

# Business & Contract Law



## Week 6

## PART 3: CONTRACTUAL LAW

### H/Human resources

29. Employment Contracts
30. Employee Obligations
31. Employer Obligations
32. Noteworthy Aspects
33. Contract Termination
34. Health and Safety
35. Redundancy and Unemployment

## 29 – Employment Contracts

- A By an *individual contract* of employment, the employee is bound, for a determined or undetermined period, to *work in the service of the employer*, whereas the latter is to *pay a wage* set according to the time period or the work performed (time work or piece work) ([CO, art 319](#))
- B Form: any form but if concluded for longer periods of time, in writing

## 29 – Employment Contracts

C Mandatory provisions: CO art 361, 362

D Other types of contracts:

- Collective
- Contract-types
- Part-time
- On-call

## 30 – Employee Obligations

The following (CO art 321):

1. Has to perform the work assigned to in person.
2. Perform the work with diligence.
3. Treat with due care the tools given by the employer.
4. Has a duty of loyalty to the employer.
5. Has a duty of secrecy.
6. Hand sums of money received.
7. Hand work produced.
8. Work overtime if required.
9. Follow in good faith any general orders issued.
10. Is liable for damages caused

## 31 – Employer Obligations

### 31-1/ Payment Rules

Pay the wages that have been agreed upon or set through standard contracts or collective agreements ([CO, art 322](#))

Pay any shares in the profits ([CO, art 322](#)).

Make all payments in due time ([CO, art 323](#)).

Compensate overtime work ([CO, art 321](#)).

May pay in advance ([CO, art 321](#)).

Pay when employee is prevented from work ([CO, art 324](#)).

Provide a pay slip ([CO, art 322](#)).

## 31 – Employer Obligations

31-2/ Provides sufficient piece work (CO, art 326)

31-3,4/ Reimburse any expenses incurred necessary for the performance of work ([CO, art 327](#)).

31-5/ Give consideration and protect the person of the employee ([CO, art 328](#)).

31-6/ Allow at least one day off (CO art 329)

31-7/ Allow for 4 weeks vacation (CO art 329)

## 31 – Employer Obligations

31-8/ Make contributions to social security ([CO, art 331](#)) as well as pay

- Benefits
- Taxes



## 32 – Noteworthy Aspects

Awareness of the following:

- Insurance for loss of earnings
- Who is concerned by withholding taxes
- What salary is paid during vacation
- What leave entitlement there is when the work year is incomplete
- What usual leave is there

## 33 – Termination

33-1/ Transferring contracts is automatic (CP art 333)

33-2/ The modification of a contract must be agreed

33-3/ According to the nature of the employment contract:

1. A contract of determined period terminates without being necessary to give notice ([CO, art 334](#)).
2. A contract of undetermined period can be terminated by either of the parties ([CO, art 335](#)); thus, notice is required.

## 33 – Termination

33-5/ Termination for wrongful or abusive motives ([CO, art 336](#))  
*personal features such as sex, race and age; exercising a constitutional right such as the freedom of religious practice; preventing the other party from filing claims resulting from the contract of employment; asserting claims resulting from the contract of employment; performing a legal duty; workers union membership; illness and accident; pregnancy; partaking in relief organization activities*

33-6/ See also inopportune termination [CO art 336c](#)

## 33 – Termination

33-7/ Termination can occur immediately for the right motives  
([CO, art 337](#))

*conflicts of interest; dishonesty; disobedience; willful neglect of duty; prejudicial conduct; incompetence;*

33-8/ With the death of the employer the contract is passed on

33-9/ There is a general prohibition of competition (CO art 340)  
based on the principle of reasonableness.

33-10/ Work certificate is provided (CO art 330).

## 34 – Health & Safety

Labor Law aims at protecting the health and safety of works. The role of labor inspectors is in this respect paramount. The provisions deal in particular with

- Night work
- Sunday work
- Minimum daily rest
- Minimum weekly rest
- Health and safety at the workplace
- Rights of pregnant women and young mothers
- Harassment

## 35 – Unemployment

A        The unemployment scheme operates just like any other kind of insurance, where premiums and benefits are carefully calculated with the purpose of helping the unemployed find work.

B        Definitions:

- Full-time job-seeker
- Part-time job-seeker
- Partial job-seeker

## 35 – Unemployment

C Have the right to unemployment benefit any worker who:

1. Is unemployed or partially unemployed (LACI, art 10 and 11).
2. Is a recognized resident (LACI, art 12).
3. Fulfils the conditions in terms of the contributions (LACI, art 13 and 14).
4. Is capable of being placed so as to fill a suitable position (LACI, art 15).
5. Satisfies the requirements of the control (LACI, art 17).

## 35 – Unemployment

D Do not have the right to unemployment benefit those who are shareholders/owners or managers of a business (LACI, art. 31)

### *Guide:*

Espace emploi: <http://www.espace-emploi.ch/>