ARBEITSRECHTLICHES

Are notice blocks permissible?

Termination blocks are common in seasonal industries. Employers use them to prevent employees from giving notice during peak season months. The locks apply not only to the employees affected, but also to the employer. There are two types of termination blocks: - Notice cannot be submitted for a certain period of time - No notice dates are permitted A termination block must be recorded in writing as it deviates significantly from normal employment contract regulations.

Use of social networks at work

The employer may regulate the scope and type of private use of the Internet and social networks on the basis of his right to issue instructions. If he does not lay down any rules in this regard, the private use of the Internet and social networks is permitted during working hours as long as it is not excessive. The employee has no right to private use of the social platforms. If the employee's work performance suffers due to excessive use of social networks or if the employee does not perform the agreed working time to which he would be obliged, the employer may deduct the difference from the salary or even claim damages if the company has suffered a financial loss due to excessive use. These measures require a precise policy on the part of the company. It is up to the employer to clearly define such limits. Under the Swiss Code of Obligations, employees are bound by duties of care and fiduciary duty towards their employer. This also includes the obligation to protect trade secrets. Employees are therefore obliged to ensure that they do not disclose internal company information on social networks for private or professional purposes during or outside working hours.

Accessibility and working outside working hours with mobile devices

With mobile devices, it has become common for employees to respond to messages from superiors or colleagues even outside working hours. To this day, there are no legal regulations that provide an answer to the constant availability and use of mobile devices. It is clear that simply carrying mobile phones or laptops is not regarded as working time. The actual working time, e.g. answering a call or reading an e-mail, is regarded as working time. The Labour Code grants employees protection with regard to working hours. The employee does not have to be reachable outside working hours. Emergencies are exceptions. If the employee is very frequently disturbed by calls and e-mails due to his or her constant availability, so that he or she can no longer use the time sensibly as leisure time, this time is to be classified as working time. In this case, the employer is required to contractually regulate the availability of his employees in the company regulations or in the employment contracts. It could be considered, for example, to agree with the employee that the latter tolerates enquiries from the employer by SMS, e-mail or telephone outside working hours. However, if these remain unanswered, the employee will not be blamed for any misconduct. Unless his task, a project assigned to him or the position of the employee in the company requires an immediate reaction under the

specific circumstances. This applies above all to the management members of a company. The duty of management members to be reachable outside working hours goes further than that of ordinary employees. A member of management must be reachable to the extent required by the needs of the respective company. The salary of a member of management must take account of this higher level of responsibility.

No bonus without clear goals

An employee sued the Federal Court for a bonus. He had contractually agreed with his employer that he would receive an annual bonus of CHF 10,000 if the agreed targets were achieved. The employer dismissed the employee after two years and denied him the bonus. After complaints by all instances, the man went to the Federal Court and also lost there. The court justified its decision with the fact that no targets had been set for the bonus. It would be different if the employer had not set any targets to refuse the bonus. But that did not happen with the accountant. (Source: BGE 4A_378 of 27.11.2017)

Commitment to workload change in maternity?

If an employee requests a reduction in working hours during maternity leave, this does not have to be accepted if a different workload has been contractually agreed. The employer must agree to an amendment to the contract. If the employer rejects the change, the employee can accept it or must give notice. She cannot force the employer to change the workload.

Federal Court again defines holiday pay in ruling

In a new ruling, the Federal Supreme Court clarifies what conditions must be met, among other things, for the payment of holiday pay. In the present case, the employer had to pay the holiday pay twice. Although the holiday pay was shown on the wage declaration, the employee filed a complaint and the Federal Court ruled in his favor. Two conditions were not met by the employer: the parties had agreed on a working time of 42.5 hours. Thus, the employment is not considered irregular and the holiday pay should have been paid at the time of the holiday. The written employment contract did not state which part of the salary was paid out to compensate for the holidays. The court did not allow it to apply that the shares were visible on the pay slips and that the employee had accepted the slips without objection. (Source: BGE 4A_561/ 2017 of 19.03.2018)

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