

NJORD in Estonia: Three important things that make your employment contract more bulletproof

Reasonability and good faith are basic principles for a good work relationship. That means, that both the employer and employee should act polite and loyal, with each other's best interests in mind. That can be accomplished in an atmosphere and environment of mutual understanding. There is no such thing as a perfect person nor a perfect employee, except maybe for those who believe that of themselves. But we can't blame them, because those employees might be more successful than some and we can certainly learn a lot from them.

Employment contract can be altered by a mutual agreement between the parties, which means that in addition to reasonability and good faith, both parties must abide by the employment contract. Usually, the employment contract includes terms and conditions in addition to some other obligations, that the parties have agreed upon. Is that enough? As a lawyer who practices the law daily, I say no. Let me give you some examples from real life.

Accuracy of a work place location

There is a dispute pending in court, where the Supreme Court has given directions to a lower level court to re-evaluate a case where the employer gave the employee an order to start working in a workplace that was at a different address than previously agreed upon in the employment contract. What makes this case unique, is the fact that the new location was merely 200 m away from the old one – which makes it a matter of principle. Two out of three judges have agreed, that not showing up for work at a location that is only a couple hundred meters away from the previous location is malicious and terminating the employment contract is justified.

The third judge disagrees and finds that the employee is simply following what's been stated in the contract and working at a different location is not in accordance with the employment contract.

It raises a valid question: who, if anyone, is acting maliciously? Before the final verdict, it's worth remembering that it's not reasonable to set the workplace location with such an accuracy. Same suggestion applies when drafting work responsibilities.

Suspension

Recently a court decision was finalized where the parties argued over whether the employer was right to suspend a problematic employee. The employee had created a work atmosphere where other employees refused to work in. To make sense of the situation and restore a peaceful workplace environment, the employer decided to suspend the employee, since there wasn't any ground for terminating the employment contract. The Employment Act does not give specific directions to deal with these kinds of situations, but the law does give specific reasons for when the employee does not have to perform their work assignments.

The employer decided to suspend the employee (asked the employee not to come in) while paying a salary for the time of suspension. Since the employee regarded employer's decision as unlawful, court had to make the final judgement. The court found that these kinds of situations are not regulated by law, but all things considered, especially the fact that the employee did not suffer any monetary damages during that time, such conduct of the employer was in fact justified. Therefore, internal regulations should foresee such situations and give guidelines for the employer for solving them.

Actions before terminating the employment contract

Undoubtedly most common work-related disputes are disputes regarding the termination of employment contract. A recurrent mistake that both the employer and the employee make is that they don't give the other party an opportunity to stop the possible violation. Employee will cancel the contract extraordinarily because the employer has been late paying the salary or hasn't done it all together, or the employer hasn't paid enough attention to workplace harassment.

On the other hand, the employer fails to give the employee a warning and terminates the contract immediately.

Leaving aside the exceptions, both parties must give each other a deadline by which time the other party must stop the violations of the employment contract. If that isn't done, termination of the contract is void. It's wise to draw up a practical manual for employment contract termination in addition to other internal work regulations.

Need more information about employment contracts? Contact NJORD's partner Katrin Sarap for more.



KATRIN SARAP

ATTORNEY AT LAW,
PARTNER

(+372) 66 76 440

KATRIN.SARAP@NJORDLAW.EE