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AVOCATS

DROIT DU TRAVAIL

Le contrat de stage : doit-il être rémunéré ou non ?



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The internship or traineeship contract: should it be paid or not?

As the end of the school and university year approaches, many people are looking for summer internship or internship lasting several months to gain knowledge and experience. But what is the status of these internship and of the internship contract from the point of view of [employment law](#)? Should they be paid or not? A recent decision of the Swiss Federal Supreme Court (TF 4A_150/2023 -30.11.2023) sets out a number of principles.

Internships and internship contracts are not expressly governed by the Swiss Code of Obligations. An internship contract therefore appears to be similar to an employment contract. One of the essential elements of an employment contract is that the employee's work is remunerated.

In its aforementioned decision of 30 November 2023, the Federal Court reiterated that it is possible to have an unpaid internship contract. The Federal Court explains that "*the distinction between an unpaid traineeship contract and a traineeship contract subject to the rules of an employment contract and performed in return for a salary (art. 320 para. 2 CO) depends on all the circumstances of the specific case. The freedom of the parties to agree that the trainee's services are to be provided free of charge is restricted by art. 320 para. 2 CO*".

"As long as there is an objective justification for the existence of the internship and the fact that it is unpaid, it must be accepted, even if it lasts a year or more, depending on the circumstances (JEAN-PHILIPPE DUNAND, Commentaire du contrat de travail, 2nd ed. 2022, n. 33 ad art. 319 CO; RÉMY WYLER, Commentaire du contrat de travail, 2nd ed. 2022, n. 33 ad art. 320 CO). On the other hand, where the company has an objective interest in the service provided by the trainee, art. 320 para. 2 CO applies: the traineeship is then covered

by the employment contract and entitles the trainee to a salary (RÉMY WYLER, *op. cit.*, no. 33 ad art. 320 CO)".

In the case before the Federal Court, the "trainee" had "studied economics with a specialisation in marketing at the University of Bucharest in Romania. She obtained a degree equivalent to a Swiss university bachelor's degree. Also in Romania, she passed the traineeship entrance exam to qualify as a chartered accountant. In Switzerland, she attended the TQG I and II accountancy courses.

In terms of professional experience, her curriculum vitae mentions experience as an assistant accountant with several companies in Romania, including an activity as head accountant between 2002 and 2012 [...] as well as an activity as accountant in Switzerland with a sole proprietorship owned by her husband".

The "trainee" was hired on 3 January 2017. The classification of her contract is in dispute. The employer considers that it hired her as a trainee, while the "trainee" maintains that it wanted to conclude a contract of employment. The contractual relationship was terminated by the trainee's resignation with immediate effect on 21 February 2018.

In the view of the Federal Court, the cantonal authority was right to find that the trainee's work placement had added real value to her career and had enabled her to develop her knowledge and increase her chances of being hired at a later date. The cantonal court also held that the contract had enabled the "trainee" to familiarise herself with Swiss accounting practices, since she had little practical experience in Switzerland apart from a job with her husband's company. The "trainee" had an overriding interest in the performance of the contract and had accepted an unpaid traineeship in order to gain practical experience in Switzerland.

In the view of the Federal Court, the cantonal court did not violate art. 320 para. 2 of the Swiss Code of Obligations by considering that the contract concluded was a training period carried out in the interests of the "trainee". It could therefore be unpaid.

The following should therefore be borne in mind with regard to traineeships and remuneration: if the traineeship contract is concluded in the trainee's overriding interest so that he or she can acquire professional expertise, it may in principle be unpaid. If this is not the case, in principle it must be remunerated.

The undersigned deliberately uses the term "in principle", as each case must be examined separately. In addition, there are special rules in certain areas. This is particularly the case in the hotel and catering industry. The CCNT for hotels, restaurants and cafés stipulates a minimum wage for work placements as part of hotel school courses. In the canton of Vaud, this is also the case in the childcare sector. A standard contract with a minimum wage for trainees is set out in the Vaud State Council Decree of 24 May 2023.

A well-informed employer should therefore be cautious, especially if the internship/traineeship lasts several months.

Source : <https://www.wg-avocats.ch/en/actualites/the-internship-or-traineeship-contract-should-it-be-paid-or-not/>