

INFORMATION SHEET FOR FILMING DURING CORONA

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Gender note: For ease of reading, male pronouns are used in all Covid-19 documents. The female form is of course always included.

The various different "Covid-19 regulations" are abbreviated below as "COVID-19-V-...", namely Covid-19-Regulation-**3** = COVID-19-V-3, COVID-19-V-**Besondere Lage** [Special Situation] = COVID-19-V -BL, COVID-19-V **Personenverkehr** [Passenger Transport] = COVID-19-V-PersV, ...-**Kultur** [Culture] = COVID-19-V-Kultur, COVID-19-V-**Erwerbsausfall** [Loss of Earnings], etc.; all as of 1 or 2 April 2021)

The following are national measures. Where cantonal measures are stricter than national ones, these must be observed.

The following current questions and answers concern filming in Switzerland:

Is filming even allowed?

Yes. The restrictions on cultural and private activities have been largely lifted by now and are being tightened again rather selectively; in general, they do not affect commercial works (such as filming) as such (see below). The current provisions of the regulations must be observed, such as generally applicable mask mandates (tightened again, see below) and certificate obligations, as well as bans on gathering (in certain indoor and outdoor areas, COVID-19-V-BL Art. 4 ff.); the employer's general prevention measures (COVID-19-V-BL Art. 25); and graduated measures to protect particularly vulnerable workers (COVID-19-V-3 Art. 27a, including pregnant women, unvaccinated persons with certain pre-existing conditions, see Section 10 f. and Annex 7). Appropriate protection concepts are therefore essential (COVID-19-V-BL Art. 10, 20 lit. 5, 25). In this context, the measures specified in the protection concept must be observed at all times (e.g. COVID-19-V-BL Art. 20 lit. c.; COVID-19-V-3 Art. 27a). - However, during the uncertain situation in December 2021 (rising case numbers, Omicron variant), short-term restrictions must again be expected.

Are the actors exempt from the mask mandate?

The **general mask mandate** in **indoor working environments** (if more than one person is present) has been reintroduced (Art. 25 (1^{bis}) COVID-19-V-BL). Exceptions apply here, namely where a mask cannot be worn for safety reasons or due to the *nature of the activity*, subparagraph (a) (the latter concerns actors in front of the camera).

A **general mask mandate without exceptions** applies in **public transport** (Art. 5 COVID-19-V-BL). When filming in means of transport, it would therefore have to be ensured that the environment is not considered public transport (cordoning off, reserved vehicle).

Furthermore, there is a general mask mandate in **publicly accessible** indoor spaces (Art. 6 COVID-19-V-BL). There is an exemption here for the "exercise of cultural activities" (Art. 6 para. 2 lit. f in conjunction with Art. 20 lit. a COVID-19-V-BL).

Now that the mask mandate applies again in the work environment, it is doubtful whether filming can rely on the exemption of cultural activities (uncertainty factor, especially in commissioned/advertising production!). Therefore, as a precautionary measure, the obligation to wear masks indoors (directors, crew), with exemption only according to the type of activity as above, (actor) should be assumed.

Insofar as the activities are clearly "cultural" (e.g. singing, stage performance, etc.) and therefore masks are not worn, a certificate for access must be required (COVID-19-V-BL Art. 20 d No. 1) and effective ventilation must be provided (No. 2). For groups of more than 5 people, it is also mandatory to draw up a protection concept.

Cf. on the mask mandate in overview

<https://www.bag.admin.ch/bag/de/home/krankheiten/ausbrueche-epidemien-pandemien/aktuelle-ausbrueche-epidemien/novel-cov/masken.html#1416629835>

Filming is also affected by the reintroduced mask mandate applicable when working in indoor spaces that are **not accessible to the public** (if several people are in one room). In addition, there is the **employer's duty** to take preventive measures (STOP principle). In addition to the **wearing of masks**, these may (or must, where the FOPH recommendations provide for this) include **mandatory certification**, regular **rapid tests**, **distance rules**, special **protective equipment** (e.g. FFP2 masks for professionals who cannot maintain a safe distance from actors, such as make-up, wardrobe), **ventilation**, etc.

(The FOPH currently requires a minimum of *either* a certificate *or* a minimum distance of 1.5 metres, a mask *or* the recording of contact details

<https://www.bag.admin.ch/bag/de/home/krankheiten/ausbrueche-epidemien-pandemien/aktuelle-ausbrueche-epidemien/novel-cov/massnahmen-des-bundes/empfehlungen-fuer-die-arbeitswelt.html>)

However, the decreed mask mandate must be implemented in any case.

The specific duties of the employer can go further. The concepts can and must be appropriate to the concrete situation. With the emergence of new virus variants, a 48-hour isolation (plus tests) before filming can become relevant again.

What must be observed when filming in the public sphere?

In principle, all persons must comply with the recommendations of the FOPH (Art. 4 COVID-19-VO-BL). Masks are mandatory in all indoor areas accessible to the public (Art. 6 para. 1 COVID-19-VO-BL); also, in public transport (Art. 5 C-19-VO3)). When filming in such spaces or in means of transport, care must therefore be taken to provide clear barriers (so as to keep out the public where possible) and in this way to guarantee that the measures under the protection concept apply within the barrier. External onlookers should be made aware of the distancing regulations and the obligation to wear masks. Cantonal rules must also be observed; each canton can draw up its own rules here.

The requirements of the operators of the means of transport or the landlords of buildings must also be observed.

Can extras take part?

The same applies to extras: whether it is a matter of worker protection (obligation to wear a mask indoors (Art. 25 COVID-19-VO-BL) or cultural activity (no obligation to wear a mask, but then a certificate; (Art. 6 para. 2 lit. f in conjunction with Art. 20 lit. a) is doubtful. As a precaution, masks should be worn unless precluded by the nature of the activity (film mask; recordings). If the mask cannot be worn, the general conditions of the protection concept must be strictly adhered to.

What should be considered when film professionals enter the country from a state/territory with increased infection risk ("high-risk area")?

When entering Switzerland, there is a general obligation to provide contact and health data (FOPH entry form, Art. 3 f. COVID-19-V-PersV). Persons entering the country from abroad must have a negative test result (Art. 8 COVID-19-V-PersV). Another test must be taken after entry.

This now applies **without exception to vaccinated and recovered** persons. Cross-border commuters remain exempt from the testing obligation (provided that the region of origin is not listed in Annex 1 No. 1 of the COVID-19-V-PersV). There is no exemption from mandatory testing for persons with COVID-19 symptoms, unless they can prove by means of a medical certificate that the symptoms are not due to a COVID-19 infection (Art. 9a para. 3).

When entering **from a high-risk area** (Art. 2 and Annex 1 COVID-19-V-PersV, **virus variant area** - No. 1 immunvasive, No. 2 non-immunvasive variants) a general **10-day quarantine requirement** applies, including for **vaccinated and recovered persons** (Art. 9). Those entering from No. 2 areas (non-immunovasive variants) can "test to release" at the earliest on the 7th day of quarantine (Art. 9 (3) COVID-19-V-PersV).

However, no areas are currently on the Annex 1 list - the **quarantine requirement is currently not in place**; but would apply again if and where this changes.

<https://www.bag.admin.ch/bag/de/home/krankheiten/ausbrueche-epidemien-pandemien/aktuelle-ausbrueche-epidemien/novel-cov/empfehlungen-fuer-reisende/liste.html#1158844945> .

Persons entering Switzerland by plane or bus must have a negative test result before departure. Vaccinated and recovered persons are exempt from this (Art. 7 COVID-19-V-PersV). The current page of the FOPH should always be consulted in this regard and current **testing/quarantine obligations** (Art. 9 COVID-19-V-PersV and list pursuant to Art. 2 and Annex 1 No. 1 COVID-19-V-PersV) should be verified, as should **entry restrictions** for certain high-risk countries (COVID-19-V-3 Art. 9 and list in Annex 3, currently [29/11/2021] again a number of countries with **entry bans** in connection with the new Omicron variant, including South Africa), for non-work stays (Art. 4 COVID-19-V-3), visa restrictions (COVID-19-V-3 Art. 10) as well as the current practice.

What happens if someone on the set shows symptoms of illness?

Proceed according to the protection concept.

What happens if someone on the set falls ill with Covid?

Proceed according to the protection concept. Registration for daily sick pay for the sick person, if available. If filming is interrupted, refer the employee to the RAV. If appropriate, application for financial aid in accordance with C19-V-Kultur Art. 4 to the competent canton.

What happens if someone on the set has to be quarantined?

Proceed according to the protection concept. Filming may have to be interrupted. In case of interruption of filming:

- Refer employees without quarantine (according to applicable contractual provisions, e.g., AAB Weekly Rate [with supplementary agreement SFP, IG, GARP], or AAB Daily Rate), to the RAV.
- Refer employees with ordered quarantine to the AHV compensation fund (see Corona "EO"; daily allowance entitlement under COVID-19-V- Erwerbsausfall (Loss of earnings) Art. 1/1/d, Section 1^{bis} lit. a No.2, Art. 3 ff.)
- If appropriate, application for financial aid in accordance with COVID-19/V-Kultur Art. 4 to the competent canton.

What happens if filming has to be interrupted due to government measures (e.g., filming ban, business closure)?

Application for compensation for loss of earnings to the competent AHV compensation office. If appropriate, application for financial aid in accordance with Art. 4 COVID-19/V-Kultur to the competent canton.

How does the EO (Corona loss of earnings compensation, COVID-19-V-Erwerbsausfall) work?

Only those persons who have been ordered by the authorities to undergo quarantine or isolation, or self-employed persons in the event of a closure ordered by the authorities or a ban on events are entitled to compensation (daily allowance). There is no claim in the case of an alarm on the CovidApp or voluntary quarantine. The amount of compensation is 80% of income, up to a maximum of 196 francs per day, i.e., a maximum of 5,880 francs in a month with 30 days. Self-employed persons are also entitled to this compensation.

May performers and participants on set be questioned about their vaccination status?

Information about a vaccination is classed as particularly sensitive data that may only be collected and processed with the consent of the person concerned unless there is sufficient justification (FADP Art. 3 lit. c No. 2). Justification can (only) be considered if the information is necessary for the performance of the contractual activity (OR 328b; and the violation of data protection is also

proportionate). Whether and when this is the case depends on the specific circumstances and is also currently very controversial from a legal point of view.

During filming, it may obviously be necessary to know the risk of infection posed by a person or, especially if the circumstances are such that this risk is particularly high, how it may affect the person themselves, so that the necessary precautions can be taken to protect them and the other participants.

The legally regulated **certificate** is available for this purpose. Although the data from the certificate is also particularly sensitive (health), it is widely used on a statutory basis and may insofar also be processed: In some cases, certification is mandatory (cultural activities indoors, for exceptions see above). Otherwise, the certificate **may be** required as part of an employer protection concept, provided this has been prepared in **writing** (for this purpose, the participants must be consulted in advance; alternative proposals must be considered if reasonable). Primarily, the "certificate light", which does not provide any information about the vaccination status, should be used. The protection concept allows participants with and without a certificate to be treated differently if there is an objective reason for doing so (= no discrimination).

There would need to be a substantial necessity to **ask about vaccination status**, which would not already be satisfied with the certificate (possibly in the "light" version). This is conceivable, for example, for assignments abroad where regulations require persons to be vaccinated or recovered for certain activities (e.g., currently in Austria); also if it is impossible to plan a certain activity based on tests that have to be repeated at short notice. Except in such special cases, asking about the vaccination status is not likely to be justified. Likewise, it is not justifiable to use the existing information on certificate or vaccination status for purposes other than the protection concept. In particular, it is not permitted to share such information with other team members (necessary processing of this data reserved, e.g., for access rules, travel, or assignment planning). Their health protection must primarily be ensured through the protection concept (including the requirement for a certificate, if applicable). More justifiable is the collection of voluntary data with the consent (in writing!) of the persons concerned, provided that those who do not want this do not suffer any (unjustified) disadvantage as a result.