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The recent newspaper articles mentioning that many apprentices “drop out during their apprenticeship” and “break” their contract before the end of the term are an opportunity to come back to this particular employment contract in Swiss law and to give a brief reminder to both employers and apprentices.

The apprenticeship contract has the particularity of being governed by both private and public law provisions.

As regards public law provisions, at federal level, the apprenticeship contract is governed by the Federal Law on Vocational Training (LFPR) and its implementing ordinance (OFPr)

The LFPR recalls that *“vocational training is the joint task of the Confederation, the Cantons and labour organisations”*.

According to Art. 14 RTA, the apprenticeship contract is governed *“by the relevant provisions of the Code of Obligations⁴ (Art. 344 to 346a), unless this Act provides otherwise”*.

A particular feature of the apprenticeship contract is that it must be approved by the cantonal authorities. Furthermore, *“if the apprenticeship contract is terminated, the training provider must immediately notify the cantonal authority and, if applicable, the vocational school”*.

According to Article 20 LFPR, companies wishing to take on and train apprentices must have obtained a permit from the canton.

At the cantonal level, the apprenticeship contract is governed by the various cantonal laws or regulations.

In the canton of Vaud, this is the Vocational Training Act (LVLFP) and its implementing regulation (RLVLP).

The purpose of the Vaud law is to regulate the application of the federal law in the Canton of Vaud.

With regard to authorisation, Vaud law specifies that the company must submit the apprenticeship contract signed by the parties for approval by the department within the time limit set by the regulation, i.e. by 31 July of the year of entry into training at the latest.

The Vaud regulation also specifies that the *“apprenticeship contract ends at the latest at the end of August”*. The regulation also states that apprentices take their holidays during school holidays and that the employer must grant *“at least three consecutive weeks of holidays, unless there are major reasons against it”*.

If the apprenticeship contract is submitted late, it is transformed, with the agreement of the parties, into a pre-apprenticeship contract.

The authorisation is granted if:

“(a) the undertaking or the network to which it belongs has a training authorisation and still fulfils the conditions thereof at the time of the application for approval ;

(b) the training takes place under suitable conditions, in particular as regards the place of work of the person to be trained;

(c) the contract complies with the standards of the apprenticeship contract and, where applicable, the relevant collective labour agreement;

(d) the medical certificate, if requested in accordance with Article 11, attests to the fitness of the trainee to follow the chosen training course;

(e) the network contract is attached to the application for approval in the case of networked training.”

Changes to the apprenticeship contract must also be submitted to the department for approval.

It should be noted that the authorisation may be cancelled or revoked if the department considers that the training is compromised.

Still at the level of public law, the Labour Act also contains special provisions for young employees, whether or not they are apprentices, in terms of rest and working hours.

Young people” are workers of both sexes under the age of 18.

In addition, Ordinance 5 deals exclusively with the protection of young workers (LTO 5) and includes provisions on working hours and rest periods, but also on particular activities that may be prohibited or permitted under certain conditions.

At the level of private law, the apprenticeship contract is governed by Articles 344 to 346a of the Code of Obligations (CO) and is considered an individual employment contract of a special nature.

Unlike the “ordinary” employment contract, which may be oral or tacitly concluded, the apprenticeship contract is only valid if it is in writing.

The written contract should regulate the nature and duration of the vocational training, salary, probationary period, working hours and holidays.

The trial period should not be less than one month and not more than three months. If it is not fixed in the contract, it is three months. In exceptional cases, the probationary period may be extended to six months by agreement between the parties and with the approval of the cantonal authorities.

Article 345a CO imposes specific obligations on the employer. In particular, the employer must ensure that the apprentice is trained “under the responsibility of a person in the trade with the necessary professional skills and personal qualities”.

It must, of course, allow the apprentice *"without any reduction in salary, the time needed to attend vocational school and inter-company courses, and to take the final apprenticeship examination"*.

Until the age of 20, the employer must grant the apprentice at least five weeks' holiday per year of apprenticeship.

The trainee may only be employed in work unrelated to the intended occupation and in piecework or job-related work if this is related to the exercise of the occupation and if the training is not jeopardised.

Article 346 CO sets out some special rules on termination.

As with the "ordinary" employment contract, *"during the trial period the apprenticeship contract may be terminated at any time with a seven-day notice period"*.

However, the apprenticeship contract may be terminated immediately for good cause in the following cases :

"(a) if the person responsible for the training does not have the professional capacity or personal qualities to train the trainee;

b) if the trainee does not have the physical or intellectual aptitudes required for his or her training or if his or her health or morals are compromised; the trainee and, where appropriate, his or her legal representatives must be heard beforehand;

(c) if the training cannot be completed or can only be completed under substantially different conditions from those foreseen."

For the rest, the provisions of the CO on the "ordinary" employment contract, i.e. articles 319 ff CO, apply to the apprenticeship contract.

This brief review of the apprenticeship contract highlights the fact that, while an employer's decision to train apprentices is laudable and should be encouraged, it should not be taken lightly and attention should be paid to the obligations imposed by the specific provisions of the Code of Obligations but also by public law.

Source :

<https://www.wg-avocats.ch/en/news/labour-law/newspaper-articles-mentioning-apprentices-drop-out-during-apprenticeship-break-contract-before-the-end-of-term/>