECLARATION AND TAXATION**

#### **Art. 6 Payroll reporting**

Within the scope of their respective collection responsibilities (Art. 12), the "Enforcement Office" and "swisstempcomp", collect the payroll reports of the affiliated staff leasing companies.

The "Enforcement Office" and "swisstempcomp" coordinate the collection of the payroll report and the collection and exchange the necessary data with each other.

#### **Art. 7 Taxation**

As part of its respective responsibility for collection (Art. 12), the "Execution Office" or "swisstempcomp" is entitled to carry out collection on the basis of an assessment (taxation) in the absence of a wage declaration. With the assessment, a turnover fee of CHF 100 is levied.

### **2ND SECTION: INVOICING**

#### **Art. 8 Type of invoicing**

The invoicing for the contributions under Art. 25 of the Association's Articles of Association is conducted as part of their respective collection responsibility (Art. 12) by the "Enforcement Office" or swisstempcomp.

**Art. 9 Calculating contributions**

Calculating the contributions is carried out in accordance with the contribution rates set out in Art. 25 of the Articles of Association.

**Art. 10 Partial invoices**

<sup>1</sup> Partial amounts can be invoiced to the subordinated enterprises; this can be done in arrears on the basis of a self-declaration or on the basis of the presumed annual wage total reported or taxed in the previous year.

<sup>2</sup> If a company joins the CBA during the course of a calendar year, its financial obligations are invoiced pro rata temporis.

**Art. 11 Annual accounts**

A total account is drawn up on the basis of the reported or taxed wage total. The definitive final statement of account is made annually in the form of a statement of differences.

**Art. 12 Collecting contributions**

<sup>1</sup> Contributions are collected on the basis of the AHV (pension insurance) payroll.

<sup>2</sup> The swisstempcomp compensation fund and the Enforcement Office are collection agencies under Art. 25 of the Articles of Association.

The collection of the contribution rates under Art. 25 of the Articles of Association is carried out by the compensation fund swisstempcomp for all companies that are swisstafing members. The swisstempcomp regulations will be adapted and approved accordingly.

The collection of the contributions of all other companies is carried out by the "Enforcement Office".

<sup>3</sup> Claims shall be enforced in accordance with the provisions of the Federal Act on Debt Collection and Bankruptcy (DEBA). With the second reminder, an administrative fee of CHF 100 and interest on arrears from the 30th day of the delivery of the contribution invoice will be charged.

<sup>4</sup> In the case of annual accounts due to late notification of wage totals as well as additional audit charges and subsequent invoices, interest on arrears will be charged from 1 February of the following year of the calendar year for which the wage totals are due with the invoice.

### **THIRD PART: BENEFITS**

#### **1. SECTION: STATUTORY BENEFITS**

##### **Art. 13 Reimbursement to members of the contracting parties**

<sup>1</sup> The members of the contracting parties who are subject to the CBA on Staff Leasing receive reimbursement not exceeding 80% of the Association fee.

<sup>2</sup> The right to reimbursement does not arise until the necessary supporting documents have been submitted. The reimbursement must be claimed within three years of the end of the calendar year in which the enforcement cost contributions were paid. If the claim is not made within this period, it will permanently expire.

##### **Art. 14 Lump-sum payment of the enforcement costs of the collective labour agreement and for reimbursements**

The lump-sum payment of the enforcement costs of the collective labour agreement and for the reimbursement of the contracting parties under Art. 13 of the Regulations will be determined annually by the General Assembly.

##### **Art. 15 Grants to the regional enforcement commissions**

In order to fulfil the enforcement tasks at regional level, the enforcement commissions receive an annual grant under Art. 28 of the Association's Articles of Association, which is determined by the Schweizerische Paritätische Berufskommission Personalverleih (Swiss Joint Vocational Committee for Staff Leasing) (SPKP). The regional enforcement commissions are accountable and responsible to the Board. The use of the funds is laid down in the guidelines on the tasks of the regional enforcement commissions.

#### **2. SECTION: OTHER BENEFITS**

##### **Art. 16 Assumption of direct costs in connection with the CBA on Staff Leasing**

The PVP bears the direct costs for the negotiation, printing and dispatch of the CBA on Staff Leasing, the related annual salary agreements and their declaration of general application and other direct costs to be decided by the Board in connection with this contract.

**Art. 17 Funding of the joint enforcement bodies of the sectors for the CBA declared generally applicable and the CBA in accordance with the list in Annex 1**

<sup>1</sup> Under Art. 3(2)(a) and Art. 28(1) of the Association's Articles of Association, the PVP shall assume the expenses arising from the activities of the joint enforcement bodies appointed for this purpose in the collective employment agreements.

<sup>2</sup> The benefit concepts are based on the enforcement contributions of the corresponding sectoral collective employment agreements and are passed on to the corresponding joint enforcement organisations.

**Art. 18 Promoting continuing training**

<sup>1</sup> In order to promote the continuing training of the leased employees, the Continuing Training Office will provide these continuing training services.

<sup>2</sup> An employee leased out by a staff leasing agency is entitled to continuing training benefits of max. CHF 4,000 if:

- the course to be funded has a clear relationship with the current or intended professional activity, she/he must provide proof of this,
- he/she has worked at least 352 hours with a staff leasing business within twelve months and for which he/she and the staff leasing business have paid the CBA on Staff Leasing professional contribution,
- he/she has submitted the required documents under Art. 19(2) and (3) within twelve months of the end of the course,
- if it does not involve the following provision
  - exclusively in-house continuing training courses
  - courses that promote well-being or personal development
  - driving licence (basic training)
  - leisure courses
  - conventions and conferences
  - courses offered by foreign providers not domiciled in Switzerland
  - courses abroad (except SBV courses in Spain and Portugal)
  - CAS, DAS and MAS education at universities and colleges
  - distance learning courses
  - individual and private lessons
- no other state or other institution is funding the course in question (principle of subordination)



<sup>3</sup> Continuing training benefits are paid out for courses offered by educational institutions in accordance with the Training Register which has been approved by the Board. The applicant must have completed at least 80% of the course time. Absences because of illness or accident are excluded from this rule.

<sup>4</sup> Occupational safety courses are possible right from the first day of placement, provided that an employment contract is in place. It must be enclosed with the application. The SPKP (Swiss Joint Vocational Committee for Staff Leasing) may impose restrictions.

<sup>5</sup> A continuing training benefit will cover the costs referred to in paragraphs 1 - 3 of this Article in the following scope:

- Course fees are: registration fees, school fees, teaching materials up to CHF 100 per course and examination fees
- If the total course costs exceed CHF 1,000 within the entitlement period, the employee must pay a personal contribution of 20% of the course costs exceeding CHF 1,000. Mobility costs equivalent to the value of ½ a 2nd class tax train ticket from the place of residence to the course location and back on presentation of receipt for public transport tickets, bike rental charges and travel costs by car are charged at CHF 0.5 per km;
- Catering costs of CHF 20 for one-day courses on presentation of receipt;
- Accommodation and catering costs of CHF 100 for courses lasting several days on presentation of receipt, where the total travel time by public transport from the place of residence to the course location and back would amount to more than 3 hours per day;
- Wage loss compensation of 100% of the basic wage shown on the last working day, which is shown on the wage slip submitted, provided that a maximum of five course days per week fall on weekdays from Monday to Saturday, take place between 8am and 6pm and last at least four hours per day of the continuing training course.

<sup>6</sup> The maximum entitlement to benefits under paragraph 2 of this provision is:

- for course costs: CHF 800 per course day or:

CHF 1,000 for 352 hours

CHF 2,000 for 528 hours

CHF 4,000 for 704 hours

which the employee has paid within 12 months.

For the purpose of determining the entitlement to benefits, hours worked within an entitlement period are not cumulated. Only the number of hours of work shown in the first application is taken into account.

The SPKP can define maximum costs per category (course group) according to the published Training Register.

- for loss of earnings: CHF 250 per course day or CHF 29.75 per hour:
  - CHF 750 for 352 hours
  - CHF 1,250 for 528 hours
  - CHF 2,000 for 704 hours

within 6 months, with no more than CHF 2,000 being paid in any one calendar year.

The prerequisite for compensation for loss of earnings is that the course attendance results in an actual loss of earnings. Exceptions are SBV courses in Spain and Portugal.

- for expenses (mobility, board and accommodation costs): CHF 300 per claim period

The last working day on the one hand and the start of the continuing training on the other hand are decisive for the calculation of the twelve months (course costs) or six months (loss of earnings). See graphical illustrations on the claim deadline on [www.temptraining.ch](http://www.temptraining.ch)

<sup>7</sup> The claim period begins on the last day of work, which is shown in the form of wage slips on the first application that triggers the claim, and ends 12 months later. After the expiry of the 12-month period, a new claim period commences - after a waiting deadline of 12 months after the performance of the working hours in accordance with paragraph 6 of this provision.

<sup>8</sup> The scope of the continuing training benefit is determined once per course and applicant.

<sup>9</sup> Full-time education at upper secondary level and further education at tertiary level 5a are conditionally supported: If the applicant can prove relevant professional experience of at least 3 years, he/she can apply to the SPKP for a one-off continuing training benefit.

- In the case of applicants who have completed an apprenticeship, the years from the 3rd year of apprenticeship (EFZ) / 1st year of regular employment (EBA) are regarded as relevant professional experience.
- Internships of less than 6 months are not counted as work experience.

<sup>10</sup> Loss of earnings compensation will be paid for a maximum of 8.4 hours per course day if the applicant is insured against accidents and does not receive any income from an unemployment fund, a DI office or other social services.

<sup>11</sup> Applications for the disbursement of continuing training contributions must be completed, signed and accompanied by the pay slip(s) for the hours worked in accordance with paragraph 6 of this provision, a copy of an official document of identification, an employment contract for work safety courses or, if the hours are not shown on the pay slip (e.g. monthly salary), course description and, if compensation for loss of earnings is requested, the timetable for the course must be sent to the Continuing Training Office before the course begins. The postmark or date of e-mail dispatch are decisive. It is essential to

use the form provided by the Continuing Training Office (can be downloaded from [www.temptraining.ch](http://www.temptraining.ch)).

<sup>12</sup> The application may be submitted by the applicant himself/herself, by his/her staff leasing business or by his/her employee social partner association.

<sup>13</sup> Requests for modification will be accepted in writing until the time the decision is made. If, after the application has been examined, requests for changes are made which have a financial impact, the applicant must submit a new application.

<sup>14</sup> The Continuing Training Office does not pay any advance funding.

#### **Art. 19 Processing of applications for continuing training and type of benefits**

<sup>1</sup> Applications are processed by the Continuing Training Office. Appeals may be made to the Appeals Commission.

<sup>2</sup> The continuing training benefit under Art. 18 of these Regulations will be paid upon presentation of proof of attendance at the relevant continuing training course and of proof of the course costs paid by the applicant.

<sup>3</sup> If the staff leasing business provides the applicant with the amount in advance for the continuing training approved by the Continuing Training Office in accordance with Art. 18 of these Regulations, the staff leasing business is entitled to payment of the approved amount. The staff leasing business is not entitled to compensation for administrative expenses.

#### **Art. 20 Decision-making authority and disbursement**

<sup>1</sup> The Continuing Training Office decides on benefits up to a maximum of CHF 6,000.

<sup>2</sup> Payments of more than CHF 6,000 per application deadline, excluding expenses, are the exclusive responsibility of the Board.

<sup>3</sup> The decisions of the Office under paragraph 1 or of the Board under paragraph 2 may be appealed to the Appeals Commission within 30 days of the date of the decision.

<sup>4</sup> The payment of continuing training contributions is made by the Continuing Training Office. The continuing training benefits are paid exclusively to the accounts of the beneficiaries indicated on the request for payment of the training benefit. The payment of continuing training benefits is made only in Swiss francs.

#### **Art. 21 Promotion of occupational safety**

On application, the Board makes the decision to contribute to campaigns to promote occupational safety and for preventive occupational health and safety.

**Art. 21<sup>bis</sup> Recognition of training institutions or inclusion in the Training Register**

<sup>1</sup> The following criteria must be met in order to be included in the Training Register:

- The provision is put out to public tender and accessible to the public.
- The course provider is based in Switzerland and the courses take place in Switzerland (with the exception of SBV courses in Spain and Portugal).
- The training institute is eduQua-certified and/or recognised by the respective industry association. In the area of occupational safety, the Continuing Training Office relies on SUVA (Swiss accident insurance fund) recommendations.
- Any training institution with a turnover of more than CHF 100,000 after one year of inclusion in the Training Register must enter into a written agreement with the Continuing Training Office at the latter's request. It governs profit sharing, special conditions with sales rebates, the flow of information and publication. Training institutes of the social partners are excluded.

<sup>2</sup> Recognition ceases or does not arise if one of the parties terminates the agreement, one of the conditions set out in paragraph 1 ceases to apply or proof that the conditions have been met has not been provided.

<sup>3</sup> If the needs in a category (course group) according to the published Training Register are covered, a new inclusion can be rejected by the Continuing Training Office, in deviation from paragraph 1.

**Art. 21<sup>ter</sup> Temporal scope**

<sup>1</sup> The new regulations apply to all applications submitted to the Continuing Training Office after these Regulations have come into force.

<sup>2</sup> Applications submitted to the Continuing Training Office prior to the entry into force of the Regulations will be subject to the old legal provisions. Has an entitlement period begun, before the implementation of these regulations, it ends in each case latest by October 31<sup>st</sup> 2016. Further applications which are handed in during this period are evaluated according to the old legal provisions.

<sup>3</sup> The postmark or the date on which the e-mail was sent is decisive for the date of submission of the application.

**Art. 22 Payments to the Social Fund to support the collective daily sickness benefit insurance of the social partners of the staff leasing company**

<sup>1</sup> To support the collective daily sickness benefit insurance of the social partners, the PVP shall make annual financial contributions to the collective daily sickness benefit insurance of the social partners in the staff leasing sector.

<sup>2</sup> The “Social Fund Office” keeps account of this and is responsible to the Board.

**Art. 23 Other employee benefits**

The General Assembly of the Association may decide on other benefits of a social nature.

***FOURTH PART: COMPENSATION FOR MEMBERS OF THE SPKP AND THE BRANCH OFFICES***

**Art. 24 Annual compensation**

<sup>1</sup> The members of the Association shall receive the following annual remuneration as compensation for general expenses, secretarial expenses and as remuneration for preparatory work for SPKP meetings and of the Enforcement, Continuing Training and Social Fund Offices, depending on their functions:

- The President: CHF 10,000.00
- The Vice President: CHF 8,000.00
- The members: CHF 5,000.00
- Allowances for chairpersons of the Continuing Training and Social Fund Offices: CHF 3,000.00

<sup>2</sup> In the event of entering or leaving the Association in the course of a calendar year, or commencing or resigning from a specified function, the annual compensation will be reduced pro rata temporis.

**Art. 25 Attendance fees**

For the day of the SPKP meetings or of the Execution, Continuing Training and Social Fund Offices as well as for each working day for the fulfilment of special tasks on behalf of the Association, its President or one of the chairpersons of the Execution, Continuing Training and Social Fund Offices, each member of the Association attending will receive an attendance fee of CHF 600.00 per day.

**Art. 26 Reimbursement of expenses for travel, meals and overnight accommodation**

<sup>1</sup> For travel to the meetings of the Association and its groups, members are entitled to the price of a 1st class railway ticket and, where necessary, the post bus.

<sup>2</sup> The meal is reimbursed at CHF 50.00 per main meal and CHF 60.00 per day of travel.

Travel days are the day before a meeting day for members of the Association who are unable to reach the meeting by public transport departing after 7am on the day of the meeting.

The day after a meeting day for those Association members who cannot get home by public transport before 10pm on the meeting day.

<sup>3</sup> The overnight accommodation allowance is CHF 200.00. It is intended for each night between two consecutive meeting days or between meeting day and travel day. It does not apply to members of the Association who live at the place of the meeting.

**Art. 27 Common provisions**

If a member of the Association attends several meetings on the same day which are entitled to compensation under these Regulations, the attendance fee and the reimbursement of expenses is paid only once.

**Art. 28 Disbursement**

The claims for compensation of the Association members are determined by the Enforcement Office secretariat. Compensation is paid semi-annually. If a member of the Association does not agree with the compensation paid out, he/she must report this to the Enforcement Office secretariat. In the event of differences of opinion, the President of the Board shall make the final decision.

**FIFTH PART: ADMINISTRATIVE PROVISIONS**

**1<sup>st</sup> SECTION: MONITORING**

**Art. 29 Employer monitoring**

<sup>1</sup> The SPKP or RPKP are entitled to carry out all necessary checks in the affiliated companies with regard to compliance with the provisions of the CBA on Staff Leasing, the obligation to pay contributions and entitlement to benefits.

<sup>2</sup> Monitoring the employment conditions in areas with a CBA declared generally applicable and a CBA in accordance with the list in Annex 1 to the CBA on Staff Leasing is delegated to the responsible joint bodies of the sectors on the basis of Art. 3(2)(a) of the Articles of Association. Delegating the monitoring also delegates the authority to impose penalties for non-compliance.

<sup>3</sup> The remaining monitoring tasks are delegated to the regional enforcement commissions on the basis of Art. 10(2) of the Association's Articles of Association. Delegating the monitoring also delegates the authority to impose penalties for non-compliance.

<sup>4</sup> In the case of supra-regional staff leasing companies with central administration of the leasing activity, the monitoring may be ordered directly by the Swiss Joint Vocational Committee for Staff Leasing (SPKP).

**Art. 30 Monitoring the regional enforcement commissions**

<sup>1</sup> The "Enforcement Office" of the PVP is entitled, by order of the Board, to carry out all necessary monitoring of the regional enforcement commissions with regard to compliance with the guidelines and the use of the allocated funds.

<sup>2</sup> The Board will annually determine the compensation to the regional enforcement commissions on the basis of the budgets submitted by the regional enforcement commissions.

<sup>3</sup> The activity reports of the regional enforcement commissions will be examined by the SPKP from a technical point of view and by the Finance Commission from a financial point of view.

**Art. 31 Contractual penalties**

<sup>1</sup> Contractual penalties may be imposed both by the SPKP and by the Regional Joint Vocational Commissions for Staff Leasing (RPKP). Contractual penalties for monetary and non-monetary infringements are to be imposed unless the infringements are minor within the meaning of Art. 20(2) RecA (Federal Recruitment Act). Misconduct under Art. 20(2) RecA and Art. 37 CBA on Staff Leasing is not minor if:

- a. the proportion of monetary misconduct in the target payroll amount is at least 2%, and/or
- b. regardless of the 2% limit, one of the following examples of monetary misconduct is present several times:

Misuse of premium surpluses (profit participation)
KTG (daily sickness benefit) premium share too high
No/false settlement of enforcement and continuing training contributions

and/or

- c. one of the following examples of non-monetary misconduct has occurred more than once:

Lack of BVG (pension) insurance
Insufficient BVG (pension) insurance (wrong time)
Lack of KTG insurance
Insufficient or incorrect KTG insurance (wrong time, wrong duration of benefits)
Non-compliance with the period of notice
regular late payment of wages

<sup>1bis</sup> The contractual penalty for monetary infringements is calculated in accordance with the contractual penalty calculator in Annex 1(1) and for non-monetary value infringements in accordance with Annex 1(2) of these Regulations.

<sup>2</sup> Contractual penalties based on monitoring under Art. 29(2) of these Regulations are to be imposed by the joint bodies of the relevant industries, but may be delegated by them to the enforcement bodies of the CBA on Staff Leasing by power of attorney.

<sup>3</sup> At the request of the Enforcement Office, the SPKP may make minor changes and additions to the contractual penalty calculator in accordance with Annex 1, in particular with regard to the determination of mitigating and aggravating factors, and submit them to the General Assembly for approval.

<sup>4</sup> If the company to be monitored unduly delays or refuses to hand over the information and documents necessary for the monitoring to the supervisory bodies (refusal to comply), the RPKP may, after warning of this, impose a contractual penalty of a maximum of CHF 5,000, or CHF 50,000 in the event of complete refusal. If the contractual penalty is imposed for material infringements, the refusal to comply is no longer taken into account as aggravating because of the existence of serious non-monetary misconduct.

<sup>5</sup> In the event of delay or refusal of the monitored company to provide written proof of the compensation payments under Art. 38(3) CBA on Staff Leasing, the RPKP may, after appropriate warning, impose a contractual penalty in the amount of the outstanding compensation payments at the time of the imposition of the same, up to a maximum of CHF 5,000. This penalty will be imposed in addition to any contractual penalty for material infringements.

#### **Art. 31<sup>bis</sup> Monitoring costs**

<sup>1</sup> The imposition of monitoring costs is governed by Annex 2 of these Regulations.

<sup>2</sup> In the event of failure to comply for up to 1% of the controlled TARGET payroll, no monitoring costs can be imposed. In the event of failure to comply for 1%-2% of the monitored TARGET payroll, the monitoring costs for placements in businesses (Art. 37 CBA on Staff Leasing) are imposed as follows:

- Active cooperation (in accordance with Annex 2(3)): 0%
- Passive cooperation (in accordance with Annex 2(3)): 50%
- Non-cooperative behaviour (in accordance with Annex 2(3)) 100%

<sup>3</sup> The monitoring costs imposed must not exceed the sum of the established and sanctioned failures to comply.

#### **Art. 31<sup>ter</sup> Temporal scope**

<sup>1</sup> Art. 31 and Art. 31bis as well as Annexes 1 and 2 of these Regulations apply until 30 June 2017.



They will be automatically extended by one year, unless one or more of the social partners objects by 30 April each year.

<sup>2</sup> These provisions apply to decisions of the SPKP and the RPKP taken after the entry into force of these Regulations.

## **2<sup>nd</sup> SECTION: LEGAL REMEDIES**

### **Art. 32 Appeal**

<sup>1</sup> Appeals will be dealt with and decided by the Appeals Commission in accordance with Arts. 19 and 20 of the Articles of Association.

<sup>2</sup> Decisions of the Board and the Enforcement, Continuing Training and Social Fund Offices as well as resolutions of the RPKPs may be appealed to the Appeals Commission within 30 days of their opening.

<sup>3</sup> The appeal must be submitted in writing and must contain an application and a statement of grounds. Any evidence must be enclosed.

<sup>4</sup> The decision of the Appeals Commission is final.

## **3<sup>rd</sup> SECTION: SPECIAL PROVISIONS**

### **Art. 33 Time-barring**

<sup>1</sup> Corrections to the declared or estimated payroll may be claimed no later than up to five years after the end of the calendar year relating to the payroll.

<sup>2</sup> Payments received or not received in sufficient amounts may be claimed for a maximum of two years after the occurrence of the event.

### **Art. 34 Incorrect information**

If payments are obtained by giving false information, they are to be paid back. In addition, criminal prosecution remains reserved.

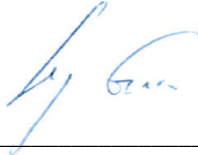
## **4<sup>th</sup> SECTION: ENTRY INTO FORCE**

### **Art. 35 Entry into force**

The Regulations enter into force with the declaration of general application of the CBA on Staff Leasing.

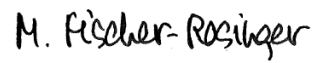
The amendment of the Regulations was approved by the General Assembly on 12 March 2014, 25 June 2014, 29 October 2014, 20 November 2014, 18 June 2015, 23 June 2016, 18 January 2017 and 21 June 2017.

Bern, 6 December 2018



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Serge Gnoss  
President of the Board



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Myra Fischer-Rosinger  
Vice President of the Board

**The authentic text is the German version of the Regulations**

## Annex 1

### Contractual penalty calculator

#### Starting point

This contractual penalty calculator was adopted at the meeting of the SPKP on 23 June 2016 for the attention of the General Assembly and is valid until 30 June 2017. Since experience is the only way to assess whether the calculator delivers the desired results, these should be monitored and evaluated on an ongoing basis and the definitive calculator then put into operation; tempcontrol shall report periodically to the SPKP Committee.

#### 1st Operating principle of the calculator for monetary infringements

##### 1.1 Monetary non-compliance under Art. 31(1)(a)

If the percentage of monetary non-compliance in the target payroll amounts to at least 2%, the infringements are not minor within the meaning of Art. 20(2) RecA and a contractual penalty must be imposed.

This is calculated as follows:

- a. If the percentage of monetary non-compliance in the target payroll amounts to at least 2% and less than 3%:  
The basic contractual penalty corresponds to half the amount of the monetary non-compliance and can be increased or decreased with the offences influencing the punishment (aggravating or mitigating factors) (see point 3 below).
- b. If the proportion of monetary non-compliance in the target payroll amounts to at least 3%:  
The basic contractual penalty corresponds to the amount of the monetary non-compliance and can be increased or decreased with the offences influencing the punishment (aggravating or mitigating factors) (see point 3 below).

#### Example for (a):

Actual payroll	1,000,000	
Target payroll	1,025,000	
Non-compliances.	25,000	
Percentage share:	2.44%	
Basic contractual penalty:	<b>12,500</b>	(half of 25,000)

#### Example for (b):

Actual payroll	500,000	
Target payroll	520,000	
Non-compliances.	20,000	
Percentage share:	3.85%	
Basic contractual penalty:	<b>20,000</b>	

**1.2 Systematic non-compliance under Art. 31 (1)(b)**

If one of the following examples of monetary non-compliance under Art. 31(1) of these Regulations has occurred more than once:

Misuse of premium surpluses (profit participation)
KTG (daily sickness benefit) premium share too high
No/false settlement of enforcement and continuing training contributions

these are not minor infringements within the meaning of Art. 20(2) RecA and a contractual penalty must be imposed.

This is calculated as follows: The basic contractual penalty corresponds to the amount of all monetary non-compliance and can be increased or decreased with the offences influencing the punishment (aggravating or mitigating factors) (see point 3 below).

**Example:**

Actual payroll	500,000
Target payroll	520,000
Non-compliances.	20,000
Percentage share:	3.85%
Basic contractual penalty:	<b>20,000</b>

**2nd Operating principle of the calculator for non-monetary infringements in accordance with Art. 31(1)(c)**

If one of the following examples of non-monetary non-compliance under Art. 31(1) of these Regulations occurs more than once:

Lack of BVG (pension) insurance
Insufficient BVG (pension) insurance (wrong time)
Lack of KTG (daily sickness benefit) insurance
Insufficient or incorrect KTG (daily sickness benefit) insurance (wrong time, wrong duration of benefits)
Non-compliance with the period of notice
Regular late payment of wages

they are not minor infringements within the meaning of Art. 20(2) RecA and Art. 37 CBA on Staff Leasing and so a contractual penalty must be imposed.

This is calculated as follows for non-monetary non-compliance: Sum of the employees affected multiplied by the lump sum amount per relevant instance of non-compliance:

<b>Non-monetary non-compliance lump sum per employee affected</b>	<b>Number of employees affected</b>	<b>Amount per employee affected</b>
Lack of BVG (pension) insurance		500
Insufficient BVG (pension) insurance (wrong time)		300
Lack of KTG (daily sickness benefit) insurance		500
Insufficient or incorrect KTG (daily sickness benefit) insurance (wrong time, wrong duration of benefits)		300
Non-compliance with the period of notice		200
Late payment of wages		100
13 million paid too late		100
Holiday credit not retained		100
Non-disclosure of holiday credit on payroll accounting		100

Wage class not listed on placement contract		100
Exceeding the probationary period		200
Violation of ban on hiring moonlighters and strike breakers		5,000

**3rd Grounds for aggravation and mitigation of punishment**

The basic contractual penalties under points 1.1, 1.2 and 2 are cumulated and can be increased or reduced with the following offences which have an influence on the penalty (factors aggravating or mitigating the penalty).

**Reparation:**

in full 0.8, partly 1.4-(0.6\*percentage of reparation), none 1.4

The degree of reparation (complete, partial, none) is calculated on the basis of the proportion of the total amount of non-monetary non-compliance paid in arrears and proven of the total amount of non-compliance as decided by the RPKP.

**Example:**

Findings: Monitoring report	CHF	30,000.00
Undisputed, are paid in arrears and proven.	CHF	15,000.00
Within the scope of the hearing	CHF	15,000.00
Amount of the disputed sum recognised by the RPKP	CHF	12,000.00
Amount of the disputed sum not recognised by the RPKP	CHF	3,000.00
Amount of non-compliance according to RPKP resolution	CHF	18,000.00

Reparation equals 83.3% "partial" → factor: 1.4 - (0.6\*0.833) = 0.90

**Fault:**

minor 0.8, minor-medium 0.9, medium 1.0, medium-serious 1.2, serious 1.5

The degree of fault (minor, minor-medium, medium, medium-serious, serious) is calculated on the basis of the percentage of monetary non-compliance in the monitored payroll:

Fault	Level of contractual penalty (for non/monetary non-compliance) in % of monitored payroll
minor:	0-2.75%
minor-medium	2.76-3.5%
medium	3.6-4.25%
medium-serious	4.26-5%
serious	>5%

**Repetition:**

1st repetition 1.0, 2nd repetition 1.5, 3rd repetition 2.2, 4th repetition 3.1

A repetition exists if the monitored staff leasing company again infringes at least 50% of the same articles of the CBA that it has already infringed during the last monitoring check.

**Example:**

Reparation	partial	0.95
Fault	minor-medium	0.9
Repetition	1st repetition	1.0
0.95*0.9*1.0=		0.86
Interim result 1 20,000*0.86=		<b>17,200</b>

**Example 1**

<b>1. Monetary non-compliances</b>	
Actual payroll	500,000
Target payroll	520,000
Non-compliances.	20,000
Percentage share:	3.85%
<b>Basic contractual penalty</b>	
<b>Monetary non-compliances:</b>	<b>20,000</b>

<b>2. Non-monetary non-compliance lump sum per employee affected</b>	Number of employees affected	Amount per employee affected	Total
Lack of BVG (pension) insurance	10	500	5,000
Insufficient BVG (pension) insurance (wrong time)		300	
Lack of KTG (daily sickness benefit) insurance	5	500	2,500
Insufficient or incorrect KTG (daily sickness benefit) insurance (wrong time, wrong duration of benefits)		300	
Non-compliance with the period of notice		200	
Late payment of wages		100	
13 million paid too late	6	100	600
Holiday credit not retained		100	
Non-disclosure of holiday credit on payroll accounting		100	
Wage class not listed on placement contract		100	
Exceeding the probationary period		200	
Violation of ban on hiring moonlighters and strike breakers		5,000	
<b>Basic contractual penalty non-monetary non-compliances</b>			<b>8,100</b>

Basic conventional penalty for non-monetary and monetary non-compliances (20,000+8,100): 28,100

**3rd Grounds for aggravation/mitigation of punishment:**

- no reparation		28,100*1.4	39,340
Fault	medium	39,340*1	39,340
Repetition	2nd	39,340*1.5	59,010

**4th Total contractual penalty (hypothetical) 59,010**  
**Total contractual penalty (actual: max. penalty is CHF 50,000) 50,000**

**Example 2**

<b>1st Monetary non-compliances</b>	
Actual payroll	1,000,000
Target payroll	1,025,000
Non-compliances.	25,000
Percentage share:	2.44%
<b>Basic contractual penalty non-monetary non-compliance:</b>	<b>12,500</b> (half of 25,000)

	Number of employees affected	Amount per employee affected	Total
<b>2nd Non-monetary non-compliance lump sum per employee affected</b>			
Lack of BVG (pension) insurance	20	500	10,000
Insufficient BVG (pension) insurance (wrong time)		300	
Lack of KTG (daily sickness benefit) insurance	10	500	5,000
Insufficient or incorrect KTG (daily sickness benefit) insurance (wrong time, wrong duration of benefits)		300	
Non-compliance with the period of notice		200	
Late payment of wages		100	
13 million paid too late		100	
Holiday credit not retained		100	
Non-disclosure of holiday credit on payroll accounting		100	
Wage class not listed on placement contract		100	
Exceeding the probationary period		200	
Violation of ban on hiring moonlighters and strike breakers		5,000	
<b>Basic contractual penalty non-monetary non-compliance:</b>			<b>15,000</b>

Basic conventional penalty for non-monetary and monetary non-compliances (12,500+15,000): 27,500

**3rd Grounds for aggravation/mitigation of punishment:**

- full reparation		27,500*0.8	22,000
- Fault	minor	22,000*0.8	17,600
- Repetition	1st repetition	17,600*1	17,600

**4th Total contractual penalty 17,600**

## Annex 2

### Monitoring costs

#### 1. Calculation of monitoring costs

Imposition of the payroll monitoring costs carried out on behalf of the Swiss Joint Vocational Committee for Staff Leasing and its regional commissions on the monitored leasing business

repetition	Fault	Willingness to cooperate	Percentage of monitoring costs charged to the leasing business
1	minor	active	0%
2	minor-medium	active	5%
3	medium	active	15%
4	medium-serious	active	30%
5	serious	active	75%
6	minor	passive	10%
7	minor-medium	passive	20%
8	medium	passive	40%
9	medium-serious	passive	60%
10	serious	passive	100%
11	minor	uncooperative	100%
12	minor-medium	uncooperative	100%
13	medium	uncooperative	100%
14	medium-serious	uncooperative	100%
15	serious	uncooperative	100%

#### 2. Determination of fault:

The degree of fault used here must correspond to the one used for the calculation in the contractual penalty calculator.

#### 3. Determination of willingness to cooperate:

##### Active cooperation:

- The requested documents were provided on time and in full
- The monitoring went well

##### Passive cooperation:

- Not all documents were made available
- The monitoring was poor

##### The following is considered as uncooperative behaviour:

- Documents are only supplied after repeated requests and under threat of legal action.
- During the monitoring, the employees of the monitoring company are actively prevented from doing their work.