



# **Table of Contents**

4 Basic Information 5 Checklist 5 Examples 6 Further information 7 Employment Law 7 Basic Information 9 Checklist 9 Examples 10 Further information 11 Daily Sickness Benefits Insurance 12 Basic Information 14 Checklist 14 Examples 14 Further information 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information 21 Health Insurance 21 Basic Information 22 Checklist 23 Examples 24 Further information 25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information 29 Data Protection / Patient's Rights 29 Basic Information 20 Further information 21 Examples 22 Further information 23 Checklist 24 Further information 25 Disability Benefits 26 Basic Information 27 Checklist 28 Further information 39 Criminal Law 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 37 Checklist 38 Basic Information 39 Checklist 30 Basic Information	5 Che 5 Exa 6 Fur 7 Em 7 Bas 9 Che 9 Exa 10 Fur 12 Dai 12 Bas 14 Che 14 Exa 14 Fur 16 Occ 16 Bas 19 Che 19 Exa 20 Fur 21 Hes 21 Bas 23 Che 23 Exa	ecklist amples ther information  ployment Law sic Information ecklist amples ther information  ily Sickness Benefits Insurance sic Information ecklist amples ther information ecklist amples ther information ecklist amples ther information ecklist amples ther information	
5 Examples Further information 7 Employment Law 7 Basic Information 9 Checklist 9 Examples 10 Further information 11 Daily Sickness Benefits Insurance 12 Basic Information 14 Checklist 14 Examples 14 Further information 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information 21 Health Insurance 21 Basic Information 22 Checklist 23 Examples 24 Further information 25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information 29 Data Protection / Patient's Rights 29 Basic Information 20 Checklist 21 Examples 22 Further information 23 Checklist 24 Examples 25 Disability Benefits 26 Examples 27 Examples 28 Further information 29 Data Protection / Patient's Rights 30 Examples 31 Checklist 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Basic Information 37 Checklist 38 Further information 39 Criminal Law 31 Basic Information 31 Checklist 32 Further information 33 Criminal Law 34 Examples 35 Further information	5	amples rther information  ployment Law sic Information ecklist amples rther information ily Sickness Benefits Insurance sic Information ecklist amples rther information ecklist amples rther information ecklist amples rther information	
Further information  Femployment Law Basic Information  Checklist Examples Further information  Employment Law Basic Information  Let basic Information  Let basic Information  Checklist Examples Let E	5	amples rther information  ployment Law sic Information ecklist amples rther information ily Sickness Benefits Insurance sic Information ecklist amples rther information ecklist amples rther information ecklist amples rther information	
Further information  Further information  Checklist  Examples  Daily Sickness Benefits Insurance  Basic Information  Daily Sickness Benefits Insurance  Basic Information  Checklist  Examples  Further information  Checklist  Examples  Further information  Checklist  Examples  Health Insurance  Basic Information  Health Insurance  Basic Information  Checklist  Examples  Further information  Checklist  Basic Information  Checklist  Examples  Further information  At Checklist  Examples  Basic Information  At Checklist  Examples  Basic Information  At Checklist  At Examples  Further information  At Checklist  At Examples  Further information  At Checklist	6 Fur  7 Em  7 Bas  9 Che 9 Exa 10 Fur  12 Dai 12 Bas 14 Che 14 Exa 14 Fur  16 Occ 16 Bas 19 Che 19 Exa 20 Fur  21 Hea 21 Bas 23 Che 23 Exa	ployment Law sic Information ecklist amples rther information ily Sickness Benefits Insurance sic Information ecklist amples rther information ecklist amples rther information	
7 Basic Information 9 Checklist 9 Examples 10 Further information 12 Daily Sickness Benefits Insurance 12 Basic Information 14 Checklist 14 Examples 14 Further information 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 27 Examples 28 Further information 29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 34 Basic Information 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 38 Basic Information	7 Bas 9 Che 9 Exa 10 Fur  12 Dai 12 Bas 14 Che 14 Exa 14 Fur  16 Occ 16 Bas 19 Che 19 Exa 20 Fur  21 Hea 21 Bas 23 Che 23 Exa	sic Information ecklist emples ether information  ily Sickness Benefits Insurance sic Information ecklist emples ether information ecklist emples ether information cupational Pension Scheme	
9 Examples 10 Further information  12 Daily Sickness Benefits Insurance 12 Basic Information 14 Checklist 14 Examples 14 Further information  16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information 29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 38 Basic Information	9	ecklist amples ther information  illy Sickness Benefits Insurance sic Information ecklist amples ther information cupational Pension Scheme	
9 Examples 10 Further information 12 Daily Sickness Benefits Insurance 13 Basic Information 14 Checklist 14 Examples 14 Further information 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information 21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information 25 Disability Benefits 25 Basic Information 27 Checklist 28 Further information 29 Data Protection / Patient's Rights 29 Basic Information 29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 38 Basic Information	9	inples ither information ily Sickness Benefits Insurance sic Information ecklist imples ther information cupational Pension Scheme	
10 Further information  12 Daily Sickness Benefits Insurance 11 Basic Information 12 Examples 14 Examples 14 Examples 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 38 Basic Information	10 Fur  12 Dai  12 Bas  14 Che  14 Exa  14 Fur  16 Occ  16 Bas  19 Che  19 Exa  20 Fur  21 Hea  21 Bas  23 Che  23 Exa	ther information ily Sickness Benefits Insurance sic Information ecklist amples ther information cupational Pension Scheme	
12	12	ily Sickness Benefits Insurance sic Information ecklist amples rther information cupational Pension Scheme	
12 Basic Information 14 Checklist 14 Examples 14 Further information  16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 33 Basic Information 34 Checklist 35 Further information 36 Travelling Abroad 37 Checklist 37 Examples 38 Further information	12 Bas 14 Che 14 Exa 14 Fur  16 Occ 16 Bas 19 Che 19 Exa 20 Fur  21 Hea 21 Bas 23 Che 23 Exa	sic Information ecklist amples rther information cupational Pension Scheme	
14 Examples 14 Eynther information 16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information 21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information 25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information 29 Data Protection / Patient's Rights 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 38 Examples 39 Basic Information	14	ecklist amples ther information cupational Pension Scheme	
14 Examples 14 Further information  16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist 37 Checklist	14       Exa         14       Fur         16       Occ         16       Bas         19       Che         19       Exa         20       Fur         21       Bas         23       Che         23       Exa	emples cupational Pension Scheme	
16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 34 Examples 35 Further information 36 Travelling Abroad 37 Checklist 37 Checklist	14 Fur  16 Occ 16 Bas 19 Che 19 Exa 20 Fur  21 Hea 21 Bas 23 Che 23 Exa	cupational Pension Scheme	
16 Occupational Pension Scheme 16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information  27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist	16 Occ 16 Bas 19 Che 19 Exa 20 Fur 21 Bas 23 Che 23 Exa	cupational Pension Scheme	
16 Basic Information 19 Checklist 19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist	16 Bas 19 Che 19 Exa 20 Fur 21 Hea 21 Bas 23 Che 23 Exa		
19	19		
19 Examples 20 Further information  21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist	19 Exa 20 Fur 21 Hea 21 Bas 23 Che 23 Exa		
21 Health Insurance 21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 31 Examples 32 Further information 33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist	20 <u>Fur</u> 21 <u>Hea</u> 21 <u>Bas</u> 23 <u>Che</u> 23 <u>Exa</u>		
21	21 Hea 21 Bas 23 Che 23 Exa		
21 Basic Information 23 Checklist 23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 37 Checklist	21 <u>Bas</u> 23 <u>Che</u> 23 <u>Exa</u>	rther information	
23	23 <u>Che</u> 23 <u>Exa</u>		
23 Examples 24 Further information  25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information  34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 37 Checklist	23 <u>Exa</u>		
25 Disability Benefits 25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist			
25	24 <u>Fur</u>		
25 Basic Information 27 Checklist 27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist		<u>rther information</u>	
27			
27 Examples 28 Further information  29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist			
29 Data Protection / Patient's Rights 29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist			
29 Basic Information 31 Checklist 31 Examples 32 Further information 33 Griminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist			
29 Basic Information 31 Checklist 31 Examples 32 Further information  33 Criminal Law 33 Basic Information  34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information  37 Checklist	28 <u>Fur</u>	<u>"ther information</u>	
31			
31			
32 Further information  33 Criminal Law  33 Basic Information  34 Checklist  34 Examples  35 Further information  36 Travelling Abroad  36 Basic Information  37 Checklist			
33 Criminal Law 33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist			
33 Basic Information 34 Checklist 34 Examples 35 Further information 36 Travelling Abroad 36 Basic Information 37 Checklist	<del></del>		
34 Checklist 34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist			
34 Examples 35 Further information  36 Travelling Abroad 36 Basic Information 37 Checklist			
35 Further information  36 Travelling Abroad  36 Basic Information  37 Checklist			
36 Travelling Abroad 36 Basic Information 37 Checklist			
36 Basic Information 37 Checklist	<del></del>	<u> </u>	
37 <u>Checklist</u>			
<del></del>	-		
Proposed a	<u> </u>		
37 <u>Example</u>			
37 <u>Further information</u>	37 <u>Fur</u>		

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# Appendix: Letter Examples

<b>40</b> 45	General	Application for free administration of justice <u>Tips on legal protection insurance</u>
46	Employment Law	Request for an inspection of personal files
47		Employment Law Complaint
50		<u>List of enclosures: Complainant</u>
51		Typical codes contained in letters of reference
53		Continued payment of wages in the case of illness (scales)
54		Request for a written justification for the dismissal
55		Objection to the termination due to illness
56		Objection to a wrongful dismissal
57	Daily Sickness Benefits	Accompanying letter to the health questionnaire
58	, Insurance	Assertion of the direct right to claim
59	Occupational Benefits Plan	Accompanying letter to the BVG health questionnaire
60		Application for BVG benefits
61		Request for an inspection of files
62		Enquiry at the 2 <sup>nd</sup> Pillar Central Office
64		Information sheet 2 <sup>nd</sup> Pillar Central Office
66	Health Insurance	Application for cost credit approval
67		Exclusion of accident insurance cover
68		Changing the deductible rate
69		Termination of basic health insurance
70	Disability insurance	Request for an inspection of files
71		Precautionary objection to the preliminary decision
72		Objection/Justification for the objection
74		Appeal against a ruling
76	Data Protection /	Request for an inspection of files
78	Patient's Law	Second request for an inspection of files (Reminder)
79		Request for the deletion of data
80		Request for the correction of data
81		Request for the blocking of data
82		Letter to prevent further data protection violations
83	Criminal Law	Overview of the criminalisation of HIV transmission
84		Objection to a penalty order
85		Request for an inspection of files
86	Travelling abroad	Certificate permitting the carrying of medication



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The legal advice department supplies a free service on behalf of the Swiss Aids Federation. In giving a donation, you can contribute towards the maintenance of this service. Each donation is an invaluable contribution for more justice. Many thanks for supporting us in this way. More can be found on <a href="https://www.aids.ch/en/donations">www.aids.ch/en/donations</a>

## **Donation account**

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# The most important information in short

## 1. Basic Information

In everyday life, we are, from time to time, confronted with legal questions and problems. If you take the correct steps from the start, the chances are that you will, eventually, obtain justice. It is not always possible or even the right decision to call in a lawyer.

This guide cannot possibly provide answers to all the many legal questions connected with HIV. It should, however, help you along in taking your first legal steps and enable you to weigh up whether or not it makes sense or would be necessary to involve legal professionals for in-depth clarifications and/or to take legal steps (e.g. lawsuits, complaints).

The following information is provided for you, chapter by chapter, with this guide: In an introduction (Basic Information), the most important and most frequent problems, which can occur within a specific legal area, are presented. A checklist should help you to remember the most important points. The various Example Appendixes will serve as a guide. The Further Information column refers to Literature, Internet Sites and specialist Legal Counselling Centres for each particular issue.

This guide is only then of any use, if the information that you really need is contained. Is something unclear or is there some important information, which is missing? We are always grateful for any inputs and suggestions at <a href="mailto:recht@aids.ch">recht@aids.ch</a>.

#### **Deadlines**

One of the most important rules of play in legal disputes is: a strict **adherence to deadlines!** The best arguments in the world are useless if an entry is submitted too late, because the responsible authority, e.g. the court, will no longer read though the submission. This means that a missed deadline will result in you losing all your claims.

Deadlines can either be fixed by setting a date (e.g. "until the 24<sup>th</sup> of February") or by setting days (e.g. "within 30 days"). The written submission (e.g. appeal, objection or complaint) must have been submitted to the Swiss post office by the last day of the deadline, at the latest. In order to be able to prove that you have complied with the deadline date, it is recommended that you send the letter by **recorded delivery**. It is also advisable not to wait until the last day, but to submit your letter at the post office a few days before the deadline date. This way, you avoid problems, even if you have miscalculated the deadline by a day.

A deadline, which is given in days, begins from the day upon which you receive the letter. The first day of the deadline is the day after you have received the letter. So, if you, for example, receive a ruling on the 1<sup>st</sup> of October with a time limit for appeal of 30 days, then the first day of the deadline is the 2<sup>nd</sup> of October and the last day of the deadline is the 31<sup>st</sup> of October. You must post your complaint on this day, at the very latest; otherwise the deadline will be missed.

In certain legal areas, there are still the so-called judicial holidays. These vary depending on the field of law and partly depending on the Canton. During the judicial holidays, a deadline lies dormant and carries on when the judicial holidays end. As a rule, the judicial holidays are specified in the decisions:

- from the seventh day before Easter until and including the seventh day after Easter;
- from the 15<sup>th</sup> of July until and including the 15<sup>th</sup> of August;
- from the 18<sup>th</sup> of December until and including the 2nd of January.

Once again: it is very important to adhere to the deadlines! If you miss a deadline, the courts or the authorities will no longer hear you, even if you do have a very good argument!

#### Costs

Legal disputes are, as a rule, expensive. High lawyer's costs and, partly, court costs can be incurred. As long as a legal dispute has not been taken to court and is still in the phase where both parties are trying to make their case known to each other, costs are normally not incurred. This also applies to administrative procedures. However, as soon as a legal action, an appeal or a complaint is submitted to a higher authority or a court; court costs can arise. Clarify early on with the relevant court, how high the costs can become.

If you have a legal protection insurance, or if you are a member of a union, these may take over a lawyer's costs. A lot of people are covered by legal protection insurance due to the supplementary insurance within their health insurance policy, without even being aware of it. If you are living in poor financial circumstances, it is possible, in some cases (preferably through a lawyer), to submit an application for costfree case management and cost-free legal representation. If this is granted, lawyers and court costs are met by the state.

The principle here is: the higher the possible lawyer's fees and court costs, the more important the dispute subject matter must be, in order to make court proceedings and the involvement of a lawyer worthwhile. Otherwise, it can easily happen that a legal dispute over a couple of hundred francs can cause the lawyer's fees and court costs to reach an amount many times higher. In such cases, it is not worth going to court and a practical solution should be sought.



## 2. Checklist

- What deadlines are ongoing and when do these expire?
- Do I have all the necessary documents?
- How much would a court procedure cost?
- What would a lawyer cost? Where can I find a good lawyer?
- Can I apply for cost-free legal representation and cost-free case management?
- Do I have a legal protection insurance or am I a member of a union?
- Is there a legal protection insurance included in my health insurance policy?
- What should I be aware of if I want to take out a legal protection insurance policy?



## 3. Examples

#### Application for free administration of justice

If you do not possess the necessary financial means and your legal request does not appear to be hopeless; you might possibly be eligible for cost-free legal protection insurance (court costs and lawyer's fees, covered by the state). Free administration of justice can be applied for in civil proceedings, criminal proceedings and in administrative proceedings. It does not however exempt someone from paying the damages of the winning opposite party. The application can, if necessary, be submitted by your lawyer.

## Tips on legal protection insurance

Perhaps you are considering taking out a legal protection insurance policy, or you already have one and you want to submit a claim. This information guide offers you tips.



## 4. Further Information

#### Literature

- It is your good right. Your everyday legal adviser, foundation for consumer protection (www.konsumentenschutz.ch)
- **Abu-Kompakt** Basics: A practical reference book on various legal questions; easy to understand and explained in an illustrated way. Cornelsen Verlag (www.cornelsen.ch).
- Social security guide. An advisory guide from the Federal Social Insurance Office. Targeted are small businesses, although the advice given is simply written and easy to understand for everyone.
   (www.bsv.admin.ch -> Informationen für KMU / Unternehmen -> Dokumente)

#### Internet

- <u>www.aids.ch</u>: Homepage of the Swiss Aids Federation. Here you will find answers to the most important legal questions concerning HIV, as well as further legal information.
- <u>beobachter.ch, ktipp.ch, www.saldo.ch:</u> The homepages of the most important consumer magazines include a lot of information on legal questions
- <u>www.sozialversicherungen.admin.ch</u>: A very detailed list of the most important social security departments from the Federal Office for Social Security.

#### Legal advice

- **Legal aid at the Swiss Aids Federation**: Responsible for legal questions in connection with HIV and Aids (<a href="www.aids.ch">www.aids.ch</a>). In the social security fields also legal representation.
- Legal advice by the lawyer's collective: From Monday to Friday, each afternoon, experienced lawyers give advice on all legal areas. An initial consultation costs CHF 70.--. The advice centre is in Zürich. (www.anwaltskollektiv.ch).
- Advisory centres of the Swiss Bar Association: The Swiss Bar Association runs cost-free advisory centres, in practically all Cantons (addresses under <a href="www.sav-fsa.ch">www.sav-fsa.ch</a>, the link: Legal Advice)
- Beobachter: The magazine "Beobachter" offers legal advice for their subscribers. (www.beobachter.ch)

# **Employment Law**

#### 1. Basic Information

Most people with HIV are at an age, where they are normally in some kind of employment. The ability to work is not affected as a rule and there are no professions which cannot be carried out as a result of an HIV-positive diagnosis. Nevertheless, certain questions can still arise.

## The interview: What should an HIV-positive person say?

During the job interview, the employer is only allowed to ask questions, which are directly linked to the employment relationship, which say something about your ability to work and which are relevant to their selection. Questions, which are a breach of one's privacy rights are not permitted – for instance, questions relating to criminal records, pregnancy, religion or sexual orientation. This especially applies to an HIV infection. Whether one is HIV-positive or not – does not, in principle, have to be made known. The question about one's HIV status can even be answered falsely (the so-called right to lie in self-defence).

### When should an employer be informed of an HIV infection?

In Switzerland there are no professions, which are forbidden to people with HIV. The HIV infection does not, therefore, ever have be admitted to, even in the health or gastronomy sectors.

If the HIV infection, e.g. the consequences thereof, should influence your ability to work, you should inform your employer that as a result of health restrictions, your ability to carry out the advertised position would be affected. You do not, however, have to specify the disease, which is responsible.

#### Medical suitability test

An employer can request a medical suitability test. The doctor (medical officer) is however only allowed to inform the employer as to whether or not you are able to enter into a working relationship purely on the basis of the test. An HIV test is not part of a medical suitability test.

## Problems with work assignments abroad

Even if you are fully capable of working, certain trips abroad can, in rare cases, be problematic as far as carrying out your work goes, because certain countries make entering there complicated or even forbid any entry at all for people with HIV. It is therefore recommended to clarify the status of any future foreign working engagements beforehand. Exact information can be found under the chapter "Travelling Abroad".

## Absences from work

Your employer is obliged to guarantee you with short-notice work absences, e.g. doctor's visits. In the case of flexible working hours, routine doctor's visits should be carried out in your free time. If this is not possible, or if it is a matter of emergency, you do not have to catch up on the resulting lost working hours. For loss of working hours because of illnesses or accidents, see the chapter "Daily Sickness Benefits Insurance".

#### Termination

In Switzerland, there is a freedom of dismissal. This means that an employer can give notice to his employee unproblematically as long as he or she adheres to the termination deadline. You do, however, have the right to request a written justification. (see <a href="Example">Example</a>).

- Wrongful dismissal: There are many reasons for a wrongful dismissal. A termination of employment, on the grounds of an individual personal characteristic for example, is considered wrongful. This includes nationality, religion, sexual orientation or even HIV.
- **Important:** even a wrongful dismissal remains valid; you can though demand compensation if you are able to prove that the dismissal was wrongful. As a rule, the courts rarely grant more than one or two month's wages, even though the law provides for up to six monthly wages as compensation (see **Example**).
- Blocking periods: If you become ill and can no longer work, you are protected, for a certain amount of
  time, from dismissal: in the first year of service for 30 days of illness, in the second year up until the fifth
  year for 180 days. A verbal dismissal during this so-called blocking period is void, therefore invalid.
  When the blocking period has expired, a dismissal, as a cause of the inability to work, is permitted.

**Attention**: The probationary period has no blocking periods!

#### **Deadlines**

In principle, you can make claims from an employment contract for up to 5 years. However, it is better not to wait that long. In the case of wrongful dismissal, you should submit a written objection to your employer. Legal action for wrongful dismissal must be taken between 180 days after the termination of the employment relationship (see <a href="Example">Example</a>).

#### **Court proceedings**

Industrial tribunal proceedings are free of charge up to a disputed amount of CHF 30'000.-. But be careful: the disputed amount of a job reference corresponds to approximately one month's wage. Whoever, therefore, submits a wage claim for CHF 28'000. - and, in addition, an alteration to the job reference letter, the disputed amount lies above CHF 30'000.-. If you have a legal protection insurance policy or are a member of a union, you might, under the circumstances, have the right to a lawyer, free of charge. Clarify this.

## **Employment letter of reference**

The importance of an employment letter of reference is very often underestimated. When you apply for a new job, each new prospective employer will read through the letter of reference from your last workplace. If this is formulated negatively in any way, your chances of being invited for a job interview, are more often than not, not so good. Time and again, reference letters contain so-called coded, i.e. hidden, messages. It is important that you also recognise these codes (see <a href="Example">Example</a>). If you do not agree with certain comments, you should seek a discussion with your employer. It is recommended, in this case, that you immediately write to your employer and give a short reason for a proposed modification.

Under no circumstances, may the employer mention any medical diagnoses in a letter of reference.



Further information on the subject of HIV and employment can be found in the brochure "HIV and Employment" as well as on the website of the Swiss Aids Federation under "Living with HIV – Labour Law"!



## 2. Checklist

- What should I/must I say in my job interview?
- How should I react if the employer asks me directly about an HIV infection?
- Do I have to re-schedule my doctor's appointments to my free time?
- What do I need to clarify, if I want to go and work abroad?
- Has the employer observed the blocking periods when terminating employment?
- What is the deadline for an objection to a wrongful dismissal? When does the time limit for legal action run out?
- Which person, on behalf of the employer, is responsible for the personal files?
- How high is the amount in dispute? Would court proceedings be free of charge?
- Do I have all the most important documents (e.g. employment contract, personnel regulations, previous and current correspondence, personal files, etc.)?
- Does the content of the letter of reference conform with the interim reports and qualification documents?
- Are there hidden, coded phrases in the letter of reference, resp. interim letters of reference?
- Should I seek legal advice/representation? Do I have a legal protection insurance policy or am I a member of a union?



## 3. Examples

#### **Inspection of personal files**

Before you even start to weigh up whether or not it is worth starting proceedings against your employer, you should know which documents your employer has in your personal file. Every employer has an obligation to keep one and every employee has the right to inspect these documents and to make copies of them. Most of the time, documents such as employment contracts and contract alterations, qualification documents or interim letters of reference, can be found in the personal file. Sometimes, internal documents can be found of which one was previously unaware.

#### **Employment Court Lawsuit Form and List of Enclosures**

If one cannot reach an agreement with one's employer, taking the case to court is unavoidable. If the case in not particularly complicated, you do not have to consult a lawyer. The industrial tribunal must officially establish the facts of the case and as a rule ask all the relevant questions.

It is important though, that you communicate clearly to the court what it is you want and that you can produce evidence (witnesses, documents). The easiest way to do this is to submit a legal action form to the court. The form attached here is that of the industrial tribunal court in Zürich but can be used in all Swiss law courts

## **Typical codes in letters of reference**

The law requires, that a letter of reference describes the work performance and behaviour of the employee. In an ideal case, the letter of reference does not contain any specifically stated codes (e.g. "this letter of reference is not coded" or "our company is committed to uncoded letters of reference"). If such a notation is missing, there is a danger that there are hidden formulations in the letter which mean something other (mostly negative) than they are given to mean at first glance. This is why it is important to know the meaning of the most important codes.

#### Scales for continued wage payments in the case of illness

If you are on sick leave, you are still entitled to your wages for a limited amount of time. If a daily sickness allowance is available, then the payments are in accordance with the insurance policy (as a rule 80% of the wage is paid for a period of 720 days). If no daily sickness allowance is available or you haven't been included in one, then the length of the continued payments is, according to the Canton, calculated in accordance with the so-called Bern, Basle or Zürich Scales.

## Request for a written justification for the dismissal

A dismissal does not have to be justified right from the start. If you request it however, the employer must justify the reason why he or she has dismissed you. Especially, if you do not agree with the dismissal, it is recommended that you ask for the reason why.

#### Objection to a dismissal in the case of illness

If you receive a dismissal during an absence of illness, this becomes invalid if it is issued within the blocking period. You should then submit a written objection within 30 days.

## Objection to a wrongful dismissal

If the dismissal is wrongful, then you should raise an objection, at the latest, on the last day of the working relationship and preferably in writing. If you miss out on this time limit, you **cannot** make a claim for compensation at a later date.



## 4. Further Information

#### Literature

- **Job and HIV.** Guideline for HIV-positive people, job seekers and employees, Swiss Aids Federation (can be ordered and downloaded at www.aids.ch)
- Employment law from work contract to dismissal. Beobachter-Buchverlag, www.beobachter.ch
- Employment law: what employees should know. Counselling advice with case examples, tips and letter examples, "Saldo" advice service, <a href="www.saldo.ch">www.saldo.ch</a>
- Work, illness, disability. A comprehensive piece, about work and social security legal aspects by K. Pärli/J. Hug/A. Petrik, Stämpfli-Verlag, <u>staempfliverlag.com</u>

#### Internet

- <u>www.aids.ch</u>: Homepage of the Swiss Aids Federation Switzerland. Under the chapter "Living with HIV Legal Aspects" you will find a lot of information on the subject of HIV at the workplace.
- <u>www.gerichte-zh.ch</u>: Homepage of the courts in the city of Zürich. Under the link Themen -> Arbeit, you will find a lot of information, checklists and forms on labour law. As the labour law is the same all over Switzerland, this information applies everywhere.
- www.seco.admin.ch: Homepage of the State Secretariat for the Economy SECO. Under the link "Publikationen und Dienstleistungen Arbeit" there are leaflets and information. Here, you will also find the generally binding collective work agreements.
- <u>www.unia.ch</u> The homepage of the union UNIA contains a lot of information on questions relating to all aspects of work.

## Legal advice

- **Legal advisory service of the Swiss Aids Federation:** Responsible for questions relating to employment law in connection with HIV and Aids (<a href="www.aids.ch">www.aids.ch</a>).
- Legal information from the industrial courts: Most industrial courts offer legal information on labour laws free of charge. Make enquiries at the court responsible (the court responsible is normally near your workplace).
- **Swiss Bar Association advisory centres**: The Swiss Bar Association runs advisory centres, free of charge, in practically every Canton (Addresses under <u>sav-fsa.ch</u>, link Legal advice)
- **Unions**: Many unions run a legal advisory service for their members.
- **Beobachter**: The magazine "Beobachter" offers legal advice to its subscribers (www.beobachter.ch)

# Daily Sickness Benefits Insurance

## 1. Basic Information

Illness can lead to a prolonged inability to work and result in financial loss. This income gap can be covered by the daily sickness benefits insurance, which, unfortunately, in Switzerland is not a compulsory insurance.

In the case of longer lasting absences from work, the continued payment of wages, required by law, does not offer enough protection against wage gaps. A possible disability pension is only paid after a waiting period of one year. It is for this payment gap that the daily benefits insurance is intended. There are those under the Health Insurance Act (KVG) and those under the Contract Insurance Law (VVG), those for private individuals and those for groups of people.

#### Daily benefits insurance according to the KVG

The Health Insurance Act (KVG) provides for the right to take out voluntary daily sickness benefits insurance. This can be provided by recognised health insurance companies, both as an individual insurance, as well as a collective insurance. In the case of a pre-existing health condition, the health insurance companies have the option of applying a reservation for a maximum of five years in connection with said pre-existing condition. Since the Swiss Federal Court of Insurance already considers an HIV infection to be a disease, health insurance companies are allowed to implement the above-mentioned reservation in relation to the KVG daily benefits insurance. In addition to this, most health insurance companies only offer symbolic daily insurance benefits (between CHF 10.- and CHF 30.- per day) because the legislator failed to set out a legal minimum daily benefits amount. This is why a daily benefits insurance under the KVG, nowadays, hardly plays a role anymore

#### Individual daily benefits insurance according to the VVG

Nowadays, the type of daily benefits insurance under the Private Insurance Contract Act (VVG) is dominant in both individual and collective insurance policies. (VVG). This law allows the insurers to carry out a comprehensive check-up on the health of the applicant before entering into a contract. This, in practice, is carried out with the completion of, a more or less detailed, health questionnaire. In contrast to a job interview, questions can be asked in connection with an HIV diagnosis. If an HIV infection exists, the application for individual daily benefits insurance is normally rejected.

Anyone who completes the (application) form incorrectly is committing a breach of an obligation to notify. If this is discovered, the insurance company can refuse to cover your claim costs, but then only if the non-declared health disorder (HIV infection) and the recently occurring health condition are not in any way linked (in other words linked to any illnesses associated with HIV). The insurance company must however pay the loss of wages for illnesses, which are in no way connected, to HIV.

### Collective daily benefits insurance according to the VVG

Many employers take out a collective daily benefits insurance for their employees, which, mostly guarantee continued payments in the case of illness for up to 80% for a maximum of 720 days.

• Collective daily benefits insurance with a medical check-up upon joining the company: With this option, the new employees must complete a health declaration form when registering for a collective daily benefits insurance. The insurer has the possibility of making a risk selection and can refuse insurance cover altogether. Anyone who completes the health form incorrectly is in breach of an obligation to notify (see above).

- Important: In contrast to the insurance company, an employer has no right to an insight into your medical data. If you are required to fill out a questionnaire for the insurance company, then you should send this directly to the insurance company. Should the employer demand that you submit to him or her a copy of the questionnaire, then you can make a copy of it and falsify information (leaving out any mention of an HIV infection, etc.) and then send the correctly filled out questionnaire, with an accompanying letter (see Example) to the daily sickness benefits insurance company. This way you can avoid giving the employer an insight into your medical data.
- Especially larger employers enter into contracts with insurance companies, without requiring a medical check-up. This means that the risk of any loss of earnings during the period of the employment relationship is covered.
- If you are not included in the daily sickness benefits insurance scheme because of an HIV infection or any other illness, your employer must, over a limited period, implement continued wage payments (see "Scales for continued wage payments in the case of illness" page 10). Besides HIV, there are many other reasons, why one may not be included in the daily sickness benefits insurance scheme, such as, for example, an old knee injury or a back problem.

The end of an employment relationship usually means a withdrawal from the company group insurance scheme. Usually though, there is a clause in the general contract terms which provides the right to transfer over to an individual insurance policy, albeit with a higher premium.

## Change of daily sickness benefits insurance

Because people with an HIV-positive diagnosis are denied direct access to individual daily sickness benefits insurances, transfer rights are extremely important.

- Before entering into a new working relationship, you should clarify whether or not a daily sickness benefits insurance is available and if yes, what type.
- If you have been included, by your employer, in a restriction-free collective daily benefits insurance scheme; if you change jobs, take an unpaid holiday or become self-employed, then you definitely should examine the possibility of transferring over into an individual insurance scheme without needing a new medical check-up (look up the General Insurance Conditions).
- Otherwise, it is worth registering with the unemployment insurance department, because then you have a legal right to a continuation of daily benefits insurance payments without the need of a medical check-up. In principle, you must declare a transfer to an individual insurance, within 30 days of termination of employment, unless the General Insurance Conditions stipulate a longer period.

**Noteworthy** is also the **Free Movement of Persons Agreement** among the collective daily benefits insurers: In this agreement, the companies that are party to this Agreement undertake to provide all persons, previously insured, with the insurance cover provided by the new insurer – without (a renewed) risk selection. More information on this can be found on the homepage of the Swiss Insurance Association <a href="https://www.svv.ch">www.svv.ch</a> -> Branche -> Kranken- und Unfallversicherung -> Krankentaggeld- und Unfallversicherung -> Freizügigkeitsabkommen

#### Direct right to claim

As a rule, the daily sickness benefits payments are processed by the employer; the insurer transfers the daily allowance to the employer and this is then paid out to the employee. If the transfer of your daily sickness allowances do not run smoothly, then you can exercise your right to have the payments made directly to you through the insurer, without any detour via the employer (see Example).



## 2. Checklist

## Starting a job

- Does my new employer offer a daily sickness benefits insurance?
- Is it a daily sickness benefits insurance according to the KVG or according to the VVG?
- Does the daily sickness benefits insurer demand that I fill out a form with health questions?
- What benefits does the daily sickness benefit insurance provide (benefits duration and benefits amount in wage percentage)?
- Is there a danger that my employer can gain insight into the completed health questionnaire?
- Do I still have a private individual daily benefits insurance?

## Change of job

- Is there a free right of transfer from the old to the new daily sickness benefits insurance scheme, without having to fill out a new health form?
- What are the insurance benefits of a new daily sickness benefits insurance scheme compared to the previous one?

## **Ending a job**

- Will I receive undiminished daily benefits from my employer? Is it worth exercising my rights to claim directly with the insurers?
- Is it possible for me to convert my collective daily benefits insurance into an individual daily benefits insurance?
- How high will the premiums be for an individual daily benefits insurance?
- Should I declare myself unemployed in order to obtain the right to an individual daily benefits insurance?



## 3. Examples

## Accompanying letter to the health questionnaire

An employee cannot always be sure that his or her filled out questionnaire does not go directly to the daily sickness benefits insurer, without the employer being aware of it. Therefore, it is recommended that one completes the questionnaire incorrectly and to send the correctly completed questionnaire, together with an accompanying letter, directly to the daily sickness benefits insurer.

#### Assertion of the direct right to claim

If problems arise with an employer in connection with the forwarding of daily benefits payments, you can demand that your employer's collective daily sickness benefits insurance scheme pay you the sickness benefits directly. This way you will receive the daily benefits punctually and undiminished.



## 4. Further information

#### Literature

Daily sickness benefits payment, insurance and legal employment aspects: The target audience of this book by Häberli/Husmann are actually lawyers; however, it is one of the few books that exists on the subject of daily sickness benefits payments, Bern 2015, (www.staempfliverlag.com)

- **How to be properly insured**. An overview of private insurances. A clear and comprehensive guidebook for legal lay people. Ktipp-Buchverlag, 8. Auflage 2016 (<a href="www.ktipp.ch">www.ktipp.ch</a>)
- Work, illness, disability. A comprehensive work on jobs and social security law aspects by K. Pärli/J. Hug/A. Petrik, Stämpfli-Verlag, <a href="https://www.staempfliverlag.com">www.staempfliverlag.com</a>

#### Internet

- <u>www.aids.ch</u>: Homepage of the Swiss Aids Federation. Under the chapter "Living with HIV Legal Aspects" you will find further information on the subject of HIV and the daily sickness benefits insurance.
- Websites of the various insurance companies: As soon as you know with which insurance company your new employer has his or her collective daily benefits insurance policy; on most websites you can look up a detailed catalogue of services and the general insurance conditions.
- <u>www.edoeb.admin.ch</u> On the homepage of the Federal Data Protection Officers you will find information on daily sickness benefits insurance data protection.

## Legal advice

- Legal advice from the Swiss Aids Federation: Responsible for legal questions about daily sickness benefits in connection with HIV and Aids (www.aids.ch)
- Ombudsman's office for health insurance: For daily sickness benefits insurance according to the KVG: The ombudsman's office advises and mediates in cases where insurance holders feel they have been wrongly treated. (<a href="www.om-kv.ch">www.om-kv.ch</a>)
- The Swiss Ombudsman of Insurance: For daily sickness benefits insurance according to the VVG: The Swiss Ombudsman of Insurance advises and mediates in cases where insurance holders feel they have been wrongly treated. (insuranceombudsman.ch)
- Legal advisory office, UP for accident victims and patients: Specialist lawyers offer advice on all legal
  problems in connection with daily sickness benefits insurance. Only available in the German-speaking
  part of Switzerland. (rechtsberatung-up.ch)

# Occupational Pension Scheme

## 1. Basic Information

The occupational pension scheme (pension fund), the co-called Second Pillar, exists, aside from the old-age pension scheme (AHV) and the disability allowance (IV), to cover the risks of disability, age and death. While the AHV and IV as the First Pillar guarantees a minimum subsistence level payment, the occupational pension scheme enables the insured persons or their survivors to continue living their lives in an adequate manner. The objective is to reach, together with the 1st Pillar, a pension income of about 60% of the last paid wage.

#### Who is insured?

All employees are compulsorily insured within the occupational pension scheme between the ages of 18 and 64 (women), and respectively, 65 (men), who have reached an annual income of more than CHF 21'510.- (status in 2022).

#### **Further occupational pension provisions**

Most pension funds offer services, which go beyond the compulsory BVG insurance. This extensive occupational pension scheme is not a compulsory insurance and is based on the principles of private insurance law. As a result, pension funds are allowed to ask health questions in this area - but only in this area. Decisive, for the exact design, is the respective regulation of the respective pension fund.

#### **Health issues**

If questions about pre-existing illnesses are brought up in a questionnaire, you must answer them truthfully and, for instance, declare your HIV infection status. The pension fund will then make a reservation, for the non-compulsory area, for a maximum of five years for illnesses, which are directly related to HIV. After those five years, you are fully insured, even in the case of HIV related illnesses. If, for example, an HIV-positive person becomes disabled, due to HIV, during the first five years, then the pension fund will only provide the compulsory benefits; after those five years, the fund provides the full benefits, i.e. compulsory and non-compulsory.

According to the law of freedom of movement, the duration of the reservation must be credited in the case of a change of pension fund. If, for instance, you have worked for an employer for two years in which you have had a reservation with their pension fund, due to your HIV status, then the pension fund of your new employer is only allowed to make a reservation for a maximum of three years.

**Important**: In contrast to the pension fund (in the non-compulsory area), employers do not have the right of access your health details. If you must submit the completed pension fund questionnaire to your employer, then the following possibilities are open to you: You can tell your employer that you are sending the form directly to the pension fund by registered post and refer to data protection. Alternatively, you do not answer the questions correctly and immediately inform the pension fund, by registered post, explaining that you have provided false information to prevent your employer from unlawfully gaining insight into your health details but that you are sending them the correct information. Ask for a written confirmation of receipt of your letter from the pension fund. You also have the possibility of making a copy of the empty questionnaire, to fill out the copy correctly and to send it to the pension fund with an enclosed letter by registered post.

## People with part-time jobs

People with part-time jobs, whose yearly income does not reach the minimum amount of CHF 21'510.- (status in 2022), have, despite this, the possibility of joining a pension fund. So, it is quite possible that the respective total income exceeds the minimum amount of CHF 21'510. -. Here, it is possible to become insured voluntarily. There are, in principle, two possibilities available: either the substitute occupational benefits holding institution or the pension fund with which the employer is affiliated, as long as the regulations provide for this. In such a case, the employers are liable to pay half of the amounts corresponding to the wages received by them.

## **Self-employed persons**

As a self-employed person, you are not subject to the compulsory insurance scheme. You can however insure yourself **voluntarily** and in doing so save up security capital for the risk of old-age, disability and death.

The following possibilities are open to you:

- Connection to the pension fund of your professional/industry association.
- Some professional/industry associations offer self-employed people the possibility of insuring themselves through the pension fund schemes set up specifically for them. Also, freelance professionals have their own pension funds.
- Connection to a substitute occupational benefits holding institution.
- People who are self-employed and who are without a compulsory pension fund, are authorised to join a substitute occupational benefits holding institution.
- Connection to the pension fund scheme of your employees.
- If you employ people who are subject to compulsory insurance, you must join a pension fund scheme. You can also become insured there yourself.

#### **Disability benefits**

If an HIV infection and/or other illnesses lead to permanent restrictions in one's ability to work (disability), there is a right to a disability pension from the pension fund, in addition to the pension from the 1<sup>st</sup> Pillar. A disability degree of 40% is required, which has already lasted a year. The pension fund bases its assessment of the disability degree and the pension entitlement on the information provided by the IV department. Because the payment of a disability pension can be very expensive; quite often the question is disputed as to which pension fund should be liable to pay. It is, actually, the pension fund with which the person was initially insured when the inability to work first arose and which eventually led to the disability.

The amount of the pension fund's disability pension is calculated in accordance with the retirement assets offset by the credits which would have been acquired leading up to retirement. Disability payments can therefore vary enormously according to a person's income.

### **Partial disability**

Anyone who is less than 100% disabled can, in theory, still take on part-time work. The pension funds are allowed to consider these residual earnings, even if it can be only hypothetically achieved. This regulation is reprehensible because it allows a pension reduction without any income coming in. Apart from this, it can be difficult to find a part-time job with a small pensum. For people with a disability it can be, under the circumstances, even more difficult, if the job has to meet with certain basic conditions (e.g. the possibility of more frequent breaks, restrictions in carrying and lifting, etc.). In principle, the condition should be attached to the crediting by the pension fund, that the calculated residual earning capacity can actually be made use of. In addition to abilities and limitations, concrete opportunities on the labour market are also relevant.

#### **Retirement benefits**

The pension plan is based on an individual savings process. This begins at the age of 25 (for the risks of disability and death, already from the age of 18) and ends when the pensionable age is reached, i.e. after reaching the age of 64 (women) and 65 (men) respectively. The retirement savings, which have over the years, been saved in the individual account of the insured person, serves to finance their retirement pension.

#### Survivor's benefits

The risk of death is also covered by the occupational benefit scheme. In principle, surviving spouses, registered life partners, as well as orphans, are entitled to survivor's benefits. The pension fund can also name other persons who may be entitled, for example, unmarried couples. If such a benefit is provided for then it is also applicable for same sex couples. According to the Federal Supreme Court, co-habitation is not a requirement, rather more decisive is the fact that both partners are prepared to help and support one another.

#### **Vested benefits account**

If you leave the pension scheme before a pensionable situation (age, death or disability), you are entitled to the termination benefit. One is speaking here of a vested benefits case. A vested benefits case can arise with a change of job as well as when you start a new job after leaving the pension fund scheme. With a change of job, the previous pension fund transfers the termination benefit to the pension fund of the new employer. Also, the insured person must inform the pension fund into which vested benefits institution the termination benefit should be transferred. You have a choice between a vested benefits account, with a transfer in your name, to a bank foundation or a vested benefits policy, set up in your name, within an insurance company.

## When retirement assets are forgotten about

It happens very often that an employee no longer knows where his or her pension fund assets are kept, especially where frequent changes of jobs have occurred. If the pension fund has not received any notification from the insured person as to where the termination benefit should be transferred, the institution is obliged, no later than 2 years after the date of the vested benefits case, to transfer the termination benefit to a substitute occupational benefits holding institution.

In the search for forgotten benefits with institutions for occupational pension schemes, you can get in touch with the Second Pillar Central Office and they will tell you which institutions may be holding the corresponding assets, vested benefit accounts or policies (see <a href="Example">Example</a>). Pension schemes, and vested benefit institutions are obliged to report annually to the Second Pillar Central Office, if they are holding pension capital without any notification from the entitled persons.

### Occupational pension fund scheme and unemployment

If you become unemployed, you are compulsorily insured through the occupational pension scheme against the risk of death and disability. The pre-condition is that you receive daily allowances or compensation from the unemployment insurance fund after the usual waiting period of 5 days and that the daily wage exceeds CHF 82.60 (status in 2022). The premiums for this provision are paid half by you and half by the unemployment insurance fund.

#### Cash withdrawal of the pension fund capital

If you meet with one of the following conditions, then you can withdraw the total vested benefits amount in cash:

- If you are leaving Switzerland permanently and if you can qualify this with confirmation of a registered place of residence or a confirmation of employment abroad.
- Attention: In the case of an emigration to an EU/EFTA country, a cash payment is only possible for the part of the vested benefits amount which is above the non-compulsory level, provided you are subject to a compulsory insurance for old-age, disability and survivor's benefits in the country of destination!
- If you become self-employed with a full-time job and you are able to prove this with confirmation by the AHV Compensation Fund or the Tax Office.
- If your termination benefit amount is smaller than the individual personal contribution.
- If you use the money for residential property, which you personally and permanently inhabit. Up to the age of 50: payment of the entire vested benefits amount, above the age of 50: half or the amount which you could have brought forward at the age of 50 – whichever is higher.

Note: If you are married or officially registered, your partner must agree, in writing, to the cash payout.



## 2. Checklist

#### Insurability

- Am I subject to the compulsory occupational pension insurance?
- Can I join a pension fund voluntarily (e.g. in the case of self-employment or several small workloads)?

#### **Health questions/Reservations**

- Is there a danger that the employer can gain access to the health questionnaire, which I have completed, for the voluntary pension fund?
- If a reservation is made: Has it been clearly narrowed down? (Overtly general exclusions such as "infectious diseases" rather than "HIV", are not permitted).
- Is there a time limit on the reservations (a maximum of five years)?

## End of work/Change of job

- Can I have the pension fund capital paid out?
- Where is/will my pension fund money being/be kept?
- Can I claim disability benefits from the pension fund?
- Is it possible, that I have assets from an occupational pension scheme and am not (no longer) aware of it? Should I submit a search request to the Second Pillar Central Office?



## 3. Examples

## **Accompanying letter Health Questionnaire BVG**

As with the daily sickness benefits insurance companies, the pension fund companies often ask health questions when someone is starting a new job. Here, you should make absolutely sure that your employer is not made aware of your HIV infection or any other health-restriction issues you may have, as this information is not intended for him or her.

### **Application for BVG benefits**

It is not always the case that the IV department automatically sends a copy of the IV (disability pension) ruling to the relevant pension fund. If you have been receiving an IV pension for the past few months and you have not been contacted by your pension fund, then, to be on the safe side, you should submit a copy of your application to them.

#### **Application for an inspection of files**

If the pension fund refuses to pay a BVG disability pension, they do not state the reasons for this within a ruling, but rather in the shape of an informal letter. The reasons are often kept to a minimum, which means that you can only make a clear picture for yourself, whether or not the rejection is justified, if you have access to the complete pension fund files.

## Request to the 2<sup>nd</sup> Pillar Central and the corresponding Information Sheet

If you should, by chance, still have pension fund assets, then it is worth getting in touch with the 2<sup>nd</sup> Pillar Central Office. This department has an overview of all BVG assets in Switzerland. The application can be made by filling out the form intended for this purpose. Please also take note of the attached Information Sheet.



## 4. Further information

#### Literature

- **Counting on retirement**. How to plan your finances for old-age. Beobachter Buchverlag (www.beobachter.ch)
- **Happily retired this is how!** Relationships, living, money and legal rights in one's new stage of life. Beobachter-Buchverlag (<a href="https://www.beobachter.ch">www.beobachter.ch</a>)
- **Plan your pension the right way**. The ideal time, the realistic budget, personal life planning. A lot of tips for the third stage of life. Ktipp-Ratgeber (<a href="www.ktipp.ch">www.ktipp.ch</a>)

### Internet

- www.aids.ch: Homepage of the Swiss Aids Federation.
- <u>www.bsv.admin.ch</u> On the homepage of the Federal Social Insurance Office you will find a lot of information (Link: Sozialversicherungen -> berufliche Vorsorge)
- <u>sozialversicherungen.admin.ch</u> A further, very detailed collection on the most important social securities by the Federal Office of Social Security. Also included is information about occupational benefits (under: BV 2. Säule).

## Legal advice

- Legal advice of the Swiss Aids Federation: Responsible for all legal questions concerning occupational benefits in connection with HIV and Aids (<u>www.aids.ch</u>)
- Legal service "UP" for accident victims and patients: Specialist lawyers offer advice on all legal problems in connection with occupational benefits. German-speaking part of Switzerland only.rechtsberatung-up.ch
- **Legal service "Procap"**: The Swiss Disability Association "Procap "runs a legal service where experienced lawyers offer legal advice for the disabled (<a href="www.procap.ch">www.procap.ch</a>)
- **Legal service "Inclusion Handicap"**: The Swiss Working Group for the Integration of the Disabled offers cost-free advice and assistance in all disability-related legal matters.

# Health Insurance

## 1. Basic Information

Every person living in Switzerland is subject to compulsory social health insurance according to the health insurance law (KVG), which guarantees basic medical care. In this basic insurance, all health insurance companies must accept applicants, male and female, regardless of pre-existing illnesses or age. It is for this reason that no questions, relating to your health, can be asked of you when concluding a contract.

## **Compulsory health insurance benefits**

The compulsory health insurance (basic insurance) covers the costs for:

- Diagnosis and treatment of illnesses and accidents (if not already covered by a compulsory accident insurance) and the consequences thereof.
- Medication, which has been prescribed by a doctor.
- **Hospital stays** in the general ward of a hospital, which is on the hospital list of your Canton of residence or the Canton where you live (listed hospital).
- **External hospital care (Spitex)** provided this is prescribed by a doctor. Costs for home-help on a regular basis are not covered if there is no existing supplementary insurance available.
- Medical care in a care home or in the care department of a hospital, provided this is prescribed by a
  doctor. As a rule, a certain limited amount of the care costs must be paid for by the patient him or herself;
  the remaining uncovered nursing care costs are covered by the Cantons/communities of residence.

Costs for dental treatment are, in general, not covered by the basic insurance. An exception is made when irreparable damage occurs as a result of the side-effects of an HIV therapy, or if dental damage is the direct result of having contracted Aids.

#### **Accident cover**

If you work less than 8 hours a week for a single employer, you must take out an accident insurance cover with your existing health insurance company. This is not necessary if you work for a single employer for at least 8 hours a week, then you are automatically insured against accidents.

## **Deductible rate and excess**

Apart from the health insurance premiums, the insured persons must provide two services themselves: deductible rate and excess.

The deductible rate is the yearly amount, which you have to pay to the insurance company yourself, all other costs are covered by the insurance company (in the cases listed above). You can choose the deductible rate amount yourself; the least amount is CHF 300.-, the maximum amount CHF 2'500.-, a year. The higher the deductible rate, the smaller the health insurance premiums. Choose the lowest deductible rate of CHF 300.- if you have to go for frequent blood tests and/or are taking HIV medication. A higher deductible rate is not worth choosing in this case (see <a href="Example">Example</a>). In addition to this, you yourself must pay 10% of the treatment and medication costs that exceed the deductible rate up to a maximum amount of CHF 700.-, per calendar year (excess). Note: In the case of original medication, and where there is generic medication available, the deductible rate goes up to 20%! Of this, 15% of the maximum of CHF 700.- will be deducted. 5% is charged to the patient, without limit.

#### Advance payment obligation

Some health insurance companies require that you pay for the medicines, which you buy at the pharmacy; the insurance company will then reimburse you. This means that sometimes one has to pay high amounts, (e.g. for HIV therapy), in advance (the remuneration system principle). If this presents a problem for you or you do not want to do it this way, you should, before taking out a new health insurance policy, make sure that the accounting is settled directly between the pharmacy and the health insurance company (the remuneration system principle).

#### Alternative insurance models

The insurance companies offer various models, e.g. the HMO model, Telmed model, etc. With such a variety of alternatives on offer you can save on premiums, however they do limit the choice of doctors/hospitals. Before you apply for such a model, you should ask the health insurance company exactly what sort of restrictions this might entail, particularly with regard to your chronic disease.

## **Cost approval**

Before undergoing an expensive treatment, e.g. an operation, a rehabilitation, a spa stay or even the start of a longer lasting therapy, you should always obtain cost approval from the health insurance company, so as to be clear from the very beginning, whether or not and to what extent the company will cover the costs (see <u>Example</u>).

### **Supplementary insurances**

Aside from the compulsory insurance, there are voluntary supplementary insurances, which provide a broader choice of services than the compulsory companies (for instance contributions towards fitness subscriptions, single rooms in hospitals, etc.). While the basic insurance companies are open to all residents of Switzerland, the supplementary insurances of the health insurance companies can carry out a so-called risk selection. This means, that the insured person can be asked many questions pertaining to his or her health. People with HIV/Aids are practically never included in these supplementary insurance schemes. It is also not worth filling out the forms falsely or, for instance, to write that one does not have HIV. Because as soon as the health insurance company finds this out (as a rule, then, when they have to provide benefits) they can annul the supplementary insurance contract and the insured person has consequently paid the premium for nothing. It is therefore important: before you cancel your supplementary insurances with your health insurance company, e.g. because the premium rates have become too expensive, you should be aware that you will never be able to take out those supplementary insurances at a later date.

## Reduction of health insurance premium rates

If you live in modest financial circumstances, you may be entitled to a reduction of the health insurance premium rates. In each Canton, there are regulations and organisations. (The relevant addresses can be found on the homepage of the Federal Office of Public Health: <a href="Bundesamt für Gesundheit">Bundesamt für Gesundheit</a>).

## **Termination**

You can terminate the compulsory basic insurance at the end of the calendar year. For a termination of the contract as of the 31<sup>st</sup> of December, the letter of termination, sent by registered post, **must be received by** the previous health insurance company no later than the 30<sup>th</sup> of November, respectively, no later than the last working day of November (see Example). Attention: If the premium for the following year remains unchanged, a three-month term of notice applies.

If you have a minimum deductible rate (franchise) of CHF 300.- and no alternative insurance model such as HMO or a general practitioner's insurance model, you can cancel your contract in the middle of the year. For a termination for the 30<sup>th</sup> of June, the termination letter must arrive by registered post at your previous health insurance company by the 31<sup>st</sup> of March, resp. by the last working day in March.

Health insurance companies experiencing financial problems are allowed to raise the premium amount in the middle of the year. The health insurance company must inform the insured person of this by the end of April. If this should be the case, you can terminate your contract by the end of May and change over to another company by the 1<sup>st</sup> of July.

Your change of health insurance company will only become effective when the new insurance company confirms your admission to your previous insurance company.



## 2. Checklist

- Which insurance models are available? To what extent is my free choice of doctor/hospital
- Do I have to pay for the medication in advance?
- Is it worth my paying a higher deductible rate?
- Am I insured for accidents through my employer or do I have to include an accident cover in my basic insurance policy?
- Do I have supplementary insurances? What do they cover?
- Am I entitled to a premium reduction?
- Prior to an expensive operation or therapy: Have I obtained cost credit approval?
- Prior to a hospital stay: is the hospital, which I have chosen, on the list of hospitals of my Canton of residence? Or do I have to pay a certain amount myself?
- What deadlines do I have to make a note of, if I want to change my basic insurance?



# 3. Examples

## Request for cost credit

In order to avoid future disputes as to whether or not a certain therapy, treatment or a cure is covered by the health insurance company, you should submit a request for cost credit approval in advance. As a rule, you should receive a reply from the insurance company within a few days.

#### **Accident insurance exclusion**

If you work for more than 8 hours a week for a single employer, you are automatically insured against occupational and non-occupational accidents. In this case you can remove the accident insurance from your health insurance policy.

## Changing the deductible rate

If you want to change your deductible rate, (e.g. reduce it, because you are taking a new anti-retroviral HIV therapy medication), you must submit this by registered post at the end of the year with a one month time limit. Your letter should – just as with a termination - arrive, at the health insurance company, by the 30th of November, respectively by the last working day of November.

#### **Termination of health insurance**

For safety's sake, the termination should be sent by registered post and it should arrive at the health insurance company's offices on time. If your basic and supplementary insurances are with the same company and you only want to cancel your basic insurance policy, then you should explicitly state that you want to retain your supplementary insurance(s).

## 4. Further information

#### Literature

- The Compulsory health insurance system. Guidebook of the Federal Office for Public Health, which answers the most important questions (to download as a PDF in English: www.bag.admin.ch -> Insurances -> Health Insurance -> Key Points in brief -> Dokumente)
- 1x1 of health insurance. Easy to understand guidebook about health insurance. Can be had as a PDF to download at Santésuisse (www.santesuisse.ch -> für Versicherte -> Publikationen -> 1x1)

#### Internet

- www.aids.ch: Homepage of the Swiss Aids Federation.
- www.priminfo.admin.ch: Here, the premiums of the health insurance companies can be compared. This is a website of the Federal Office for Public Health.
- www.comparis.ch: Under the link Insurance -> Health insurance, one can find a lot of information about health insurance, as well as the health insurance premium comparisons.
- www.bag.admin.ch: Homepage of the Federal Office for Public Health. Under the link Insurances -> Health insurance, there is information on health insurance.

## Legal advice

- Legal advice of the Swiss Aids Federation: Responsible for health insurance questions in connection with HIV and Aids (www.aids.ch)
- **Health insurance ombudsman's office**: The ombudsman's office advises and mediates in cases, where the insured person feels their health insurance company has wrongfully treated them (www.om-kv.ch)
- Legal advice office (UP) for accident victims and patients: specialist lawyers offer advice on all legal problems in connection with the health insurance company (www.rechtsberatung-up.ch)

# **Disability Insurance**

## 1. Basic Information

Whoever is at risk of becoming unemployed as a result of illness or who becomes fully or partially disabled, is eligible for a disability allowance from the disability insurance scheme (IV). Here there is a distinction in the different types of benefits.

## **Early detection**

If you have been unemployed, uninterruptedly, for at least 30 days or have had repeated short absences due to illness within a year; your case can be submitted for early processing, to the IV department in your canton of residence. The application is voluntary and without any legal claim.

Not only are you entitled to register, but also your employer, your attending doctors, your daily allowance benefit, accident and unemployment insurance, your pension fund, the social welfare authorities and family members living in the same household with you. All of these people are however, obliged to inform you, in advance. The written registration must be submitted to the IV department of your Canton of residence. You can download the registration form at <a href="https://www.ahv-iv.ch">www.ahv-iv.ch</a>.

Early recognition is a preventative measure so as to make sure that a disability can be prevented from occurring at a later date. The aim of early recognition is to ensure that suitable measures are taken at the workplace. In an early recognition discussion, an analysis is carried out of your medical, professional and social circumstances. Within 30 days it will be decided as to whether or not early intervention measures will be implemented (->IV-Anmeldung).

### **Early intervention measures**

After early detection, an early intervention is available as a follow-up measure. The aims here are to maintain the previous job or to facilitate integration into a new job. A plan is drawn up with a target agreement. The pre-condition of the permission for recognition measures, is a registration with the IV department. Among the possible measures are, for example, training courses, adjustment of the workplace, work placement or career counselling.

The early recognition lasts for a maximum of six months from the IV application date and is finalised with a decision as to whether the path of integration or a pension should be considered.

**Note**: There is no legal claim to early intervention measures.

## **Integration measures**

The integration measures pursue the goal of improving a long-lasting and significant ability to work. These include re-training, further education, career counselling and work placements. Important is the principle "Integration Before Retirement": pensions are only paid out when early intervention measures or integration measures are no longer possible or do not deliver the desired result.

## Requirements for a disability pension

The entitlement begins, at the earliest, after a one year waiting period. During this year, the incapacity to work (restrictions in the current job due to health reasons) must amount to at least, on average, 40%. After this period, there must still be at least the same degree of incapacity to work (the inability, following integration into the general labour market to earn an income). In addition to this, the pension entitlement occurs, at the earliest, six months after the submission of the application to the IV department.

## Calculation of the degree of disability

In order to be eligible for a disability allowance, the degree of disability is decisive. This corresponds to the percentage of the loss of earnings, due to the disability. In order to determine the degree of disability, the IV department differentiates between employed, unemployed and partially employed.

In the case of employed persons, the IV department determines the degree of disability by means of income comparison. The department determines the income which you could earn if no damage to health existed (= valid income). From this, they deduct the income that you can be expected to earn following the damage to your health and after proceeding with the re-integration measures (= disability allowance). The missing amount is the reduction of income due to disability. Expressed in percentage terms, the degree of disability is arrived at.

With unemployed persons, the IV department calculates the disability degree by activity comparison: Experts in the IV department clarify immediately, exactly how strongly the disability affects areas of activity, for example, when dealing with housework. With partially employed persons the IV department calculates the disability degree, according to disability in both areas: in working life (loss of income) and in the current areas of activity (activity comparison).

#### Pension disability amount

Pension eligibility according to the IVG is as follows:

Degree of disability under 40% No pension entitlement

Degree of disability of 40% to 49% At a degree of disability of 40% = 25% pension. Thereafter, the pensions increase by 2.5% per degree of disability.

[Example: Degree of disability of 45% = 37.5% pension]

[Example: Degree of disability of 58% = 58% pension]

Degree of disability of at least 70% S Full pension (100%)

## The procedure

The IV department informs the insured person, with a so-called preliminary decision, the kind of ruling it intends to issue. The preliminary decision is basically nothing more than a draft of the original ruling. The insured person has 30 days, in which to comment on the preliminary decision (= Objection, see <a href="Example">Example</a>). After that, the IV department issues the ruling. You must contest the ruling, within 30 days, at the cantonal insurance court if you are not in agreement with it (= Appeal, see <a href="Example">Example</a>). Due to the large deficit in disability insurance, the IV departments have become very strict over the past few years and are refusing more IV applications than before.

#### Supplementary benefits

The IV pension of the 1<sup>st</sup> Pillar is, on its own, not enough to secure a livelihood (maximum CHF 2'390.-per month – status in 2022). If required therefore, the so-called supplementary benefits (EL) boost the minimum legally anchored income received by IV pensioners. Besides this, the supplementary benefits also remunerate medical and disability expenses. Those who receive EL, have a yearly maximum amount of CHF 25'000.- for singles, CHF 6'000.- for people living in homes, CHF 50'000.- for married and registered couples. They are also eligible for a remuneration of the following costs: dental treatment, home-help, home-care and home-nursing, as well as day-to-day structures such as diet, transport to local treatment centres, resources and cost-sharing of the basic insurance amount (deductible rate and excess).



## 2. Checklist

- Should I register myself for an early detection assessment?
- Have I received a preliminary decision or a ruling from the IV department? Are there deadlines?
- Is the decision acceptable to me? Should I study the current IV files?
- What do my attending doctors have to say about the IV department's decision?
- Do I have current doctor's reports with which I can disprove the arguments of the IV department?
- Am I eligible for supplementary benefits?
- Do I have a legal protection insurance policy?
- Should I seek legal assistance?



# 3. Examples

## **Application for access to files**

Before you are able to judge whether legal steps are worth taking against a negative decision by the IV, you must have a comprehensive knowledge of the files. As it takes a few days before you receive the files, you should make - especially when there are deadlines - an application for access to the files quickly (see also precautionary objection below).

#### Precautionary objection against the preliminary decision

The deadline, for challenging a preliminary decision by the IV department, is, at 30 days, relatively short, especially if you want to study the files. It takes a few days for the files to reach you. If the timeline proves to be too short, you can submit a written precautionary objection, so that the deadline does not expire and at the same time request the files. After you have studied the files, you can decide whether the objection still needs to be justified (see below) or whether it should be retracted because the preliminary decision reached has been a correct one.

## **Objection/justification for the objection**

The grounds for an objection must be drawn up individually in each case. A definitive example cannot be given, because each case is different. It is for this reason that the example letter shows only that, which should be contained in such a letter of objection.

## Appeal against a ruling

An appeal must also be individually drawn up, it is for this reason that the example letter shows only how it should formally look and what it should contain. In the case of an appeal, it is to be recommended that comprehensive evidence (additional doctor's certificates, etc.) should be enclosed. As in the case of an objection, there is a 30-day deadline for submitting the appeal. In contrast to an objection, as complainant you must pay for the costs of the proceedings in advance. These can range between CHF 500.- and CHF 1000.-. However, if your appeal is upheld, the IV department must reimburse you with these costs.



## 4. Further information

#### Literature

- IV What am I entitled to? Everything about pensions, legal rights and insurances. Beobachter-Buchverlag (www.beobachter.ch).
- Chronically ill what do the social services offer? This guideline from the Swiss Cancer, Lung and
  Rheumatism League, as well as Diabetes Switzerland, is dedicated to questions of social insurance
  law, including the area of disability insurance. Order and download it under <a href="www.krebsliga.ch">www.krebsliga.ch</a>
  (under: Shop -> Broschüren/Infomaterial -> Publikationen für Fachpersonen).
- Information sheets on disability insurance. The information office AHV/IV publishes numerous fact sheets on disability insurance, in collaboration with the Federal Social Insurance Office. PDF-download under www.ahv-iv.ch (link Sozialversicherungen / Invalidenversicherung / Merkblätter).
- **Disabled what do I do?** A guidebook on all legal questions on disability, published by the Pro Infirmis (www.proinfirmis.ch -> Rechtsratgeber).
- Work, illness, disability. A comprehensive work on employment and legal social insurance aspects by K. Pärli/J. Hug/A. Petrik, Stämpfli-Verlag (<a href="https://www.staempfliverlag.com/verlag">https://www.staempfliverlag.com/verlag</a>

#### Internet

- www.aids.ch: Homepage of the Swiss Aids Federation.
- <u>www.sozialversicherungen.admin.ch</u>: A comprehensive list of the most important social security companies by the Federal Social Insurance Office. Also contains information about disability insurance.
- <u>www.proinfirmis.ch</u>: On the Pro Infirmis website you will find information all about the subject of disability (www.proinfimis.ch -> Wissenswertes [at the very bottom of the page] -> Invalidität.

## **Legal Advice**

- Legal Aid from the Swiss Aids Federation: Responsible for all legal questions about disability insurance in connection with HIV and Aids (<u>www.aids.ch</u>)
- Legal advice centre UP for accident victims and patients: Specialist lawyers give advice on all legal
  questions in connection with disability insurance. Available in the German-speaking part of
  Switzerland only. (www.rechtsberatung-up.ch)
- Legal service Procap: The Swiss Disability Association, Procap runs a legal service where experienced lawyers offer advice on all legal problems in connection with disability insurance. (www.procap.ch)
- Legal service Inclusion Handicap: The Swiss Association of the disabled people's organisations
  offers advice and assistance on all disability related legal questions, free of charge. (<a href="www.inclusion-handicap.ch">www.inclusion-handicap.ch</a>)

# Data Protection/ Patient's Rights

## 1. Basic Information

The history of data protection began in 400 years B.C. with the Hippocratic Oath, which addresses the medical profession: "And whatsoever I shall see or hear, in the course of my profession, as well as outside my profession on my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets". This principle has also found its way into our present-day laws and is included in many legal provisions. Professional confidentiality does however not pertain only to doctors, but rather, anyone who has been taken into your confidence with highly personal information about, for example, your HIV infection. This also includes your partner, your work colleagues, your insurance company, etc. Every person has the right to protection of his or her privacy and has the right to keep the details of their private life secret. Highly personal data is considered sensitive data, which is particularly worth protecting under the Data Protection Act. This entails, amongst other things, information on religious and political opinions, personal health, private sphere (e.g. sexual orientation), ethnicity, social welfare measures or criminal prosecutions. This data enjoys a higher level of protection than any other data.

#### Where is data protection and confidentiality regulated?

The protection of privacy is anchored in the Federal Constitution (Art. 13 BV Protection of the Private Sphere). Together with this constitutional provision, there are several procedural law provisions with different scopes but which all have the same aim: personal protection. Legal regulations on data protection can be found in the Civil Code, in the Confederate Law of Protection, in the Cantonal Protection Laws as well as in the Penal Code. The criminal law provisions concern only certain professional categories: members of public authorities, members of the clergy, medical and legal professionals, chemists, psychologists, psychiatrists, auditors, as well as their assistants. If any person, from these professional categories, reveals a confidentiality, which has in view of their professional standing, been entrusted to them or has been understood by them to be confidential, they can be faced with a particularly severe punishment (a custodial sentence of up to three years or a fine). If a person from another professional group or a private person violates their duty to confidentiality, this is a civil legal violation of privacy, according to the Data Protection Act and the Civil Code. They can be ordered by the court to cease and desist and to make a satisfaction and compensation payment.

## When can particularly sensitive personal data be passed on?

In principle, there is no personal data which can be passed on, retained, used, procured, revised or destroyed ("edited"), without pre-conditions. In clearly limited cases, processing of information (e.g. passing on the information that someone is HIV-positive) is permitted, in an exceptional case, if

## the affected person gives their permission

When the person concerned, after having received adequate information, voluntarily and expressly grants permission for a disclosure.

## the law allows it in an exceptional case

According to epidemic law, doctors and hospitals are obliged to inform the responsible cantonal authorities of new HIV diagnoses. However, the name of the person is not divulged; only gender, date of birth, place of residence, the first letter of the first name and the amount of letters in the first name. The provision of this information is important so as to avoid any possible double registrations.

#### • the superior authority grants authorisation

Those who fall under the categories of authority or professional secrecy, have the possibility of being released from confidentiality, on application and with valid reasons by their superior authority. Dispensations are issued very restrictively and can, in principle, only then be issued if the discussions with the person concerned have been unsuccessful.

**Note:** The more sensitive the data, the higher the requirement for justification!

### When a data protection violation has occurred

If your personal rights have been violated; within a year of your knowing about it, you can bring an action before the Civil Court of your place of residence or that of the defendant's. You can find out how you should proceed from the Federal or Cantonal Data Protection Officers (addresses, see page 32). Court cases involving data protection violations, are as a rule, drawn out affairs and difficult to prove. Therefore, a high litigation risk with corresponding high costs can arise. Also, violations which have already occurred, usually cannot be made up for and remedied through the courts.

At best, further damage can be prevented. It is, for this reason, very important to avoid data protection violations. Therefore, for example, you should make those people, to whom you entrust sensitive information, aware, that this is highly personal information which they may not disclose without your prior permission.

## Right to information, right to an inspection of medical history

Each person has – regardless of age, place of residence and nationality – the right to information on all data concerning him or herself. The right to information is very important in data protection, because you can only know what data is available when you have been informed of it.

In order to receive information, a written request (with personal identification) sent to the owner of the data collection is enough (see Example letter). A reason is not needed. What does make sense though is to give precise information in respect of the data which you would like to receive. The written data must, as a rule, come in the form of a printout or a photocopy and should, in principle, be free of charge.

## The right to authorisation or deletion

If incorrect or outdated data is contained in the data collection, you can demand that this information be corrected or deleted. This can be essential in the case of a personal dossier, as well as a medical history dossier, for example, in connection with the mention of psychiatric problems. Although you do have the right to delete, or rather correct your data, following this through can prove difficult in isolated cases (see <a href="Example">Example</a>).

## Patient's rights

Besides having the right to secrecy and an insight into your medical history, you are entitled to further important rights in relation to institutions and medical systems, including:

- **Right to treatment**: This always applies to public hospitals. In emergencies, even private doctors cannot refuse treatment.
- **Right to care:** With a medical procedure, as is the nature of things, success can never be guaranteed. However, patients have a right to professional and careful treatment.
- **Right to self-determination:** Both the HIV test and HIV therapy treatment are voluntary. If carried out against your will, it is an intrusion into your personal freedom.
- **Right to information:** Medical treatments often demand far-reaching decisions of you as a patient. In order to choose the correct procedure, which suits you personally, you have to get to know all the aspects of the planned treatment beforehand. Doctors are therefore obliged to inform you of the effects, side-effects, possible long-term consequences and of the alternative possibilities available. They must also point out to you the possible problems, which can arise in relation to the recovery of costs.

# 2. Checklist

- What specifications should I make in the current situation?
- What sort of data does it concern? Is it data, which is worth protecting according to the Data Protection Act?
- Who has access to my data?
- Can I be sure, that before my data is passed on to a third party, my permission will be obtained?
- Which company/department has processed data about me in the first place?
- Should I submit an application for an inspection of my files?
- Do the collected files represent the truth?
- Do I want to have the data in the collected files corrected or deleted?
- What is the proof? Can I prove that data has been unlawfully processed?
- Will I be satisfactorily informed prior to medical treatment?



## 3. Examples

#### **Application for an inspection of files**

Before you can clarify whether and what sort of data protection violation has been committed, you should know what sort of data has been collected about you. You can request this together with an application for an inspection of the files.

## Second application for an inspection of files

A company, which has unlawfully processed data, does not, as a rule, like to admit to it. This is why it can often happen, that you do not receive the files after the first application, although according to law, this must take place within 30 days. Here, a reminder letter can be of help, in which the legal consequences are indicated.

### Request for deletion / Request for correction / Request for blocking

If there is false information in the data collection, you can request, that it be removed or corrected. You can also request that your data should be blocked and should not be disclosed to anyone. Here, you must tell the data controller exactly what should be removed or corrected.

## **Letter to prevent further data protection violations**

If someone informs others of your HIV infection without your prior permission, it is recommended that you make the person aware of their breach of data protection and the possible subsequent legal consequences. Demand from him or her a written confirmation that they will respect your right to privacy protection in the future.



## 4. Further information

#### Literature

- Data protection and HIV. A brochure from the Swiss Aids Federation, explaining the most important data protection regulations, in different life situations, and showing how one can protect oneself against data protection violations (order and download it under www.aids.ch)
- Protect your privacy. Who collects information about you and where? And what you can do about it. (www.saldo.ch)
- Patient's rights. Tips for dealing with doctors and hospitals. Includes, besides information on patient's rights, a chapter on data protection. Saldo-Ratgeber (www.ktipp.ch)

#### Internet

- www.aids.ch: Homepage of the Swiss Aids Federation.
- <u>www.edoeb.admin.ch</u>: On the homepage of the Federal Data Protection and Information Commissioner, there is a lot of information, brochures and tips on the subject of data protection.
- <u>www.privatim.ch</u>: On the homepage of the Cantonal Data Protection Officers, there are a lot of informative tips, as well as guidelines on everything concerning data protection and addresses of the cantonal officials responsible.

#### **Legal Advice**

- Legal Advice from the Swiss Aids Federation: Responsible for legal questions on everything concerning data protection in connection with HIV and Aids (www.aids.ch)
- Federal Data Protection and Information Commissioner: From Monday to Friday from 10.00 a.m. to 12.00 a.m. there is a telephone advisory service available under the number: 058 462 43 95. However, this only applies to data protection violations of private individuals and of the Federal Government (www.edoeb.admin.ch)
- Cantonal and communal Data Protection Officers: Most Cantons and the larger cities have their own Data Protection Officers. They advise those affected by a data protection violation by the Canton or the municipality concerned. The addresses can be found under <a href="www.privatim.ch">www.privatim.ch</a>

# **Criminal Law**

## 1. Basic Information

Since the 90's, people living with HIV in Switzerland have been convicted because they had unprotected sex. Due to a revision of the Epidemics Act in 2016, as well as the acknowledgement of the non-infectivity of persons whose viral load is no longer detectable thanks to HIV therapy (see below), the convictions of people with HIV has been significantly reduced in recent years.

#### Grievous bodily harm, Article 122 of the Penal Code (StGB)

People living with HIV, who engage in unprotected sexual intercourse can, under certain circumstances, be criminally prosecuted for grievous bodily harm. This applies even when no transmission has taken place (so-called attempted grievous bodily harm). If, however, one of the following conditions is met with, criminal liability does not apply:

- If the HIV-positive person informs their partner of the HIV infection and they consent to having sexual intercourse without protection, he or she is **not** liable to prosecution.
- An HIV-positive person is also **exempt** from prosecution if his or her viral load is no longer detectable, because he or she is no longer contagious and cannot transmit the virus at all.

# The Declaration by the Federal Commission for Issues relating to Sexually Transmitted Infections (CFIST) on Infectivity

"HIV-positive people, whose viral load is no longer verifiable, thanks to successful HIV therapy cannot pass on HIV sexually." This <u>Meldung (Report)</u> released by the Federal Commission for Issues relating to Sexually Transmitted Infections (CFIST), (formerly the Federal Commission for AIDS-related Issues: FCAI) in the year 2008 (<u>updated in 2016</u>), put the problem of criminal liability in a new light: Can someone be made criminally liable for grievous bodily harm, if he or she, from a purely biological standpoint, is not capable of transmitting HIV?

The Swiss Aids Federation has been strongly committed to ensuring that the principles laid down by the CFIST are recognised by the prosecution authorities and courts and that under the given circumstances, no criminal prosecution is necessary.

The lobbying was worth it: People who, at the time of sexual intercourse, do not have a detectable viral load are, as a rule, no longer made criminally liable. This also applies even if they do not inform their partner of the HIV infection prior to having sexual intercourse.

## **Criminal proceedings**

The investigative authorities know exactly what questions they must ask a suspect and how they can lead someone into making contradictory statements, which can then be used against him or her. Those who want to exercise their rights effectively cannot avoid hiring a lawyer. In doing so, it should first be clarified, whether or not the suspect has to pay for the lawyer's costs themselves or whether a so-called compulsory public defence lawyer is, for the time being, paid for by the state. A compulsory public defence lawyer is appointed, then, when a suspect has been held in custody for 10 days or if a sentence is in danger of lasting more than a year. In all other cases, a public defender is only then made available if the suspect has financial problems. In minor cases, no one has the right to a public defender.

One of the most important rights of any suspect is the right of refusal to give evidence. Because every statement can be used against you, it is often advisable to make a statement only then when you know exactly what evidence the investigating authorities can provide and when you have had a chance to consult with your lawyer. This sounds easier than it actually is. For most people affected, it is extremely difficult to refrain from making any statement at all when coming under pressure or even being remanded in pre-trial custody by the investigating authorities.



## 2. Checklist

- What am I being accused of?
- Do I fulfil the conditions of the EKAF Statement?
- Was my partner informed about my HIV infection before engaging in unprotected sexual intercourse?
- As a suspect, am I entitled to a compulsory public defence lawyer or do I have to hire and pay for a lawyer myself?
- When are the next Interrogations planned?



# 3. Examples

## Overview of the current legal situation on the criminal liability for an HIV transmission

Unlike in the past, people in Switzerland with HIV who engage in unprotected sexual intercourse, are convicted only in very rare cases. Anyone who has no detectable viral load, and who informs their partner of their HIV infection prior to having unprotected sex, will no longer be prosecuted under criminal law.

## **Objection to a Penalty Order**

Small offences are regulated with a Penalty Order. This becomes legally binding, if one does not raise an objection within a specified time limit. As the deadline is very short and because not much time remains to look at the case files from the authorities, it is also possible to submit a precautionary objection, which one can withdraw at a later date.

#### Request for an inspection of files

The investigative authorities are normally very hesitant about giving out case files, so as not to jeopardise the investigation. They want to avoid presenting a suspect with all the evidence, which they have against them, because otherwise they can prepare themselves and can influence witnesses. Nevertheless, it is worth trying to request an inspection of files and, if possible, to obtain the procedural files.



## 4. Further information

#### Literature

- The Swiss Statement Statement by the Federal Commission for AIDS-related Issues (today: Federal Commission for Issues relating to Sexually Transmitted Infections CFIST) on non-infectivity from 2008, Schweizerische Ärztezeitung (2008;89:5).
- The Swiss Statement eight years later. A look back at the developments following the publication of the EKAF-Statement and the impact made on the decriminalisation of HIV transmission (English). P. Vernazza/E. Bernard, Swiss Medical Weekly vom 29.1.2016
- HIV Criminalization Human Rights Fact Sheet. A fact sheet of UNAIDS, a subsidiary organization of the UN, on the criminalisation of HIV transmission in an international context (downloadable under <a href="https://www.unaids.org">www.unaids.org</a> -> resources -> publications -> topic criminalization
- **Criminal investigation What to do?** A comprehensive guide from the Legal Information Lawyers Collective with many notes on criminal investigating (order it under <a href="www.anwaltskollektiv.ch">www.anwaltskollektiv.ch</a>). On this website, there is also a downloadable information sheet on criminal investigations.
- Criminal sanctions Overview on the criminal sanctions in Switzerland from the Competence Centre for Law Enforcement SKJV (<u>www.skjv.ch</u> -> Was ist Justizvollzug? -> Strafrechtliche Sanktionen)

#### Internet

- <u>www.aids.ch</u>: Homepage of the Swiss Aids Federation. Further information on criminal law can be found here.
- <u>www.hivjustice.net</u>: HIV Justice Network: Platform on the subject of criminal liability of HIV transmission with articles and verdicts on the subject (international).
- <u>www.straf-prozess.ch</u>: A very good overview on the procedure of a criminal proceeding with information on everything that one needs to be aware of.

#### **Legal Advice**

- On-call criminal defence lawyers: Every day, even at weekends, a public defender who can act
  immediately can be contacted. The addresses of all emergency lawyers can be found on the website
  of the Swiss Lawyers Association <a href="https://www.sav-fsa.ch">www.sav-fsa.ch</a> under Legal advice -> Criminal Defence Duty.
- Legal Advice by the Lawyers Collective: From Monday to Friday experienced lawyers give
  information and can also become active in criminal cases. An initial consultation costs CHF 70.--.
  The advice centre is in Zürich (www.anwaltskollektiv.ch).
- Legal Advice Centres of the Lawyers Bar Association The Lawyers Bar Association runs advice centres, in practically all Cantons, free of charge (Addresses under <a href="www.sav-fsa.ch">www.sav-fsa.ch</a>, link Legal Advice).

# **Travelling Abroad**

## 1. Basic Information

Several countries have immigration and a limited stay duration for anyone with HIV. In the case of illness abroad, the basic health insurance company does not always cover all treatment costs. Also, in the case of social security, it is worthwhile clarifying the situation before travelling.

## **Immigration restrictions**

Some countries refuse entry to people who are HIV-positive, in some countries, entry is allowed, albeit only under certain conditions. It is recommended that one checks out the current entry regulations before travelling to another country. A list of the current entry regulations of almost every country, in relation to HIV, can be found under <a href="www.hivtravel.org">www.hivtravel.org</a>. You can get information on the general entry and stay duration conditions, from the Federal Department of Foreign Affairs, as well as the foreign representatives in Switzerland (see <a href="Further information">Further information</a>).

#### **Health Insurance**

If you are on holiday abroad, you continue to be covered by your basic insurance in Switzerland and you can also profit from supplementary insurances (if you have these). In most countries, having a basic insurance is enough to cover the costs of treatment. However, problems can arise in Australia, Canada, Japan and in the USA: Hospital costs there can be up to five times higher than they are here. That is why for these countries it is advisable to take out a travel health insurance. However, it should be noted that these insurances do not normally provide benefits for illnesses, which were already in existence, e.g. HIV, prior to taking out the insurance!

If you are planning a limited stay abroad for up to year, you can possibly remain covered by your basic insurance in Switzerland. Whether this is possible, in your particular case, should be checked out with your health insurance company.

If you want to emigrate indefinitely, it is, as a rule, not possible to remain insured by your health insurance company in Switzerland. An exception is made for EU/EFTA countries. Here it is possible or even a condition, in certain countries, to remain insured with the Swiss insurance company – provided you do not intend to work in an EU/EFTA country. Special conditions also apply in the case of a secondment, for instance, where you are sent by your Swiss employer to work abroad. The joint institution KVG can give you more detailed information on this.

If you have supplementary insurances you should clarify with your supplementary insurance company, whether or not you can suspend these for the duration of a long stay abroad. When changing your residence address to an address abroad, your supplementary insurances will be lost and due to the HIV infection, when you return to Switzerland, you will no longer be able to take out any new supplementary insurances.

### Disability (IV) pensions and supplementary benefits abroad

If you receive a half, three-quarters or a full IV pension, you are eligible for these even if you have relocated your residency abroad. Quarter pensions are only paid out in EU and EFTA countries. There is a special IV department, which is responsible for IV recipients living abroad <u>DI Office for people living abroad OAIE</u>. You must be careful if, in addition, you are also receiving supplementary benefits (EL): these are only paid out to those whose residency and domicile is in Switzerland. Anyone who emigrates loses all of his or her supplementary benefits (EL).



# 2. Checklist

- Are there entry restrictions, in the country, which I would like to travel to, for people with HIV?
- Are there restricted residency durations, in the country to which I would like to emigrate, for people with HIV?
- What general regulations of entry and residency apply in my country of destination?
- Is my health insurance sufficient to cover my entire planned stay abroad?
- Can I continue with my basic insurance and possible supplementary insurances in Switzerland for such time as I am abroad?
- What consequences will an emigration have on my disability pension and my supplementary benefits?
- What does this mean in respect of my accident insurance?
- Is there a social security service in the country of my choice? To what degree is it possible to carry on with my Swiss insurance protection?
- Do I have to de-register with the resident's registration office in my place of residence? If this is the case, will I be given a de-registration confirmation?
- Have I registered, after moving away, with the Swiss representation in my destination country?



## 3. Example

#### **Certificate for carrying medication**

If you are planning a longer trip to a non-EU country and you have to take large amounts of medication with you, you should carry an up-to-date certificate, which has been issued by your doctor and which describes your particular medical situation. Such a doctor's certificate can help to avoid misunderstandings in the case of possible customs checks. An example is attached here.

**Beware**: For countries, where the entry of people with HIV is forbidden, carrying such a certificate with you is not to be recommended.



#### 4. Further information

#### Literature

- Country Dossier living and working abroad. The Federal Department of Foreign Affairs (FDFA) has
  compiled detailed dossiers on a wide range of countries. They contain important information on entry,
  visas, health system, work, education, housing, culture and security. Downloadable under
  www.eda.admin.ch -> Living and working abroad -> Preparations for a stay abroad -> Emigrating ->
  Information about countries)
- **Guidebook on emigration**. A dossier compiled by the FDFA on the most important aspects of emigration. For download under <a href="https://www.eda.admin.ch">www.eda.admin.ch</a> -> publications -> Ratgeber Auswanderung.
- **Travel checklist**. A good preparation contributes significantly to the success of a trip. The FDFA's travel checklist will help you with this. It shows what you should consider and prepare before and after booking, as well as shortly before departure. Download at <a href="https://www.eda.admin.ch">www.eda.admin.ch</a> -> publications -> Reise Checkliste)
- **Emigration a new start abroad**. Planning a move, checking insurance cover, securing finances. A guide from "Beobachter" (<a href="www.beobachter.ch">www.beobachter.ch</a>)

#### Internet

- <u>www.hivtravel.org</u> A list of the current entry regulations of almost all countries, in connection with HIV.
- www.eda.admin.ch On the website of the Federal Department of Foreign Affairs FDFA you will find a
  list of foreign representatives in Switzerland and Swiss representatives abroad, as well as further helpful
  information on the topic of emigration/stays abroad.
- <u>www.swisscommunity.org</u> The website of the Organisation for the Swiss Abroad (OSA), offers information on topics such as health insurance, military service, work training and scholarships.
- <u>ec.europa.eu/eures.ch</u> The European portal for professional mobility. Here one can find a list of jobs from across the entire EU region.

#### **Legal Aid**

- Legal Aid of the Swiss Aids Federation: Responsible for legal questions on all aspects of your (planned) stay abroad in connection with HIV (www.aids.ch)
- **FDFA Helpline**: On this Helpline of the Federal Department of Foreign Affairs (FDFA), for 365 days a year, one has around the clock access to detailed information on, among other things, travel information, consular protection and life abroad. Tel. no.: 0800 24-7-365; from abroad: +41 58 465 33 33



### What is right is right: Your donation helps!

Discrimination, unlawful dismissals, data protection violations or the refusal of insurance cover, all make life difficult for many people living with HIV. The free legal advisory service of the Swiss Aids Federation, offers assistance to those affected: directly and without bureaucracy:

- We advise those affected on claims and offer possible solutions.
- We **intervene** with employers, neighbours, insurers and authorities.
- In many cases we reverse unlawful decisions

#### Get information from our website: www.aids.ch

With your donation, you make a valuable contribution and ensure that justice is done to people living with HIV. Thank you very much for your support! More at <a href="https://www.aids.ch/en/donations">www.aids.ch/en/donations</a>

#### **Donation Account**

Aids-Hilfe Schweiz, Zurich Postkonto 30-10900-5 Because Every Donation Counts!



# Annex: Example Letters

<b>40</b> 45	General	Application for cost-free justice administration Tips on Legal Protection Insurance
46	Employment Law	Request for an inspection of personal files
<b>40</b> 47	Employment Law	Employment Lawsuit
50		List of enclosures: Complainant
51		Typical codes contained in letters of reference
53		Continued payment of wages in the case of illness (scales)
54		Request for written justification for the termination
55		Objection to the termination due to illness
56		Objection to a wrongful dismissal
57	Daily Sickness Benefits	Accompanying letter health questionnaire
58	Insurance	Assertion of the direct right to claim
59	Occupational Pension	Accompanying letter health questionnaire BVG
60	Scheme	Application for BVG benefits
61		Request for an inspection of files
62		Application 2 <sup>nd</sup> Pillar Central Office
64		Information sheet 2 <sup>nd</sup> Pillar Central Office
66	Health Insurance	Request for cost credit approval
67		Exclusion of accident cover
68		Changing the deductible rate
69		Termination of basic health insurance
70	Disability Insurance	Request for an inspection of files
71	•	Precautionary objection to the preliminary decision
72		Objection/Justification for an objection
74		Appeal against a ruling
76	Data Protection/	Request for an inspection of files
78	Patient's Rights	Second request for an inspection of files (Reminder)
79	_	Request for the deletion of data
80		Request for the correction of data
81		Request for the blocking of data
82		Letter to prevent further data protection violations
83	Criminal Law	Overview of the criminalisation of HIV transmission
84		Objection to a penalty order
85		Request for an inspection of files
86	Travelling Abroad	Certificate permitting the carrying of medication

[Your name] [Your address] [Institution to which your application should be sent, e.g. Court, Conciliatory Authority]
[Address]

[Place, Date]

# **Application for Cost-Free Justice Administration**

1. Proceedings				
Proceedings Nr.	Complainant Party	Defendant Party		
Subject matter of the proceedings (e.g. divorce, claims, etc.)				
2. Applicant Party				
Name*	Street* /Nr.	Telephone Number:		
First Name*	Post Office Box	Mobile Telephone Number		
Date of Birth*	Postal Code* / Place	E-Mail Address		
Profession*	Civil Status*	Place of Origin		
Employer	☐ single ☐ married ☐ separated ☐ divorced ☐ widowed	Nationality		
	☐ in a registered partnership ☐ dissolved partnerschip ☐ co-habiting	Translator required?		
	_ 33 1182131115	□ yes		
*Obligatory Information		Language		

# 3. Persons living in the same household

Name	Profession or Activity	Net Wage (CHF/Month)		
First Name	Employer			
☐ Child ☐ Other Person	Date of Birth	Familiy Relationship		
4. Free Legal Aid				
Do you require a lawyer?  ☐ yes ☐ no	Preferred Lawyer (Name, First Nam	ne, Address)		
5. Legal Aid and lawyer's down-payments				
Is there a Legal Protection Insurance available or will the legal costs be covered by a third party (Professional Association, Union, etc.) ?				
	If yes, by whom and to what exten-	t (CHF)?		

# 6. Income (per month)

□ no

 $\; \square \; \mathsf{yes}$ 

Income Component	Applicant Party	Spouse / Partner
Earned income (Net salary, 13 <sup>th</sup> month salary, gratification, part-time work, expenses, etc.	CHF	CHF
Insurance and annuity benefits (AHV, IV, EL, unemployment benefits, etc.)	CHF	CHF
Maintenance and support contributions	Personally: CHF	CHF
	Children: CHF	CHF
Family and educational allowances	CHF	CHF
Other income (household costs, children, food costs, sub-letting, etc.)	CHF	CHF
Investment income	CHF	CHF
Total income, per month	CHF	CHF

# 7. Expenditure (per month)

Expenditure	Applicant Party	Spouse / Partner
Rent/mortgage interest rates, incl. housing service charges	CHF	CHF
Health insurance premiums minus premium reduction	CHF	CHF
Work-related expenditures (public transport costs, car costs, daily commute, external catering)	CHF	CHF
Payment of maintenance	CHF	CHF
Debt interest rates	CHF	CHF
Tax allocations (Federal Government, Canton, Community)	CHF	CHF
Other expenses (childcare costs, nursery, day-mother, education costs)	CHF	CHF
Total expenditure, per month	CHF	CHF

# 8. Assets

Assets Worth	Applicant Party	Spouse / Partner
Accounts, savings accounts, securities, shares, as well as cash	CHF	CHF
Real estate, house, condominium (market value)	CHF	CHF
Car (current value) make, type, year, buying price	CHF	CHF
Life Insurances (Surrender value)	CHF	CHF
Further assets (non-distributed inheritance, shareholdings, etc.)	CHF	CHF
Total assets worth	CHF	CHF

#### 9. Debts

Dept Position	Applicant Party	Spouse / Partner
Credits, loans, mortgage debts	Creditor:	Creditor:
(current debt status)	Amount: CHF	Amount: CHF
	Creditor:	Creditor:
	Amount: CHF	Amount: CHF
	Total:	Total:
Outstanding taxes Canton, Community and Direct Federal Taxes (per year)	Year: Amount: CHF	Year: Amount: CHF
Further Debts	CHF	CHF
Total debts	CHF	CHF

### 10. Social Welfare

Are you on v	velfare	If yes, for what period of time ?
□ Yes	□ no	

# 11. Enclosures

	Confirmation from the social welfare assistance authorities, if social welfare assistance is received; needs calculation
	Wages statement from the previous year
	Payroll accounting of the current year
	Rental contract
	Employment contract
	Mortgage interest rate and housing service charges from the previous year
	Health insurance premium statement
	Ruling on premium reduction
	Property and liability insurance documents
	Current bank and post office statements
	Latest tax statement (incl. list of securities) and latest tax assessment order
	Confirmation by the tax authorities: in accordance with cantonal practices, or at the request of the court responsible
	Further certificates which prove the financial situation of the applicant party:
_	
	· ·
	ı

12.	<b>Personal</b>	Signature	/bv	hand
-----	-----------------	-----------	-----	------

Place/Date	Signature

The applicant must personally sign the application. With this signature he or she declares that the information given above is true and complete and that he or she gives authorisation to the court to inspect all tax documents. The application must be submitted to the court, as well as to the conciliatory authority. Entries and enclosures are to be made with one copy each for the court and the conciliatory authority, as well as for each counterparty.

#### **Tips on Legal Protection Insurance**

If disputes have to be resolved in court, it often involves a lot of expense )court costs, lawyers costs, etc.). With a legal protection insurance policy, you can cover the cost risk of such a (possible) legal dispute.

Before you take out a legal protection insurance policy, you should take the following into consideration:

- As a rule you can choose between the different legal costs insurance types (car buying, selling, rental, repairs, sometimes also for such incidents such as pedestrian, cyclist, public transport passenger) or in the private sector (tenancy and labour law, purchase and loan agreements, disputes with insurance companies). There are often, also, combined solutions available.
- Clarify, as to whether or not you are already covered in one legal area or another, thorough the tenant's association, the union, the motoring association, the health insurance or elsewhere.
- Think about whether or not you really need an insurance cover for abroad. A lot of travel
  insurance companies also cover damage claims internationally, many though are limited to
  national damage claims only.
- Important: Family disputes (divorce, inheritance, marriage protection) tax and criminal proceedings are, as a rule, **not** insured!
- Attention: Most legal protection insurance companies have waiting periods (e,g, the first three
  months after the signing of the contract). Disputes, which arise within the waiting period, are
  subsequently not insured.

#### How you should proceed with damage claims

- 1. Some legal protection insurance companies offer a telephone Hotline. Call here first, if you are caught up in a legal dispute and get advice as to what first legal steps should be taken.
- 2. Fill out the damage/application form of your legal protection insurance company (you will find this on the website of your legal protection insurance company or you can order one by phone).
- 3. The legal protection insurance company will then check that the damage claim form is complete and whether the legal case is insured. If the legal case is not insured, the company will let you know and will return your documents. If the legal case is insured, a legal protection insurance lawyer will get in touch with you to discuss as to how you should proceed.
- 4. If the inclusion of an external lawyer becomes necessary, you can pass on the name of a lawyer of your choice to the legal protection insurance. He or she should be active in the particular area of the court which is responsible for hearing the case. You can, however, also choose a lawyer from the list of partner lawyers of your legal protection insurance company.

**Important**: Never hire a lawyer before you have reported the case first to your legal protection insurance company! The lawyer should take on the case, only then, when the legal protection insurance company has guaranteed that the costs are covered.

	Registered Letter	
[Your Name] [Your Address]	[Your employer] [Name of the person responsible]	
[Tour Address]	(Personal, Confidential) <sup>1</sup>	
	[Address]	
	[Place, Current Date]	
[Your Name and Address]		
Inspection of Personal Files		
Dear Mr. / Mrs. [Name]		
Dear Ivii. / Iviis. [Name]		
May I please ask you to send me all of the documents from the personal	file. which you have in your	
possession, in connection with myself. (Copies will suffice).		
possession, in connection man in your (copies min surface).		
Thank you for your efforts.		
, , , , , , , , , , , , , , , , , , , ,		
Yours faithfully,		
(Your Signature)		
[Your First Name and Surname]		

 $<sup>^{</sup>m 1}$  With this inclusion, you are making sure that only the person responsible in the personnel office reads the letter.

# **Employment Lawsuit**

Send a copy, in double, to the Employment Court [of your place of work]

Postmark:*		Process Number:*	k
Entry:*		Group:*	
Employee		Employer	
Surname:		Surname:	
First Name:		First Name:	
Date of Birth:		Date of Birth:	
Place of Origin:		Place of Origin:	
Nationality:		Nationality:	
Profession:		Type of Company:	:
Employed as:			
Translator needed? $\square$ yes $\square$ no		Translator needed	d? □□ yes □ no
Language:		Language:	
		or	
		Company descript	tion
Street:		Street:	
Postcode/Place:		Postcode/Place:	
Delivery address:		Delivery address:	
Available during the day under		Available during t	he day under
Tel. P: Mobile:		Tel. P.	Mobile:
E-Mail:		E-Mail:	
Representative		Representative	
Name:		Name:	
Postcode/Place:		Postcode/Place:	
Tel:		Tel:	
Type and duration of employ	ment		
Written contract: □yes □no	From the :		
Entry on the:	Trial Period :		
Place of work:			
Gross wage: CHF	Net wage:	CHF	Other allowances: CHF
Commission: CHF	Expenses:	CHF	
13 <sup>th</sup> month wage: CHF	Gratification:		

Termination of Employment	
Termination: ☐ due notice ☐ without notice	
☐ oral notice ☐ written notice	
Termination takes place on the: by whom?	
Immediate dismissal on the: on the:	
Was the termination justified in writing? ☐yes ☐no	
Absorbes	
Absences  If you are unable to attend court dates in the near future (military service, previous enter the reason here	ly booked holidays, etc.), please
Absent from: until:	
Monetary Claims	
Wages and Expenses	
Gross wage: from: to:	CHF
Gross wage: from: to:	CHF
Expenses (see index):	CHF
Gross13 <sup>th</sup> monthly wage:	CHF
Gratuities (see index) :	CHF
Gross holiday pay Number of days : ☐ working days ☐ calendar days	CHF
Gross accident wage/sickness wage from : until :	CHF
Gross overtime wages (see index)	CHF
Gross unjustified deductions (enclose wage statement)	CHF
Compensation	
Compensation for termination without notice (art. 337c, abs. 3 OR)	CHF
Compensation for wrongful dismissal (art. 336a OR)	CHF
Further monetary claims (please specify):	
	CHF
	CHF
Default interest at 5% from:	CHF
Total claim	CHF

Further Claims			
Confirmation of employment (only for the type and length of employment) ☐ yes ☐no			
Letter of reference on performance and behaviour		☐ yes ☐no	
Letter of reference alteration (enclose letter)		☐ yes ☐no	
Commission-/wage statements for the period	from: until:		
Publication of (what?):			
Reason for the termination		☐ yes ☐no	
Further claims (what?):			
Remarks			
Enclosures:			
Please submit, if possible, all documents at the start of proceedings. Number your receipts chronologically and make a list of the enclosed documents. Possible documents might be, for example:			
☐ Employment Contract	☐ Receipts		
☐ Wage Statements	☐ Correspondence		
☐ Termination Letter	☐ Commission Statements, Expenses,	etc.	
,			
Place and Date: Signature of the complainant:			

Process-Number:	
Parties:	

# List of Enclosures: Complainant

Nr.	Document Description	Date
1		
2		
3		

## **Letter of reference: Typical codes**

#### Terms to describe an employee's performance

#### Very good

- his/her achievements have always had our fullest recognition in all respects
- his/her achievements were always very good
- we were always extremely satisfied
- always to our fullest satisfaction
- has met with our expectations in every respect and in the best possible way

#### Good

- we were always very satisfied
- achievements were always acknowledged
- fully satisfied with the achievements
- his/her achievements have always had our fullest recognition
- always to our fullest satisfaction
- has met with our expectations in every respect

#### **Satisfactory**

- we were very satisfied
- to our fullest satisfaction
- achievements were satisfactory
- has met with our expectations
- adequate
- we were always satisfied
- to our satisfaction

#### Inadequate

- we were satisfied
- by and large to our satisfaction
- has mostly fulfilled expectations
- carried out the delegated tasks with great diligence and interest
- was always eager to meet with requirements

#### Insufficient

- we were satisfied (made an effort)
- to our satisfaction (made an effort)
- no comment

#### **Description of behaviour /conduct**

#### Very good

- With superiors and employees always faultless
- His/her friendly nature always ensured him/her of a good relationship with superiors and employees
- The open and friendly nature of this person, towards superiors and employees, was always fully acknowledged and greatly appreciated
- His/her behaviour towards superiors, work colleagues, employees and clients has always been faultless
- He/she has been appreciated by superiors, colleagues and clients as a friendly and hardworking member of staf

#### Good

- HIs/her collegial nature always ensured him/her a good relationship with superiors and employees
- His/her behaviour towards superiors, work colleagues, employees and clients has been exemplary
- Relationship with superiors, work colleagues, employees and clients has been faultless
- His/her behaviour towards superiors, work colleagues and clients has been faultless

#### Satisfactory

- His/her behaviour towards superiors and work colleagues has been faultless
- His/her behaviour towards superiors and work colleagues never presented a cause for complaint
- His/her behaviour towards employees and superiors has been exemplary
   (Superiors are mentioned here in second place, hence the satisfactory assessment)
- His/her behaviour towards employees and superiors was good

#### **Adequate**

- His/her behaviour towards work colleagues has been faultless
- His/her behaviour towards work colleagues was friendly and helpful, the behaviour towards superiors, correct
- His/her conduct towards superiors has been exemplary
- His/her conduct towards superiors never presented a cause for complaint
- His/her behaviour towards superiors and employees never presented a cause for complaint

#### Inadequate

- His/her personal behaviour has been overall faultless
- He/she was appreciated as a sociable colleague among the staff
- He/she was considered to be a collegial and friendly work colleague
- His/her personal behaviour towards superiors and work colleagues has been adequate

#### Insufficient

- He/she was considered to be a collegial and friendly work colleague
- He/she was appreciated as a sociable colleague among the staff
- His/her personal behaviour has been overall faultless
- He/she was always eager to maintain a good relationship with colleagues and superiors

# Bern, Basle and Zürich Scales: Continued payment of wages in the case of illness

#### **Bern Scale**

In the 1 <sup>st</sup> year	3 Weeks continued wages
In the 2 <sup>nd</sup> year	1 Month
In the 3 <sup>rd</sup> and 4 <sup>th</sup> year	2 Months
From the 5 <sup>th</sup> up to the 9 <sup>th</sup> year	3 Months
From the 10 <sup>th</sup> up to the 14 <sup>th</sup> year	4 Months
From the 15 <sup>th</sup> up to the 19 <sup>th</sup> year	5 Months
From the 20 <sup>th</sup> up to the 25 <sup>th</sup> year	6 Months

#### **Basle Scale**

In the 1 <sup>st</sup> year	3 Weeks continued wages
In the 2 <sup>nd</sup> and 3 <sup>rd</sup> year	2 Months
From the 4 <sup>th</sup> up to the 10 <sup>th</sup> year	3 Months
From the 11 <sup>th</sup> up to the 15 <sup>th</sup> year	4 Months
From the 16 <sup>th</sup> up to the 20 <sup>th</sup> year	5 Months
After the 21 <sup>st</sup> year	6 Months

#### Zürich Scale

In the 1st year	3 Weeks continued wages
In the 2 <sup>nd</sup> year	8 Weeks
In the 3 <sup>rd</sup> year	9 Weeks
In the 4 <sup>th</sup> year	10 Weeks
Per additional year of service	One additional week each

Attention: An employer in Bern is not necessarily bound by the Bern Scale. An employer in Zürich is not necessarily bound by the Zürich Scale, etc. The only condition is that the employee knows exactly what is applicable.

These scales only come into effect If the company has not taken out a Daily Benefits Insurance Scheme or if employees have been blocked from receiving Daily Benefits Insurance due to pre-existing illnesses.

	Registered Letter
[Your Name]	[Your Employer]
[Your Address]	[Name of the person responsible]
	(Personal, Confidential) <sup>2</sup>
	[Address]
	[Place, Current Date]
[Your Name, Address]	
Request for a written Justification for the Termination	
Dear Mrs. / Mr.	
With the letter of the [date], I have received your letter of termina	ation.
,	
With reference to Art. 335 OR of the Swiss Code of Obligations, I v	would kindly ask you to give me the
reason for this termination, in writing, within seven days,	
Yours faithfully,	
Tours faithfully,	
(Your Signature)	
[Your First name and Surname]	
[Tour First hame and Surname]	

<sup>&</sup>lt;sup>2</sup> With this inclusion, you are making sure that only the person responsible in the personnel office reads your letter.

[Your Name] [Your Address]	Registered Letter [Your Employer] [Name of the person responsible] (Personal, Confidential) <sup>3</sup> [Address]	
	[Place, Current Date]	
Objection to the Non-Compliance of the Blocking Periods		
Dear Mr. / Mrs. [Name]		
As I have already informed you on the [date], I have been unable to work since the [starting date of the incapacity to work] and probably until the [probable end of the incapacity to work], according to my doctor's assessment as a result of illness.		
You have given me notice in your letter of the [notice date] as per [end of the working relationship], i.e. during the afore-mentioned period of sickness-related inability to work. This termination is therefore, according to Art. 336c OR, null and void. ( <i>Or, in the case of illness only then within the period of notice, instead:</i> The notice period is extended for the length of the illness-related inability to work.		
As soon as the incapacity reason no longer applies, I will resume work.		
Thank you for your efforts.		
Yours faithfully,		
(Your Signature)		
[Your First Name and Surname]		

 $<sup>^{3}</sup>$  With this inclusion, you are making sure that only the person responsible in the personnel office reads your letter.

[Your Name] [Your Address]	Registered Letter [Your Employer] [Name of the person responsible] (Personal, Confidential) <sup>4</sup> [Address]	
	[Place, Current Date]	
[Your Name, Address and Date of Birth] Objection to a Wrongful Dismissal		
Dear Mrs. / Mr. [Name]		
You gave me notice on the [date]. I consider this dismissal wrongfu		
I regard your reason for the dismissal to be unfounded and would ask you to reconsider your decision and to annul the termination. Otherwise, I reserve the right to challenge this termination as wrongful and to claim compensation through the courts.		
Yours faithfully,		
(Your Signature) [Your First Name and Surname]		

 $<sup>^4</sup>$  With this inclusion, you are making sure that only the person responsible in the personnel office reads your letter.

[Your Name] [Your Address]	Registered Letter <sup>5</sup> [Your Daily Sickness Benefit Insurance] [Address]		
	[Place, Current Date]		
[Your Name, Address and if possible, Date of Birth, possibly My registration with your Daily Sickness Benefits Insurance	•		
Dear Sir or Madam			
I have been employed by the company [name of your employed daily allowance insurance with you. On the [date] I had to fill employer. As an employer does not have the right to access the question, relating to HIV, incorrectly. I do not want my eafter all, fully capable of working.	out a health questionnaire in the presence of my the health data of his employees, I have answered		
With this letter to you, I am rectifying the false declaration. I am HIV-positive and would ask you to correct this information in the health questionnaire.			
Please treat this information with the strictest confidence and I would ask you to not, under any circumstances, inform my employer. $^6$			
Thank you in advance and looking forward to your confirmation of my letter.			
Yours faithfully,			
(Your Signature)			

[Your First Name and Surname]

Enclosure: Registration with health questionnaire<sup>7</sup>

<sup>&</sup>lt;sup>5</sup> It is Imperative that the letter be sent by registered post. Only in this way can you prove, later, that you correctly reported your HIV infection. As soon as you receive confirmation from the Daily Sickness Benefit Insurance Company, this will suffice.

<sup>&</sup>lt;sup>6</sup> As a rule, a non-disclosure agreement between the insurance company and an employer works. Nevertheless, it is recommended that you specifically demand that discretion be fully adhered to.

<sup>&</sup>lt;sup>7</sup> If possible, you should make a copy of the health questionnaire. You should send the falsely completed one to your employer and the correctly completed one directly to the insurance company. If this is not possible, you can make the registration by letter or ask the insurance company for a new questionnaire.

[Your Name] [Your Address]	Registered Letter [Your Daily Sickness Benefit Insurance] [Address]
	[Place, Current Date]
[Your Name, Address and if possible, Date of Birth and Policy Nr.	1
Direct Right of Claim	
Dear Sir or Madam	
I have been employed by the company [name of your employer] states collective daily allowance insurance with you. As you know, I have am dependent on daily benefit allowances. <sup>8</sup>	
Unfortunately, there are problems concerning the forwarding of possible; specify in detail what kind of problems]. Therefore, I am	
against you in accordance with Art. 87 VVG <sup>9</sup> and must ask you to to directly and with immediate effect. My payment details are as for bank account details]. I remain at your disposal for any further questions.	llows: [post office account details or
Thank you for your attention.	
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

 $<sup>^{\</sup>mbox{8}}$  If available; copies of the notification of illness and doctor's certificates.

<sup>&</sup>lt;sup>9</sup> The legal basis for a direct right of claim can be found In Article 87 of the Insurance Agreement Law (VVG). If it concerns a daily sickness benefits Insurance in accordance with the KVG, then it must state "according to the BGE 120 V 38". In this decision, the Federal Supreme Court held that the direct right of claim also applies to KVG daily benefit insurances.

[Your Name] [Your Address]	Registered Letter <sup>10</sup> [Your Insurance Pension Fund] [Address]
	[Place, Current Date]
[Your Name, Address and Date of Birth, possibly Policy Nr.]  My registration with your Pension Fund	
Dear Sir or Madam	
I have been employed by the company [name of your employer] since [date] pension fund. On the [date] I had to fill out a health questionnaire in the presemployer does not have the right to access the health data of his employees, relation to HIV, incorrectly. I do not want my employer to know about my HIV capable of working.	sence of my employer. As an I have answered the question, in
With this letter to you I am rectifying the false declaration. I am HIV-positive information in the health form.	and would ask you to correct this
Please treat this information with the strictest confidence and please do not, my employer. 11	under any circumstances inform
Looking forward to your confirmation of my letter.  Yours faithfully,	
(Your signature)	
[Your First Name and Surname]	
Enclosure: Registration with health questionnaire 12	

<sup>&</sup>lt;sup>10</sup> It is Imperative that the letter be sent by registered post. Only in this way can you prove, at a later date, that you correctly reported your HIV infection. As soon as you receive confirmation from the Pension Fund Company, this will suffice.

 $<sup>^{11}</sup>$  As a rule, a non-disclosure agreement between the pension fund company and an employer works. Nevertheless, it is recommended that you specifically demand that full discretion be adhered to.

<sup>&</sup>lt;sup>12</sup>If possible, you should make a copy of the health questionnaire. You should send the falsely completed one to your employer and the correctly completed one directly to the pension fund company. If this is not possible, you can make the registration by letter or ask the insurance company for a new questionnaire.

fy N 1	Registered Letter
[Your Name] [Your Address]	[Your Pension Fund] [Address]
[Tour Address]	[Address]
	[Place, Current Date]
	[Flace, Culterit Date]
[Your Name, Address and Date of Birth, possibly P	olicy Nr.]
Benefits According to the BVG	
Dear Sir or Madam	
As you can see from the herewith-enclosed IV rulin pension since the [date]. I do not know whether yow would ask to clarify as to whether or not I am eligit	ou have already been informed of this. In any case, I
Please let me know if you require further documer	ntation or information.
I thank you for your efforts.	
Yours faithfully,	
Todas raidinary,	
(Your Signature)	
[Your First Name and Surname]	
Enclosure: IV ruling of the [date]	

[Your Name]	Registered Letter [Your Pension Fund]
[Your Address]	[Address]
	[Place, Current Date]
[Your Name, Address and Date of Birth, possibly Policy Nr.]	
Inspection of Files	
Dear Mr. / Mrs, (Name of the person responsible, if known)	
I would ask you to send me the complete case files as soon as possible.	
Thank you very much for your efforts.	
Yours faithfully,	
(Your Signature)	
[Your First and Last Name]	

# Inquiry at the 2<sup>nd</sup> Pillar Central Office about credit balances from the Occupational Pension Scheme

Please take note of the information on the <u>Information Sheet</u>, before you fill out this questionnaire. There should be just one questionnaire submitted per person.

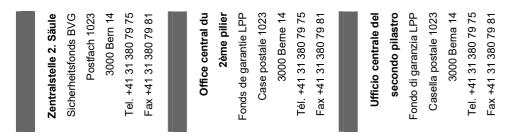
If you are submitting an enquiry on behalf of a third party, please enclose a copy of a Power of Attorney. Thank you.

1.1 Details of the person for whom credits are being sought			
Name			
Surname			
Date of Birth		AHV-Nr	
Address			
Telephone numb	er		
1.2 <u>Extra details,</u>	only in the eve	ent of the death of the pers	on for whom credit is being sought
Point 1.1 must be fil enclosed.	led out in each c	ase. Copies of the Death Certific	ate and a Family Identity Document must be
Date of death			
Information on th	ne survivor's		
Name		First Name	
Date of Birth		Relationship	
Address			
2. Details of the	work relatio	nships from which BVG Be	enefits are being sought
From	То	Name of the Employer	Occupation / Area

3. <u>Details of previous pension scheme(s)</u>		
Name		
Address		
4. Information on the receipt of any further	pension	benefits
Are you already receiving a pension from one of	f the follo	owing institutions in Switzerland?
- AHV Retirement Pension	☐ Yes	□ No
- IV-Disability Allowance	☐ Yes	□No
- 2 <sup>nd</sup> Pillar Pension BVG AHV Survivors Pension	□ Yes	□ No
Please send the questionnaire to:		
Zentralstelle 2. Säule Sicherheitsfonds BVG Geschäftsstelle Postfach 1023 3000 Bern 14		
Tel. +41 31 380 79 75 Fax +41 31 380 79 81 E-mail: info@zentralstelle.ch		
Place and Date		
Signature of the applicant		
If available, <u>copies</u> of the following documents s copies do not have to be authenticated.	should be	e enclosed with this inquiry application. The
<ul> <li>□ AHV Identity Card</li> <li>□ Wage Statement</li> <li>□ 2<sup>nd</sup> Pillar Insurance Certificate</li> <li>□ Statement from the individual AHV account (IK-Statement)</li> <li>□ Power of Attorney (only if requested for a third party)</li> <li>□ Death Certificate and Family Identity Card (compulsory in the case of a deceased person)</li> </ul>		
This form can also be downloaded, as a PDF doo	cument,	under <u>https://sfbvg.ch/en/</u> .

63

Source: 2nd Pillar Central Office/www.sfbvg.ch)



#### INFORMATION SHEET

#### Inquiry at the 2<sup>nd</sup> Pillar Central Office about credit balances from Occupational Pension Schemes

This information sheet will inform you, in which cases, credit balances from the Occupational Pension Scheme (also known as the 2<sup>nd</sup> Pillar, Pension Fund or BVG), may have accrued while being employed in Switzerland.

The Central Office of the  $2^{nd}$  Pillar is a central state institution responsible for the search of pension assets. To this end, it receives yearly information from the pension fund schemes and institutions, which maintain vested benefit accounts or policies, on all persons who have a credit balance. The  $2^{nd}$  Pillar Central Office does not, itself, manage any credit balances and does not make decisions on any claims to credit balances.

#### The development of the Occupational Pension Scheme in Switzerland

Introduction of the 1985 Obligation

The statutory obligation to provide occupational pension insurance has existed in Switzerland since the 1<sup>st</sup> of January 1985. Prior to 1985 any insurance was based on a voluntary basis. Some employers have already had an occupational insurance plan in place for their employees before 1985.

#### Claims in the period before 1972

Prior to 1972, in the event of termination of employment in Switzerland, any insurance claims from the occupational pension schemes were paid out with the last wage statement. In the case of employment relationships, which were dissolved before 1972, there are, generally, no longer any existing credit balances left.

#### Who is insured under the Occupational Pension Scheme?

From the date of the 1<sup>st</sup> of January after their 24th birthday, employees are obliged to take out a savings insurance, provided their annual AHV income is, at least, CHF 21'510 (as of 2022). This wage limit has been continuously adjusted over the years.

The exceptions, from taking out a compulsory insurance, are the following:

- the employment contract is for 3 months or less
- the employment in Switzerland is not permanent and the person concerned is equally insured abroad
- the employer is not liable to pay contributions (e.g. Embassies, International Organisations, etc.)

- the person concerned receives a sideline income and is already compulsorily insured due to his or her main occupation or is self-employed in his or her main occupation.
- the person concerned is at least 70% disabled.

Unemployed persons are compulsorily insured only in the case of death and disability. With this pure risk insurance, no savings capital is accumulated and therefore there is no entitlement to any retirement savings capital. In addition, those persons, who have not yet reached the age of 25, are compulsorily covered only by a pure risk insurance.

#### How can you determine whether or not you are/were insured for an occupational pension?

You can check on your wage statement whether or not the pension scheme contributions have been deducted. If you are insured, you should receive a certificate (Insurance Certificate or Policy) from your employer's pension scheme, which should include information about the benefits to which you are entitled.

The employer and his or her pension fund are obliged, to inform you of your insurance. If you know the address of the pension fund, get in touch with them in person.

#### Inquiry at the 2<sup>nd</sup> Pillar Central Office

If you are searching for assets from the 2<sup>nd</sup> Pillar, you can submit your inquiry to the 2<sup>n</sup> Pillar Central Office. Your inquiry will then be compared with the notifications of pension fund companies and institutions that hold vested benefit accounts or policies. If a match is found, you will be informed by the relevant institution/company. You should make possible claims directly, to the specified institution/company which, exclusively, can make a decision on eligibility and on any possible payments.

Send your inquiry to the following address:

Zentralstelle 2. Säule Sicherheitsfonds BVG Geschäftsstelle Postfach 1023 3000 Bern 14

The completed and <u>signed form</u> can also be sent per E-Mail to the following address: <u>info@zentralstelle.ch</u>. A reply will be sent, in each individual case, by post.

For more information you can reach us under the telephone number +41 31 380 79 75.

	Registered Letter
[Your Name]	[Your Health Insurance]
[Your Address]	[Address]
	[Place, Current Date]
[Your Name, Address and Date of Birth, possibly Policy Nr.]	
Request for Cost Credit for [description of the planned therapy/t	reatment]
Dear Sir or Madam	
According to the doctor's report <sup>13</sup> from Dr. med. [name of the do treatment: [description of the planned therapy / treatment or ope I would ask you to approve a cost credit for this as soon as possible	ration].
If you have any questions, may I ask you to contact Dr. [name of t	he doctor] directly if possible.
Thank you in advance.	
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

<sup>&</sup>lt;sup>13</sup> Without a doctor's report, stating that, for medical reasons, the planned treatment or therapy is necessary, the health insurance company will more likely than not, not agree to a cost credit. This is why you should obtain a doctor's report before submitting a request.

	Registered Letter
[Your Name]	[Your Health Insurance]
[Your Address]	[Address]
	[Place, Current Date]
Exclusion of Accident Cover	
[Your Insurance Policy Nr.]	
Dear Sir or Madam	
As I am already insured against accidents by my employer, I v the premium amount accordingly, as of next month.	vould ask you to adjust the accident cover and
Please find enclosed the confirmation from my employer.	
Thank you in advance.	
Thank you in davance.	
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

		Registered Letter
[Your Name]		[Your Health Insurance]
[Your Address]		[Address]
		[Place, Current Date] <sup>14</sup>
Changing of the Deductible Rate		
[Your Insurance Policy Nr.]		
Dear Sir or Madam		
Please change my deductible rate follows:	e for the basic insurance from the 1	L <sup>st</sup> of January [of the following year] as
Name, First Name	Deductible rate so far	New deductible rate
Traine, First raine	Deductible late 30 lai	The weddenine rate
Thank you in advance.		
Vours sincorolu		
Yours sincerely,		
(Your Sigr	ature)	
	ature)	
(Your Sign [Your First Name and Surname	ature)	

<sup>&</sup>lt;sup>14</sup> **Important**: The letter must reach the health insurance company by the end of November! It is therefore too late if you send it on the 30<sup>th</sup> of November, so to be on the safe side it is better to send it 10 days earlier.

[Your Name] [Your Address]		[You	stered Letter r Health Insurance] ress]
		[Plac	e, Current Date] <sup>15</sup>
Termination of Basic Heal	th Insurance		
Dear Sir or Madam			
I would like to terminate n	ny basic health insurance	cover listed below: <sup>16</sup>	5
Surname	First Name	Date of Birth	Termination Date
Please note that this term	ination is only valid for th	e basic insurance co	ver (KVG cover). <sup>17</sup>
I will be insured by a new confirmation of this termi		y as from the aforer	nentioned date. Please send me a
Thank you in advance.			
Yours faithfully,			
(Your	· Signature)		
[Your First Name and Surn	ame		

<sup>&</sup>lt;sup>15</sup> **Important**: The letter of termination must reach the health insurance company by the end of November! It is not enough if you send it on the 30<sup>th</sup> of November and to be safe it is better to send it 10 days earlier.

<sup>&</sup>lt;sup>16</sup> Policy Nr. if available

<sup>&</sup>lt;sup>17</sup> One can of course also terminate the supplementary insurance policy. Here though there are other termination deadlines to be adhered to. Please observe the General Terms of Contract. **Important:** As a rule, anyone with HIV or other chronic diseases can never again take out a supplementary insurance. This is why a termination should be well thought through.

	Registered Letter
[Your Name]	[Your IV Department]
[Your Address]	[Address]
	[Place, Current Date]
[Your AHV Nr.] <sup>18</sup>	
[Your Name and Address]	
Request for an Inspection of Files	
Dear Mr. / Mrs. [Name of administrator]	
I would ask you to send me the complete case files for inspection findings sheet from the temporary storage facility) <sup>19</sup> as soon as po	
I thank you for your efforts.	
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

 $<sup>^{18}</sup>$  Absolutely necessary: The IV departments manage their dossiers according to the AHV Nr.

<sup>&</sup>lt;sup>19</sup>The IV departments maintain their internal case files in a so-called findings sheet. If one does not specifically ask for this along with the IV files, one often does not receive it or at least not in the latest version. This document, though, is extremely important, because it shows the internal decisions made by the IV department.

 $<sup>^{\</sup>rm 20}$  If there is a deadline, please bring this to the attention of the IV department.

	Registered Letter <sup>21</sup>
[Your Name]	[Your IV- Office] <sup>22</sup>
[Your Address]	[Address]
	[Place, Current Date] <sup>23</sup>
[Your Name, Address, Date of Birth and AHV N	r.] <sup>24</sup>
Precautionary Objection <sup>25</sup> to your Preliminary D	Decision of [the date on the Preliminary Decision] <sup>26</sup>
Dear Sir / Madam	
preliminary decision). I can, however, only then complete files. This is why I would ask you to ser inspection (copies will suffice). I would further as	an objection to your preliminary decision of the (date of the justify it or at most withdraw it, once I have had access to the nd me, as soon as possible, the complete files for a brief sk you to grant me, according to common practice, an ery of the files <sup>28</sup> , in order for me to justify the objection.
I thank you for your efforts.	
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

Enclosure: Copy of the preliminary decision with envelope<sup>29</sup>

<sup>&</sup>lt;sup>21</sup> Because an objection to a preliminary decision must be submitted within 30 days, this must always be sent by registered post. Only in this way can you prove that the deadline has been adhered to.

<sup>&</sup>lt;sup>22</sup>Each Canton has its own IV department. The address can be found on the preliminary decision letter.

<sup>&</sup>lt;sup>23</sup> The deciding factor that the deadline has been met is not the date of the precautionary objection, but rather the date of the postmark.

<sup>&</sup>lt;sup>24</sup> The new AHV. Nr. Is no longer "self-descriptive", this means conclusions cannot be drawn as to the sex, age or name of the person concerned.

<sup>&</sup>lt;sup>25</sup> With a precautionary objection you can prevent the deadline from running out. This makes sense, especially then when one is not yet familiar with the files and the deadline is about to end.

<sup>&</sup>lt;sup>26</sup> Date of the preliminary decision. Important: The 30-day deadline does not begin on this date, rather on the date of delivery.

<sup>27</sup> The deadline for raising an objection is 30 days and begins upon receipt of the preliminary decision

<sup>&</sup>lt;sup>28</sup> This extended grace period is, as a rule, granted unproblematically. This means that from the moment that you receive the files, you have 30 days in which to submit a justification.

<sup>&</sup>lt;sup>29</sup> Always enclose copies (never originals) of the preliminary decision, which are in reference to the objection.

[Your Name]
[Your Address]

Registered Letter<sup>30</sup>
[Your IV- Department] <sup>31</sup>
[Address]

[Place, Current Date] 32

[Your Name, your AHV Nr.]

**Objection to the Preliminary Decision** 

Dear Sir / Madam

In the above-mentioned matter, I herewith refer to your preliminary decision of the [date of the preliminary decision letter]. I am raising an objection to your decision and am presenting the following

#### **Applications**

[Make a list here of the things that you are requesting from the IV department, e.g. increase of disability level and disability allowance, additional review by a specialist, granting of professional measures, etc.]

#### **Formal**

The preliminary decision of the [date on the preliminary decision] was delivered to me on the [date of the delivery]. The deadline for raising an objection has been met with today's postmark.

Evidence 1: Copy of the preliminary decision of the [date of the preliminary decision], Copy of the envelope<sup>33</sup>

#### Justification

[Formulate your justification, as to why you do not agree with the preliminary decision of the IV department and enclose relevant evidence (e.g. a current report from the doctor treating you, etc.), which proves that the assessment made by the IV department is a wrong one.

<u>Evidence 2</u>: Doctors report from Dr. XY....... <u>Evidence 3</u>:....

<sup>&</sup>lt;sup>30</sup> Because an objection to a preliminary decision must be sent within 30 days, it should always be sent by registered post. Only in this way can you prove that you have adhered to the deadline.

 $<sup>^{\</sup>rm 31}$  The IV department address can be found on the preliminary decision letter.

<sup>&</sup>lt;sup>32</sup> The deciding factor that the deadline has been met is not the date of the precautionary objection, but rather the date of the postmark.

<sup>&</sup>lt;sup>33</sup> You should always enclose a copy of the preliminary decision and the envelope with your objection. Keep all originals.

Yours faithfully,			
	(Your Signature)		
[Your First Name and Sur	rname]		
Enclosures:			
Evidence 1:			
Evidence 2:			
Evidence 3:			

For the reasons set out above, I would ask you to uphold the objection in accordance with the above requests. I will, of course, be happy to assist you, if you should require further documents or information.

	Registered Letter <sup>34</sup>
[Your Name]	[Social Security Court] <sup>35</sup>
[Your Address]	[Address]
	[Place, Current Date] <sup>36</sup>
Appeal	
by	
[Your Name]	
[Your Address]	(Complainant)
against	
[IV department, which has issued the ruling]	
[Address]	(Respondent)
In the matter of	
Order of the [date of the ruling]	

# [Your AHV Nr.]

#### I. Request

- 1. The ruling of the IV department should be annulled.
- 2. [Make a list here of what it is you are requesting, such as e.g. an increase of the disability pension, granting of professional measures, etc.].

<sup>&</sup>lt;sup>34</sup> Because an appeal must be submitted within 30 days, it should always be sent per registered post. Only in this way can you prove that you have adhered to the deadline.

<sup>35</sup> The exact description of the court and it's address can be found at the very back of the order, under "Rechtsmittelbelehrung" (Legal Means Instruction).

 $<sup>^{36}</sup>$  The deciding factor that the deadline has been met is not the date of the appeal, but rather the date of the postmark

II.	<b>Forma</b>	lities

The ruling of the [date of the ruling] was sent to me on the [the date, on which the ruling was sent to you]. With today's date, the 30-day objection time limit has been adhered to.

Evidence 1: Ruling from the IV department [Canton] of the [Date of the Ruling], including envelope<sup>37</sup>

#### III. Justification

1.	[Your reasons, why you do not agree with the ruling from the IV department and the appropriate
	evidence attached (e.g. current reports from your attending doctor(s), which can prove that the
	assessment, made by the IV department, is/was not a correct one.

2	
	Evidences 2: Doctor's report from Dr. []
	<u>Evidence 3</u> :
	u to uphold this appeal in accordance with the above ou should require further documents or information.
Yours faithfully,	
(Your Signature)	
[Your First Name and Surname]	

#### **Evidence:**

- 1. Ruling from the IV department of the .......
- 2. ......

 $<sup>^{</sup>m 37}$  A copy of the ruling, as well as a copy of the envelope, must be enclosed with this letter of appeal!

[Your Name]
[Your Address]

**Registered Letter** 

[Insurance/Doctor/Employer/...] [Name of the person responsible] [Personal, Confidential] <sup>38</sup> [Address]

[Place, Current Date]

[Your Name, Address and Date of Birth]
Request for an Inspection of Files

Dear Sir / Madam

I would ask you, to send me a copy, of [my medical history/personal files/any available personal data], including information on where they originated. In addition, I would like to be informed to what purpose this existing data was collected and the laws on which the processing were based (e.g. in connection with the compulsory health insurance, disability insurance). At the same time, I would like information which departments or third parties the data has been transferred to (insurance companies).

Yours faithfully,
(Your Signature)
[Your First Name and Surname]
Enclosure: Copy of Identity Document
[Subsequent confirmation must be enclosed on a separate sheet of paper!]

 $<sup>^{38}</sup>$  With this inclusion, you are making sure that only the person responsible in the personnel office reads your letter.

## Confirmation

The signatory confirms that he/she has, together with the enclosed copies, has submitted the complete dossier
(personal file, medical history, health information). The dossier has neither been partially covered, nor modified
in any way.

Place, Date

Signature of the employer, doctor, insurance company

[Your Name]
[Your Address]

#### **Registered Letter**

[Insurance/Doctor/Employer/...]
[Name of the person responsible]
[Personal, Confidential] 39
[Address]

Place, Current Date

[Your Name, Address and Date of Birth] Request for an Inspection of Files (Reminder)

Dear Sir / Madam

I refer to my written request for an inspection of files, of the [date], to which I have, to date, received no reply..

According to Art. 8 DSG, you are obliged to send me all [patient/personnel/insurance files]. According to Art. 1, Abs. 4 VDSG<sup>40</sup>, the information must be submitted within 30 days. This deadline runs out on the [date]<sup>41</sup>. You received my request for the information of the [date] on the [date]<sup>42</sup>. I therefore expect that copies, of all files which you have collected about me be sent to me by the [date], at the latest.

I would further draw your attention to the fact that the refusal to allow the inspection of files to an applicant is punishable by law Art. 34 DSG). So, should I not be in possession of all of the files which you have collected about me by the aforementioned deadline, I will assume that you are denying me access to the files in a way that is criminally relevant.

Yours faithfully,	
	(Your Signature)
[Your First Name an	d Surname]

 $\underline{\textbf{Enclosure}} \colon \textbf{Request for the inspection of files letter, of the [date]}$ 

<sup>&</sup>lt;sup>39</sup> With this inclusion, you are making sure that only the person responsible in the personnel office reads the letter.

 $<sup>^{</sup>m 40}$  Ordinance of the Federal Act on Data Protection.

<sup>&</sup>lt;sup>41</sup> 30 days after the first files inspection request was submitted.

<sup>42</sup> With the Swiss Post Office's Track & Trace system, one can determine exactly when a registered letter has been delivered.

Registered Letter [Your Name] [Your Address]	[Owner of the Data Collection] [Name of the person responsible] [Personal, Confidential] <sup>43</sup> [Address]	
	[Place, Current Date]	
Request for a Deletion of Data <sup>44</sup>		
Dear Sir / Madam		
Based on Art. 12, Abs. 2 Bst. b and Art. 15, Abs. 1 of the Federal Law on Data Protection of the 19 <sup>th</sup> of July 1992 (DSG), I would ask you, to delete all data, which you have collected about me in your database. I would kindly ask you to inform all third-party companies, to whom you have passed on my data, of this deletion and not to process any more data about me in the future.		
Please confirm this in writing within 30 days, or inform me of the reason for your decision, if you are unable to comply with my request.		
Thank you for your efforts.		
Yours faithfully,		
(Your signature)		
[Your First Name and Surname]		
Enclosure: Copy of my Identity Document		

 $<sup>^{43}</sup>$ With this inclusion, you are making sure that only the person responsible, in the personnel office, reads your letter

<sup>&</sup>lt;sup>44</sup>Source: Federal Data Protection and Information Commissioner (<u>www.edoeb.admin.ch</u>).

	Registered Letter
[Your Name]	[Owner of the data collection]
[Your Address]	[Name of the person responsible]
	[Personal, Confidential] 45
	[Address]
	[Place, Current Date]
Correction Request <sup>46</sup>	
Dear Sir / Madam	
Based on Art. 5 of the Federal Law on Data Protection of the 19 <sup>th</sup> carry out the following corrections in your database:	of July1992 (DSG) I would ask you, to
Incorrect information:	
[Insert the incorrect informa	tion]
The following information is correct:	
[Insert the correct information	on]
Please carry out this correction and notify all third-party companie about me.	es to whom you have passed on information
I would ask you to confirm this in writing within 30 days, or to infedecision, if you are unable to comply with my request.	orm me of the reason for your
Thank you for your efforts.	
Yours faithfully,	
(Your signature)	
[Your First Name and Surname]	
Enclosure: Copy of my Identity Document	

<sup>&</sup>lt;sup>45</sup>With this inclusion, you are making sure that only the person responsible in the personnel office reads your letter.

 $<sup>^{46}</sup>$ Source: Federal Data Protection and Information Commissioner (<u>www.edoeb.admin.ch</u>).

	Registered Letter
[Your Name]	[Owner of the Data Files]
[Your Address]	[Name of the person responsible]
	[Personal, Confidential] <sup>47</sup>
	[Address]
	[Place, Current Date]
Blocking Request 48	
Danis Cin / Madana	
Dear Sir / Madam	
Based on Art. 12, Abs. 2 Bst.b and Art. 15, Abs. 1 of the Fe	
(DSG), I would kindly ask you to block the following data in	i your data files from being passed on to third parties:
(Insert that which is to	be blocked)
Please confirm this in writing within 30 days, or inform m	ne of the reason for your decision, if you are
unable to comply with my request.	
Thank you for your efforts.	
mank you for your entities.	
Yours faithfully,	
, sais takinany,	
(Your Signature)	
[Your First Name and Surname]	
Enclosure: Copy of my Identity Document	

 $<sup>^{47}</sup>$ With this inclusion, you are making sure that only the person responsible, in the personnel office, reads your letter.

 $<sup>^{48}\!\!</sup>Source: \text{Federal Data Protection and Information Commissioner} \, (\underline{\text{www.edoeb.admin.ch}}).$ 

## **Registered Letter**

[Your Name] [Your Address] [Address of the person violating data protection]

[Place, Current Date]

#### **Violation of Data Protection**

"Address here the person to whom it may concern"

With this letter, I would like to strongly draw your attention to the fact that being HIV-positive is an extremely intimate and personal issue and that I, and I alone, have the right to decide who I want to inform or not inform of my condition. You have clearly acted in an unlawful way by informing other people of my disease. The personal rights of a person are legally protected. Article 28 of the Civil Code Book (ZGB) is decisive: "Anyone whose personality has been unlawfully violated can appeal to the judge for his or her protection against those who have participated in the violation."

I could, without hesitation, apply to the judge to determine the existence of a violation of personality rights and to prohibit imminent violations.

In addition to this, following the court judgement, you could be liable to pay me damages and/or offer to make reparations.

If you confirm, with your signature, that you agree to adhere to the data protection regulations, and if no further violations are forthcoming, I will refrain from taking any legal action.

82

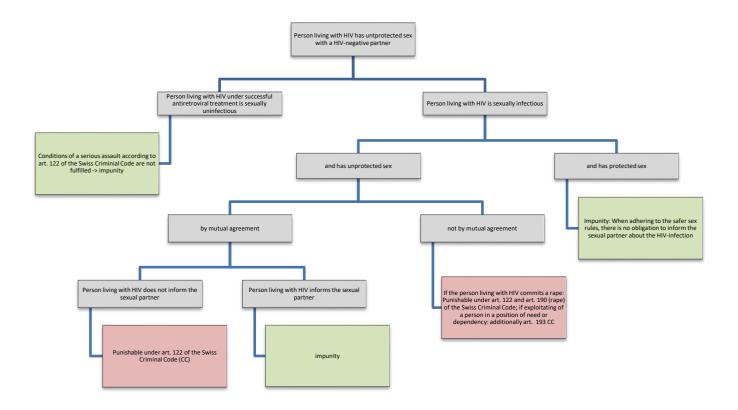
Place, Date

Signature of the person infringing data protection

# **Criminal Liability for the Transmission of HIV**

## The current legal status in Switzerland

Those who are undergoing an effective therapy, who are practicing safe sex or who inform his/her sex partner about their HIV infection, nowadays, no longer faces prosecution. Further cases where a legal prosecution can be enforced are shown in the following overview:



Registered Letter <sup>49</sup>			
[Relevant Investigating Authority] <sup>50</sup>			
[Address]			
[Place, Current Date]			
te], in due time (see Enclosure).			
Justification: I do not agree, in any way whatsoever, that I should be penalised. [A further reason as to			
why you do not agree with the penalty] <sup>52.</sup>			
Enclosure: Penalty Order of the [date] <sup>53</sup>			

 $<sup>^{\</sup>rm 49}$  Important in proving that you have adhered to the time limit.

 $<sup>^{50}</sup>$  Where the objection should be sent to, can be found on the Penalty Order. The address is there.

 $<sup>^{51}</sup>$  Is to be found on the Penalty Order.

<sup>52</sup> The better the objection is justified, the better the chances for the penalty to be rescinded.

 $<sup>^{\</sup>rm 53}$  A copy or even the original of the Penalty Order must be enclosed.

[Your Name] [Your Address]	Registered Letter  [Relevant Investigating Authority] <sup>54</sup> [Name of Person responsible]  [Address]	
	[Place, Current Date]	
[Your Name, Address and Date of Birth, if possible, Reference Nr.]		
Inspection of the Criminal Files		
Dear Mrs. / Mr. [Name]		
As I have learned, criminal proceedings have been brought against me concerning [the reason for the		
criminal proceedings]. I would ask you to send me the criminal files as soon as possible or alternatively		
to inform me of the location where I can view them. 55.		
Yours faithfully,		
(Your Signature)		
[Your First Name and Surname]		

 $<sup>^{54}</sup>$  Depending on the stage of the proceedings, this can be either the police but also the Public Prosecutors office.

<sup>&</sup>lt;sup>55</sup> As a rule, the criminal investigating authorities do not give out files, but one is allowed to view them at a designated location and to make copies.

# ÄRZTLICHE BESCHEINIGUNG / MEDICAL CERTIFICATE / CERTIFICAT MEDICAL

Arzt/Doctor/Médecin/		
Adresse/Address/Adres	se	
Ich, der unterzeichnend I, the undersigned, Doct Je, soussigné Docteur, D	tor, Doctor of medicine ———	
bestätige, dass		
certify that certifie que	Name des Patier	nten/patient's name/nom du patient
	Pass-Nr./Passpoi	rt No./N° de passeport
is affected with a chron	krankung leidet und mit folgende ic disease and is treated with the e chronique nécessitant la prise c	_
Handelsname: Brand name: nom commercial:		
Die Beschlagnahmung b The medication the par	bzw. Nichteinnahme des Medikan tient carries has been legally pres	cribed for medical treatment purposes.
Confiscating/not taking	g the medication may be life-thre	atening.
	par le patient a été légalement pr ndre le médicament peut mettre	escrit dans le cadre d'un traitement médical. en danger la vie.
Ort/Place/Lieu	Datum/date	Unterschrift und Stempel des Arztes Signature and stamp of the physician Signature et cachet du médecin