AN INTRODUCTION TO EMPLOYMENT LAW
Kort innføring i Arbeidsrett, Engelsk
# An introduction to employment law

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The most important provisions for an employment can be found in the Working Environment Act of 17 June 2005 and the Holiday Act of 29 April 1988. It may be wise to look at the provisions in these two Acts in order to note your rights as an employee and your employer’s obligations.

I. EMPLOYMENT CONTRACT

In writing
Pursuant to the Working Environment Act all employees are entitled to a written employment contract. You can in other words demand that your employer draft a written employment contract before your employment commences. If your employer does not want to give you a written employment contract, then your employer is acting in violation of the Working Environment Act.

Even if you do not have a written employment contract, your rights pursuant to the Act will be the same.

However, without a written employment contract it will be difficult to prove what has been agreed on in the event that a dispute arises between you and your employer.

It is important to note that your signature on the contract entails the following:

- I have read the contract
- I have understood the contents
- I agree with the contents

It is therefore important to read the contract and to understand its contents. You can ask to take it home with you before signing it if you want. It is important that everything that has be agreed orally is also included in the written contract.

Collective agreement
If your employer is bound by a collective agreement, or a collective agreement is made applicable in your employment contract, it could be smart to familiarise yourself with this agreement in advance. This can actually regulate a number of rights and obligations for both the employer and employee, without these being mentioned in the employment contract.
Employer’s right to manage
It is important to note that employers have a certain right to ask you to perform tasks other than what is stated in your employment contract. Employers can also change your place of work and your work hours to a certain extent.

What should be included in your employment contract?
1. Names of the employee and employer
2. Place of work
3. A description of the work, or the employee’s title, position or work category
4. When you are to begin work at the place of work
5. If the employment is temporary, how long it is expected to last
6. Your rights to holidays and holiday pay, and the regulations for stipulating when holidays can be taken
7. Employee’s and employer’s notice periods
8. Wages you are entitled to and any supplements not included in your wages.
9. An approximate specification of what days you are to work, when you start and how long you should work.
10. Length of breaks. You are entitled to a continuous half-hour break when working longer than 5 ½ hours. Note that there are special regulations for breaks if you are under 18 years of age.
11. If you have an agreement for a particular work scheme, for example reduced or flexible working hours, then this should be included in the contract.
13. Information on any collective agreements that regulate the employment.

Both the employer and the employee must act in accordance with the employment contract and the Act.

Note that an oral agreement is also binding, but with an oral agreement it may be difficult to prove or to reach agreement on under what conditions you were hired.
Another thing that is important to be aware of is the fact that a probationary period must be agreed in writing in order to be valid. If your employer only mentions orally that you have a probationary period, then this will not be valid. In such a case you will be regarded as having been permanently employed from the point in time you entered into the employment contract.

It is a good idea to be organised in a union. Trade unions fight for your rights and can help you if you get into difficulties at your workplace. Examples of trade unions are the Norwegian Confederation of Trade Unions (LO), Norwegian Association of Local and Regional Authorities (KS), Federation of Norwegian Professional Associations (Akademikerne), etc.

Note that the provisions in the Working Environment Act cannot be set aside in disfavour of the employee unless the individual provision expressly states that this is allowed. Provisions can only be set aside legally through a written agreement, a collective agreement or dispensation granted by the Labour Inspection Authority.

II. TEMPORARY EMPLOYMENT

Pursuant to the Act the basic principle is that employees shall be employed in permanent positions. However, temporary employment may be legal when the employment contract only applies to a specific period of time or short-term work. The Working Environment Act regulates exhaustively the instances where temporary employment is allowed.

The most important examples of legal temporary employment are:

- When the nature of the work dictates temporary employment and the work differs from what is ordinarily performed in the company. For example, a project in the company.
- Seasonal work. For example, temporary employment is permitted for picking fruit and berries, being a Santa Claus in December or a waiter in outdoor restaurants in the summer.
- Work experience – training in a trade. For example, carpentry.
- Substitute positions. The substitute position must be for a specific person or for a limited period of time, for example, during illness, holidays or leaves of absence.
• Participants in labour market measures through or in cooperation with the Labour Market Administration (NAV).

**Effects of legal temporary employment:**
• The employment contract will be terminated when the agreed time period has expired or when the agreed work has been performed.

• If you have been temporarily employed for more than one year, you are entitled to a written notice of termination of at least one month. However, this notice period does not apply to those who participate in labour market measures in cooperation with the Norwegian Labour and Welfare Administration (NAV).

• Anyone who has been temporarily employed continuously for four years has the same employment protection rights as a permanent employee. However, this does not apply to those who participate in work experience or participants in labour market measures in cooperation with the Norwegian Labour and Welfare Administration (NAV).

**Effects of illegal temporary employment:**
• If you are temporarily employed illegally you can file a lawsuit against your employer and demand a judgment declaring the existence of permanent employment. This must be done no later than eight weeks from the point in time when you resigned from the position. You can claim permanent employment under the conditions stipulated in the temporary employment agreement.

• You can also claim compensation from your employer. The amount of compensation will be stipulated as the amount the court finds reasonable with regard to the financial losses the employee has suffered, the employer's and employee's relationship and the circumstances in general. In certain cases you can also claim compensation for non-economic losses, so-called damages for non-economic losses. This will depend on a specific evaluation of the circumstances surrounding the termination of your employment.
III. «ON-CALL HELP»

**Rights**
Whether you are obligated to respond when your employer calls if you are on-call help will depend first and foremost on the agreement between the employee and employer. It can therefore be wise, as in normal employment situations, that the employment contract includes what rules shall apply between you and your employer.

If this is not included in the contract, then you can in principle say no if it is not suitable for you, without this entailing a breach of your employment contract.

Your employer can therefore in principle not terminate your employment if you say no often. Nevertheless, the employer is not obligated to call you. He can therefore stop calling you if you often say no or if the work you perform is not good enough.

**Employment protection rights**
If the relationship is “loose”, when in other words the employer calls at irregular or lengthy intervals, each individual period of duty can be regarded as temporary employment and the employee will then not have any employment protection rights.

If, however, the employer calls often and at regular intervals, then this can be regarded as continuous employment with employment protection rights.

If you have a fixed period of duty or cover a fixed workforce need for the company, the employer cannot refer to this as on-call help in order to avoid employment protection rights.

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IV. WAGES

**Minimum wage**
There are no rules concerning a minimum wage in the Act. There is contractual freedom between the employer and employee concerning the amount of the wages. There is therefore nothing that states that you cannot work for free, but this should be agreed on in detail.
Most employers have entered into collective agreements that include rules on the minimum wages, and this will be binding on your employer, even if it has not been included as a separate item in your employment contract.

**Overtime**

Employees are entitled to pay for overtime pursuant to the Act. If you work more than nine hours during a day or more than 40 hours during a week, then this is considered overtime. For overtime work the employee is entitled to a supplement to his wages. This supplement shall be at least 40% of the agreed wages.

It can be agreed that overtime work can be compensated by time off in lieu of overtime. However, it cannot be agreed that the overtime supplement can be compensated as time off in lieu of overtime. Even if you do take time off in lieu of overtime, you are nevertheless entitled to 40% of the agreed wages for overtime hours.

Note that the Working Environment Act only specifies the minimum provisions for overtime. If the company you work for has a collective agreement, then this will most likely regulate overtime work in greater detail.

**Wage deductions**

There are strict rules for when an employer is entitled to make deductions from your wages, and the Working Environment Act regulates exhaustively in what instances this is allowed.

If your employer is entitled to make deductions from your wages, then you must either have consented to this in writing or it must be expressly stated in your employment contract. If the company is subject to a collective agreement, then you will be bound by the deduction rules in this agreement. Collective agreements often specify specific instances where the employer can make deductions from your wages.

**For example:** *If you work as a shop assistant and there is a discrepancy in your cash count, meaning that money is missing, your employer cannot deduct this from your wages unless it has been agreed in writing.*

Your employer is obligated to give you a pay slip when your wages are paid. The Working Environment Act stipulates requirements for the
layout of pay slips, see Section 14-15, fifth paragraph of the Working Environment Act.

V. HOLIDAYS

The rules here are from the Holiday Act.

Any employee undertaking paid work, both permanent and temporary employees, are entitled to holidays.

**How much holiday are you entitled to?**
If you work for an entire year, January to December, you are entitled to 25 days (five holiday weeks). This also applies to part-time employees. Employees who start a new position after 30 September are entitled to a holiday of one week for the remaining portion of the holiday year.

It is important to note that you will not be entitled to a paid holiday.

**When can you take your holiday?**
All employees are entitled to a holiday during the period from 1 June to 30 September. Everyone can also request that any holidays not taken during the summer be taken out continuously at a later point in time. For example: If you have a three-week summer holiday, you can take the remaining two weeks continuously in October, provided your employer accepts this. Everyone can demand that the employer give at least two months’ advance notice of the schedule for holidays.

**What happens if you are ill during your holiday?**
Employees who become ill after the starting their holiday can demand a new holiday if their illness lasts for at least one week. This requires, however, that you provide a doctor’s certificate that you were ill.

**Holiday pay**
You are entitled to holiday pay during your holiday. Pursuant to the Holiday Act, holiday pay shall be paid as a rule on the last regular pay day before the holiday period. Holiday pay shall be at least 10.2% of your gross wages during the previous year.
VI. ILLNESS

Self-certification
A self-certified notice is a notice that the employee shall submit to his employer for illness lasting up to a maximum of three days, without a doctor’s certificate being necessary. You can use a self-certified notice four times during a 12-month period. Each of self-certified notices can be for up to three calendar days. This means that if you use a self-certified notice for a Friday, Saturday and Sunday will also be included. Therefore, you cannot be away from work on Monday and Tuesday, even if you submitted a self-certified notice on Friday. It is important to notify your employer of any illness by the end of the work day on your first day of absence.

You have to be employed by your employer for at least two months before you are entitled to use self-certification. If not, you must have a doctor’s certificate from your first day of absence. The same applies if you have used up your four self-certification periods.

If you are ill for more than three days, then you must have a doctor’s certificate.

If the company you work for is an Inclusive Working Life company, you can use self-certification for up to eight calendar days. Self-certification can also be used for 24 calendar days in a 12-month period. There are no restrictions on the number of times self-certification can be used.

Sickness benefits
The payments you receive when you are sick are referred to as sickness benefits. You are entitled to sickness benefits if you are so ill that you cannot work. The National Insurance Act does not consider incidents such as normal grief reactions, bankruptcy or divorce as an illness. If you become ill as a result of such incidents, you will nevertheless be entitled to sickness benefits pursuant to the National Insurance Act.

You must have been employed at your place of work for at least four weeks in order to be entitled to sickness benefits. In addition, it is a condition that you lose your fixed wages because you are ill and cannot work. It is also a condition that the income basis for sickness benefits is at least 50% of the National Insurance basic amount (1/2 G).
In order to be entitled to sickness benefits you must try to engage in work-related activity as early as possible. If this does not happen, then you can lose your right to sickness benefits under certain circumstances.

Within eight weeks you must draw up a follow-up plan for how you can return to work as quickly as possible with your employer. If you are not in work-related activity within eight weeks, an extended doctor’s certificate is required documenting overwhelming medical reasons preventing such activity.

**Sickness benefits from employers**
As an employee you are entitled to sickness benefits from your first day of absence due to illness. Employers pay the sickness benefits for the first 16 calendar days of your absence due to illness. From the 17th day of absence due to illness, the National Insurance scheme (NAV) will pay the sickness benefits.

**Amount of the sickness benefits**
Sickness benefits are calculated based on your average weekly wages for a specific period of time before you became incapable of working, the last four weeks as a rule. If your employment involves changing work periods or wages, then a longer period may be used as the basis. If there has been a permanent change in your wages during the last four weeks, then your income from when the wages were changed will be used as the basis. It is only the actual earned income that is included in the basis for the sickness benefits. Any special allowances, such as a car allowance, subsistence allowance, etc. or overtime or holiday pay shall not be included.

**How long are you entitled to sickness benefits?**
If you are on sick leave for more than one year, your entitlement to sickness benefits will expire. The time limit is the same even if you have been on a partial sick leave during the entire period. If you still cannot work when your sickness benefits have expired, you may be entitled to other benefits such as rehabilitation benefits, occupational rehabilitation or disability benefits. The Norwegian Labour and Welfare Administration (NAV) is obligated to inform you about your rights to such benefits.

**When will the money be paid?**
If the Norwegian Labour and Welfare Administration (NAV) pays the sickness benefits, the benefits will be paid at the end of the month.
When there is an agreement that the employer will pay wages during illness, the payments may be made at other times.

Note that your employer may be entitled to assign you to other work if you are capable of performing such work. If this is the case, then you will have a corresponding obligation to work.

**VII. TERMINATION OF EMPLOYMENT**

As an employee you are entitled to terminate your employment when you want. However, you still have an obligation to show up for work during your notice period. Normally your notice period will run from the first calendar day of the month following the month when you terminated your employment.

**For example:** Your employment contract states that you have a two-month notice period. If you have a disagreement with your boss on 17 March and terminate your employment, your notice period will start on 1 April. You will have to work until 31 May inclusive then. If you do not work during your notice period, you will not be entitled to any wages.

Note that you may risk being liable for damages to your employer if you fail to perform your work duties during your notice period.

A discussion meeting shall be held whenever possible before an employee is terminated. At this meeting the employer shall explain why the termination is relevant, for example that the company has decided to eliminate the department where you work or feels that your work is not good enough. You can ask questions and provide input here. Your employer should discuss your termination with a union representative. You can also choose to have a union representative or other person with you at the meeting.

**Proper notice of termination**

There are requirements for both the content and form of a notice of termination. A notice of termination shall be made in writing and contain information on the employee's right to negotiate, for example, and the deadlines for demanding negotiations and filing a lawsuit.
**Employment negotiations**

If you feel that your employment has been terminated on unfair grounds, you can demand employment negotiations. Employment negotiations are a meeting between you as the employee and your employer. You can demand to have someone with you at the meeting, for example an attorney or someone close to you.

The deadline for demanding negotiations will run from the day you receive a proper notice of termination. During the meeting you can discuss why you have been terminated. If you feel that your employer does not have any valid grounds for your termination, you can discuss this at the meeting.

**Deadlines**

It is important to note that the deadline for demanding negotiations is two weeks upon a proper notice of termination. If the notice of termination is not proper, then there is no deadline.

The deadline for filing a lawsuit is six months from the negotiations or when the notice of termination was given, but only eight weeks if you wish to demand that you be allowed to continue in your position. Legal disputes concerning terminations/dismissals are heard in the District Court.

**Grounds for when an employer can terminate an employee**

A termination shall always be based on fair and objective reasons in accordance with the company’s, employer’s and employee’s circumstances. This means that your employer must have a good reason for terminating you.

Examples of such reasons may be the fact that the department you are employed in is to be eliminated, the company must make cut-backs, or that you have not fulfilled your part of the employment contract. An employer cannot terminate you because he does not like you.

It is important to note that it is the employer who must bear the burden of proof that there are fair and objective reasons for your termination.

If the employer justifies your termination by cut-backs, etc., then he must be able to prove that the company has a real need to do so. The termination will not be fair and objective if he has any other suitable work for you.
Termination during a probationary period
During a probationary period you may, in addition to the grounds mentioned above, only be terminated if your work is not good enough, you have problems with the work, or you cannot be trusted. The employer has, nevertheless, a particular obligation to train you in your work. If such training is not provided, then he cannot in principle succeed with a claim that you are having problems adapting to your work.

As previously mentioned, a probationary period must be agreed in writing in order to be valid. If there is no such agreement in writing, then the employer’s right to terminate you will be regulated by the main rules in the Working Environment Act’s concerning termination; in other words fair and objective reasons in accordance with the company’s, employer’s and employee’s circumstances must be proven.

Termination during illness
In the event you become entirely or partially incapable of working due to illness or an accident, you cannot be terminated for this reason during the first 12 months after the incapacity for work occurred. If a termination nevertheless takes place during this period, the employer must establish as probable that there is another reason for the termination. If the employer cannot document that there are other grounds, then it must be assumed that the termination is due to the illness.

Termination during pregnancy
In the event you are pregnant, you cannot be terminated for this reason during your pregnancy. For termination during pregnancy, the employer must document, just like termination during illness, with more than 50% probability that the termination is not due to the pregnancy.

Effects of unfair termination
If the employer does not have fair and objective grounds for your termination, then you can claim compensation for economic and non-economic losses. You can also claim restoration of your position as a rule. The deadlines for submitting such claims are presented above under the Deadlines section.

Dismissal
As a rule an employer cannot demand that an employee leave at once.
Dismissal is a stronger reaction than termination. In the event of a dismissal, you must leave the same day you are notified that your employment has been terminated.

In order to be dismissed, you must have grossly neglected your duties or otherwise materially breached your employment contract. Examples of this can be theft from your employer, breaching a duty of confidentiality, etc. In other words, a great deal is required before an employer can decide to dismiss you on the spot.

Elements in the assessment of whether a dismissal has been legal will, for example, include whether a discussion meeting has been held prior to its implementation.

The dismissal shall be made in writing and must satisfy the same formal requirements that apply to ordinary termination.

### VIII Reference letter

If you resign upon a legal termination, you are entitled to a written reference letter. An employee who has been dismissed can also request a letter of reference, but the employer can write in the reference letter that the employee has been dismissed.

**Contents of the reference letter**

The reference letter must at least include the employee's name, date of birth, nature of the work and duration of the employment. The reference letter shall be dated and signed by the employer. If it has been stipulated in a collective agreement or if it is common practice in the company or for the particular type of work, the employee shall be given a more detailed reference letter.
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