

Legal insights: written employment agreements

This week my column is about written employment agreements. Books have been written about what the employment agreement is, and its requirements. Last year, the Supreme Court issued an interesting judgment on this matter, which I suspect will be cited and used as an argument in many legal battles. I will not discuss this topic with you this week, but I would like to address the need for good, and up to date written employment agreements.

Many employers have a template for an employment agreement drafted once, or copy a template of an employment agreement from somewhere on the internet and use it repeatedly in their business. That doesn't often cause problems, until it does. Many legal disputes between employers and employees can be prevented with a good and up to date employment agreement.

The agreement must be in accordance with your actions, and the agreement must take the law into account. For example, if parties agree that the employee will work on an on-call basis, and the employer employs the employee for more than three months in a row for an average of 32 hours per week, the law stipulates in article 7A:1613e of the Civil Code that there is a legal presumption that the employment agreement entails 32 hours per week. That means that even if the employee does work for 20 hours, he is entitled to payment for 32 hours. The employer may prove otherwise.

Another example is professions where employees tend to be freer to arrange their work, some employees will work tremendous amounts of overtime (sometimes without knowledge of the employer) and if a legal dispute arises, they will claim overtime over an extended period of time. This can be prevented by stipulating in the employment agreement, that only pre-approved overtime will be compensated by the employer. This will help both parties to know how to proceed if extra work is required to complete certain tasks.

In article 7A:1614c of the Civil Code it is stipulated that salary is due during a short period of time during sickness of the employee. Some employers tend to pay 80% salary from the start of the sickness as that is the amount the employee is insured for at SZV, but if no arrangement is made in the employment agreement, 100% of the salary is due during that short period of time. The employer will receive 80% from SZV. With employees that earn more than the SZV threshold 100% is due if no other arrangement is made.

Some employment agreements entail that a large portion of the salary is paid as commission. If the employee is unfit to work or the employee is unable to work due to a natural disaster or pandemic, the employee is still entitled to the average commission during that time. If the employer wants another arrangement, it should be stipulated in the employment agreement.

I regularly encounter articles that are ambiguous in employment agreements. The court always tends to interpret such articles in the benefit of the employee, as employment agreements are drafted and provided to the employee by the employer.

There are some templates of employment agreements that are in circulation that seriously make me scratch my head. For example, an employment agreement that stipulates that it will end automatically if the employee becomes pregnant.

I would recommend every employer to have a custom employment agreement made that fits their particular business. The person that draws up this custom agreement, should get proper input from the employer regarding usual situations that present themselves at the company, that need addressing. The person should provide detailed information regarding the significance of the articles of the agreement. Ultimately this will prevent legal disputes that may cost the employer significant amounts.

Employees that are involved in legal disputes with their employers, should look for the loopholes in your employment agreement.

PS. In recent weeks I have been asked a couple of times if I still enjoy writing for the Weekender. I actually like it that much that I'm working on setting up a "blawg", a legal blog, to share more information and express my opinion on legal matters. To make sure my articles and my future "blawg" remain interesting I want to hear your comments on my articles and your suggestions for topics. Feel free to contact me via sleon@bzselaw.com