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Terms of employment

Dear Ladies and Gentlemen,

We are often asked by our clients about the statutory regulations regarding the granting of time off from work, for example with regard to attending a job interview during the notice period, or with regard to time off for an employee's own wedding, or for a family member's wedding. We are asked these questions in equal measure by both employers and employees.

The legal basis for the answers to such questions can be found in Article 329, paragraphs 3 and 4 of the Swiss Code of Obligations (CO):

In addition, the employee must be granted the customary free hours and days, and, during a notice period, the time required to find alternative employment.

In determining free time, the interests of both employer and employee must be adequately considered.

This rather generally worded legal text just states that the employee has to be granted "the customary free hours and days" during working hours. However, how are customary free hours and days defined? In the case of such absences, they are actually short-term exemptions from work due to particular circumstances, or in other words, "extraordinary" free time. Usually, exemption from work is granted for carrying out personal tasks that cannot be done during normal free time. Examples could be, for instance, visits to council or local authority offices, driving exams, moving house, or occasional visits to doctors or lawyers. Other particular circumstances could also include major family events, like the birth of a child. The situation is different, however, in the case of sporting or cultural activities, or further training and education measures that are not connected with sitting professional exams: granting free time is not the norm in these cases. It is also important to make the distinction between an employee in full-time employment and an employee working part-time. The latter is expected to do these personal tasks in his or her spare time.

As far as care for sick children is concerned, employment law states that an employer must grant an employee who has to look after a sick child up to three days of time off work, under the condition that the employee presents a medical certificate.

Entitlement to free time does not automatically mean salary entitlement during this absence. Salary entitlement is part of mandatory law that cannot be altered to the

disadvantage of the employee – for example an employee, through no fault of his or her own, stays away from work, particularly in case of illness or accident. Here the CO provides the legal basis for the continuation of salary payment.

After that, where applicable, a Collective Employment Agreement (CEA), a standard employment contract or mutually reached agreements come into effect – which brings us to the core issue of this newsletter. If neither CEA nor standard employment contracts include clauses that regulate paid leave, or if the employer is not bound by such contracts, then it is worth refining the terms of employment.

In addition to specifying paid leaves of absence, further rights and obligations are specified in general, such as, work wear, on-call duty, claims during maternity leave, advance pay, further education and advanced training, the option to take sabbaticals and in particular overtime.

To all intents and purposes, the terms of employment should be considered a detailed specification of the work contract, serve as legal security and ensure equality of treatment. They are a source of information for day-to-day work, and can also be used to help prevent industrial disputes.

The terms, and any subsequent alterations or amendments introduced thereto, become binding with the agreement of each and every employee, as they constitute a change in existing work contracts. A sensible solution is informing the employees and asking for their (written) agreement. These (written) agreements then constitute a mutual change of contract, valid with immediate effect.

The terms of employment together with the contract should complement each other and form a unit, and this unit should avoid duplication of regulations or, worse still, contradictory regulations. It is also advisable to add a clause to the work contract which points to the terms of employment with which it has been issued. However, it has always to be noted that the terms of employment should include all mandatory legal regulations.

It is recommended to make the terms of employment not too extensive, to reduce them to essential points, to adapt them to the needs of the industry sector, and to update them from time to time, for example when a new working-time model is being introduced. Finally, the terms of employment should also reflect the corporate culture, and may serve as a mission statement for the company.

Should you need any help in establishing terms of employment, or should you have any questions about this, please do not hesitate to get in touch with us.

Kind regards
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