

Explanatory remarks from the Postal Services Commission dated 30 August 2018 on the

Postal Services Commission Ordinance on the Minimum Standards for Conditions of Employment in the Postal Services Sector of 30 August 2018 (PostMSO)

---

## **Preliminary remarks**

In Article 61 paragraph 3 of the Postal Services Ordinance of 29 August 2012 (PostSO, SR 783.01), the Federal Council delegated to PostCom the task of deciding on minimum standards for the conditions of employment in the postal services sector (see Federal Council dispatch to the Postal Services Act of 20 May 2009, BBI 2009 5245). Minimum standards for conditions of employment in the postal sector are intended to prevent the competition desired in the postal sector from coming at the expense of salaries and conditions of employment for postal employees (dispatch to the Postal Services Act, BBI 2009 5206). However, the minimum standards for the conditions of employment should not prevent new providers of postal services from entering the market. The minimum standards are intended to create fair competition between providers of postal services. In contrast to other standards, such as cantonal minimum wages, they do not aim to achieve any social goals. The minimum standards in the postal services sector are issued by PostCom based on the federal powers in postal services matters under Article 92 paragraph 1 of the Federal Constitution of 18 April 1999 (BV, SR 101). In the postal services sector, they take precedence over other provisions on conditions of employment, such as those issued by the cantons.<sup>1</sup>

### **Art. 1 Scope of Application**

The Ordinance applies to commercial providers of postal services that are subject to the ordinary or the simplified registration requirement under Article 4 of the Postal Services Act of 17 December 2010 (PostSA, SR 783.0) and Article 3 ff. PostSO. Postal services are defined in Article 2 PostSA. All commercial providers of postal services must comply with the minimum standards in the employment contracts they enter into with their workers. The business model the providers choose has no influence and may not be cited as justification for not complying with the minimum standards. Whether there is a relationship of employment is determined by the usual general criteria (doing work, being paid for it, being under an ongoing obligation to work, being part of an organisation that does work that is run by someone else, etc.).

The minimum standards also apply to temporary employees working for a postal services provider. If temporary employees are subject to a collective employment agreement that is more advantageous than the minimum standards laid down by PostCom, then the conditions in this collective employment agreement apply.

The minimum standards also apply to subcontractors in terms of Article 5 paragraph 3 PostSO that generate more than 50 per cent of their turnover through postal services. Although they are not subject to the registration or reporting requirement for the postal services that they provide as subcontractors, PostCom can require providers of postal services to submit the written agreement that they have entered into requiring the subcontractors to comply with the customary conditions of employment in the sector.

---

<sup>1</sup> Some cantons have introduced a minimum wage for socio-political reasons. These cantonal minimum wages may apply in the cantons concerned if they are higher than the minimum wage laid down by PostCom. However, it is up to the responsible cantonal authorities to stipulate whether these cantonal minimum wages apply to postal service providers in addition to the minimum wage laid down by PostCom (added following the decision taken by PostCom on 6 December 2018).

## **Article 2 Minimum standards**

As employees increasingly have to carry out several tasks and their duties can vary depending on the company, segmentation according to activity, sector, qualifications or experience is not possible. The minimum standards therefore apply uniformly to everyone. PostCom is required periodically to ascertain the conditions of employment that are customary in the sector (Article 61 paragraph 1 PostSO). In order to set minimum standards, it is necessary to have a general overview of the prevailing conditions of employment and the important providers. PostCom commissioned Roman Graf and Prof. Yves Flückiger of the University of Geneva to draw up the "Report on the customary minimum standards in the postal services market in 2015/2016". This report assisted PostCom in compiling a reliable database on the actual conditions of employment that apply in the postal services market.

This report provides a general summary of the conditions of employment, but does not specify what minimum requirements should apply in the sector. In order to set these minimum standards in an objective manner, a rule had to be defined that is then applied systematically. The rule applied was as follows: the minimum standards are the working conditions that apply to two thirds of all employees and in the majority of companies. Where reliable data is unavailable, the relevant provisions of employment law are applied. The minimum wage is set at the threshold of the highest of the lowest 10 per cent of starting wages, i.e. 10 per cent of the starting wages are lower than minimum wage. Setting the minimum wage at a lower level would be more imprecise, especially for statistical reasons.

Lastly, these results were compared with the various collective employment agreements in the sector and the positions of the social partners to be able to better assess the effects of setting minimum standards. Various issues were discussed, such as questions about temporary employees or employees who are paid by the piece.

As a general rule, the contracts of employment are governed by the provisions of the Code of Obligations (CO, SR 220) or the collective employment agreements for the postal services sector. Where no collective employment agreement has been concluded, the CO and the minimum standards apply. The Ordinance on the minimum standards only mentions conditions of employment for which the CO does not provide a rule (e.g. working hours) or where the standard goes beyond what is provided in the CO (e.g. the minimum wage):

Paragraph 1 fixes the gross wage at CHF 18.27 per hour. If the wage is based on other criteria, such as payment by piece, the provider must prove that the minimum wage is still being paid.

An additional payment is made in accordance with the provisions of the CO to cover holidays, public holidays and time off because of illness. It is possible to increase the hourly wage by the customary percentage for the holiday and public holiday pay.

Paragraph 2 fixes the contractually agreed working hours at a maximum of 44 hours per week. The contractually agreed working hours must be distinguished from the weekly maximum number of working hours in accordance with Article 9 of the Employment Act of 13 March 1964 (EmpA, SR 822.11).

To sum up, the following conditions of employment apply as minimum standards:

Holidays	In accordance with Swiss Code of Obligations (25 days up to the age of 20, 20 days after 20)
Working hours	44 hours
Additional hours	In accordance with Employment Act EmpA
Overtime	In accordance with Swiss Code of Obligations
Night work:	In accordance with Employment Act EmpA
Sunday work	In accordance with Employment Act EmpA
Minimum wage	Gross hourly wage of CHF 18.27
Sick pay	In accordance with Swiss Code of Obligations
Accident	In accordance with Swiss Code of Obligations
Maternity benefits	In accordance with Swiss Code of Obligations
Military service	In accordance with Swiss Code of Obligations

### **Article 3 Information on compliance with the minimum standards**

Service providers subject to the ordinary registration requirement provide proof that they are complying with the minimum standards in their annual report submitted under Article 4 paragraph 3 letter b PostSA and Article 59 paragraph 2 letter e PostSO. It is presumed in accordance with Article 5 paragraph 2 PostSO that the customary working conditions and minimum standards in the sector are being respected if the provider has entered into a collective employment agreement for the postal services sector. Subcontractors that generate more than 50 per cent of their turnover from postal services and are not subject to a collective employment agreement must comply with the minimum standards laid down by PostCom. Providers that use the services of subcontractors must prove that the subcontractors comply with the minimum standards. Proof can be provided by submitting the contract with the subcontractors.

Service providers that are subject to the simplified registration requirement and are therefore exempt from the requirement to provide proof under Article 4 paragraph 1 letter f PostSO must on request and based on their general duty to provide information in accordance with Article 23 paragraph 1 PostSA provide PostCom with information on whether they are complying with the minimum standards.

The measures and the procedure in the event of any breach by service providers of the obligation to provide information about compliance with the minimum standards is governed by Article 24 PostSA. The administrative sanctions and the procedure in the case of non-compliance with the minimum standards is governed by Article 25 PostSA.

### **Article 4 Commencement**

The Ordinance came into force on 1 January 2019. PostCom will review the minimum standards based on Article 61 paragraphs 1 and 2 PostSO and will amend them for the first time on 1 January 2023.