

The Employers' and Salaried Employees'  
Legal Relationship  
(Consolidation) Act, 1999

Ministry of Labour  
Denmark

## **The Employers' and Salaried Employees' (Legal Relationship) (Consolidation) Act**

This Act consolidates the provisions of the Act on the legal relationship between employers and salaried employees, cf. Consolidation Act No. 642 of 28 June 1996 with the amendments following from Act No. 340 of 2 June 1999.

1. - (1) For the purposes of this Act the term "salaried employees" shall mean -
- (a) shop assistants and office workers employed in buying and selling activities, in office work or equivalent warehouse operations,
  - (b) persons whose work takes the form of technical or clinical services (except handicraft work or factory work) and other assistants who carry out comparable work functions,
  - (c) persons whose work is wholly or mainly to manage or supervise the work of other persons on behalf of the employer,
  - (d) persons whose work is mainly of the type specified in (a) and (b).

(2) This Act only applies in cases where the person concerned is employed by the employer for at least 15 hours a week on average and occupies a position in which he works under the instructions of the employer.

(3) The provisions of this Act shall not apply to civil servants or civil servants on probation in the state sector, the primary school system, the Danish National Church, or the local authorities, to salaried employees covered by the Seamen's Act of 7 June 1952, or to apprentices covered by the Apprenticeship Act. However, the provisions laid down in sections 10 to 14 shall apply to salaried employees covered by the Seamen's Act.

2. - (1) The employment contract between the employer and the salaried employee may only be terminated by the parties after prior notice has been given in accordance with the rules mentioned below.

(2) Termination of the employment contract on the part of the employer may take place with at least:

- (i) one month's notice, for expiry at the end of the month, during the first six months' employment,
- (ii) three months' notice, for expiry at the end of a month, after six months' employment.

(3) The period of notice in subsection (2) (ii) shall be increased by one month for every three years of service, subject to a maximum of six months.

(4) If the employer can substantiate that it has been agreed that the work is of a purely temporary nature and that the employment relationship does not exceed a period of three months, the rule laid down in subsection (2) (i) shall not apply.

(5) If the employer can substantiate that the engagement is on probation and that the employment relationship does not exceed a period of three months, termination on the part of the employer may take place by giving a notice of at least 14 days.

(6) Termination on the part of the employee may take place with one month's notice for expiry at the end of a month, unless it has been agreed that the work is of a purely temporary nature or on probation and the employment relationship does not exceed a period of three months. However, it may be agreed in writing that a longer period of notice shall be given by the employee provided that the period of notice to be given by the employer is extended correspondingly.

(7) The notice shall be given so early that the resignation with the notice prescribed for the period of employment can take place before the expiry of that period. Notice under subsections (2), (3) and (6) of this section shall be given in writing not later than the last day of the month from the end of which the period of notice begins to run.

(8) If a salaried employee continues to work in an enterprise after a change of ownership, the period during which he was employed in the enterprise as a salaried employee before the change of ownership shall be taken into account in connection with the calculation of the period of employment.

(9) If the enterprise provides residential accommodation for the use of the salaried employee and his family as part of the employment contract, the period of notice on the part of the employer shall be at least three months. The employee shall be entitled to occupy the dwelling together with his family on payment of the agreed rent (or rent-free, as the case may be) for up to one month after his resignation; the employee's family shall have the same right in the event of his death. If the employer considers it necessary - for operational reasons - he shall, however, be entitled to claim immediate possession of the premises - against payment of the costs in connection with the removal.

(10) In the event of a duly notified work stoppage the rules of the labour market organisations concerning notice shall prevail over the above provisions.

**2 a. -** (1) In the event of dismissal of a salaried employee who has been continuously employed in the same enterprise for 12, 15 or 18 years, the employer shall, on termination of the employment relationship, pay a sum to the employee corresponding to, respectively, one, two or three months' salary.

(2) The provision laid down in subsection (1) shall not apply if the employee is entitled to old-age pension on termination of the employment relationship.

(3) No severance allowance will be payable, if the employee will - on termination of the employment relationship - receive an old-age pension from the employer and the employee has joined the pension scheme in question before attaining the age of 50 years.

(4) The provision laid down in subsection (3) shall not apply if the question of a reduction or lapse of the severance allowance due to payment of old-age pension from the employer has been settled by collective agreement as per 1 July 1996.

(5) The provision laid down in subsection (1) shall be correspondingly applicable in the event of unjustified dismissal.

**2 b. -** (1) If the dismissal of a salaried employee who is over 18 years of age and who has been continuously employed in the enterprise concerned for at least twelve months prior to the notice of termination is not considered to be reasonably justified by the conduct of the employee or the circumstances of the enterprise, the employer shall pay compensation. The amount of such compensation shall be determined with due regard to the period of service of the employee and any other circumstances of the case, but it may not exceed the salary of the employee for a period corresponding to half of the period of notice to which the employee is entitled under section 2 (2) and (3). However, if the employee is over 30 years of age at the time of notice of termination, the compensation may amount to up to three months' salary.

(2) If a salaried employee has been continuously employed in the enterprise for at least ten years, the compensation mentioned in subsection (1) may amount to up to four months' salary. After 15 years' continuous employment in the enterprise the compensation may amount to up to six months' salary.

(3) The provisions laid down in subsections (1) and (2) shall be correspondingly applicable in the event of unjustified dismissal.

**3. -** (1) If the employer refuses without good cause to accept the services of the salaried employee or dismisses him without good cause and if the employee has at the time when the employment relationship is broken off - a right to not more than three months' notice under section 2 of this Act, the employer shall be liable to pay compensation corresponding to the employee's salary up to the date on which he could have been lawfully dismissed or- if he has already been dismissed - up to the expiry of the period of notice, always provided that no higher amount of damages is payable under the general rules of law.

(2) If the salaried employee has a right to more than three months' notice at the time when the employment relationship is broken off without good cause by the employer, the amount of the compensation shall be fixed in accordance with the general rules of law. However, the employee shall, as a minimum, have a right to an amount of compensation corresponding to his salary up to the date of termination of the employment relationship with three months' notice in accordance with section 2 of this Act.

(3) If the salaried employee is engaged for a fixed term of three months or less, rules corresponding to those laid down in subsection (1) shall apply. If the employee has been engaged for a fixed term exceeding three months and the employer without good cause refuses to accept the services of the employee or dismisses him at a time when there is still more than three months to run before the expiry of the agreed period of service, rules corresponding to those laid down in subsection (2) shall apply.

(4) The provisions of this section shall also apply if the salaried employee terminates the employment relationship due to gross default on the part of the employer.

**4.** If a salaried employee fails without good cause to take up his duties or leaves his work, or if the employer terminates the employment relationship due to gross default on the part of the employee, the employer shall be entitled to compensation for any loss incurred by him as a result hereof. In the event of unlawful absence from work or desertion, the employer shall, as a minimum, be entitled to compensation corresponding to half a month's salary, in the absence of special circumstances.

**5.-** (1) If a salaried employee becomes unable to carry out his work due to illness, the resulting absence from work shall be deemed to be lawful absence unless he has contracted the disease intentionally or by gross negligence during the period of employment or if he has fraudulently failed to disclose - at the time when he took over the job - that he was suffering from the disease in question.

(2) However, it may be stipulated by written agreement in the individual employment relationship that the salaried employee may be dismissed with one month's notice for expiry of the employment relationship at the end of a month, if the employee has received his salary during periods of illness for a total period of 120 days during any period of twelve consecutive months. The validity of the notice shall be dependent on it being given immediately on the expiry of the 120 days of illness and while the employee is still ill, but its validity shall not be affected by the fact that the employee has returned to his work after the notice of dismissal has been given.

(3) If the employer provides board and lodging for the employee as part of his salary, the employer shall be required to provide for the necessary care of the employee during periods of illness, as long as the employee stays in the house of the employer.

(4) In the case of illness lasting for more than 14 days, the employer shall be entitled, without expense to the salaried employee, to request further information as to the duration of the employee's illness from the attending medical practitioner or from a specialist chosen by the employee. If the employee fails to comply with this requirement without good cause, the employer shall be entitled to terminate the employment relationship without notice.

**6.-** (1) The fact that a salaried employee is called up for national service (whether civil or military) shall not entitle the employer to dismiss the employee; the employment relationship may *only* be terminated by giving notice under the provisions of section (2) of this Act, and the employee shall be entitled to receive his salary in accordance with the provisions of subsection (2) of this section. However, the employee shall be required to notify the employer as soon as he has been informed of the date on which he is to report for duty, but at earliest so long time before the reporting date that the employee might have given notice of termination of the relationship under the rules laid down in section 2 (6) of this Act for expiry at the end of the month preceding the month during which he is to report for duty. Failure to do so shall entitle the employer to terminate the contract without notice with effect from the reporting date the first time the employee is called up and, in the case of subsequent periods of national service, to claim compensation for any loss caused by the failure to notify him.

(2) A salaried employee shall not be entitled to receive any salary during the first period of national service, but the employer shall, in the event of any subsequent periods of national service, be required to pay the salary of the employee for the month in which he is called up and for the following month.

(3) After a new call-up for military service the salaried employee shall be entitled to reinstatement in his post with the same seniority. If the employee wishes to avail himself of this right, he shall inform the employer hereof when notifying him about his call-up, cf. subsection (1), and in that case he shall be under a duty to return to his post on discharge.

**7.-** (1) With a view to the employer's organisation of the work a female salaried employee shall, not later than three months before the expected date of her confinement, inform her employer of the expected date for the start of her maternity leave. However, the maternity leave shall be considered to have started, either if the salaried employee is incapable of working due to the pregnancy 4 weeks before the expected date of confinement for the reasons mentioned in section 12 (2) and (3) (i)-(ii) of the Act on benefits in connection with sickness or maternity or has at this or later become incapable of working and if the incapacity for work continues until the confinement.

(2) The salaried employee shall be entitled to half of her salary during absence from work due to pregnancy and maternity from the start of the maternity leave, cf. subsection (1) until 14 weeks after the confinement.

(3) The salaried employee shall be entitled to full salary, if she becomes incapable of working due to pregnancy for the reasons mentioned in section 12 (2) and (3) (i)-(ii) of the Act on benefits in connection with sickness and maternity during the period from the start of the pregnancy, cf. subsection 1. Section 5 (4) shall be correspondingly applicable.

(4) If an employer dismisses a salaried employee before the start of the maternity leave or during the period mentioned in subsection (2), she shall be entitled to full salary during the period of notice. If the salaried employee is dismissed during the period mentioned in subsection (2), she shall be entitled to full salary from the start of the maternity leave.

**8.** In the case of the death of a salaried employee during the term of the employment period, the surviving spouse or children under 18 years of age whom the employee was liable to maintain shall be entitled to receive one, two or three months' salary if the employee had at the time of the death been employed in the enterprise for respectively one, two or three years.

**9.-** (1) Where the work of a salaried employee in the service of the employer entails expenses for travelling, costs of subsistence away from the home etc. the employee shall be entitled to payment of all necessary expenses by the employer and the latter shall be required to give the employee an appropriate advance for the payment of such expenses. This shall apply also if it has been agreed that such expenses are to be paid out of the agreed salary or commission, but the sales effected are insufficient to cover the normal costs.

(2) Advances of commission paid to a salaried employee may only be recovered by the employer from salary due to the employee or earned commission and may not be recovered as ordinary debts.

(3) The payments and allowances mentioned in sections 2 b, 3, 5, 6, 7 and 8 of this Act shall in respect of salaried employees paid on a commission basis be calculated on the basis of the sums which the employee could presumably have earned by way of commission if he had not been prevented from performing his work activities during the periods in question.

**10.-** (1) Salaried employees shall have the right to organise for the protection of their interests and to give their organisation information about their own pay and working conditions.

(2) Any group of staff shall - irrespective of its number - be entitled to demand, through their organisation, negotiations with the management of the enterprise on pay and working conditions.

(3) It shall be the duty of the employer to ensure that records of such negotiations are drawn up and signed by both parties; a copy hereof shall be handed over to the employer as well as the salaried employees.

(4) If no agreement can be reached between the parties in the negotiations or if one of the parties refuses to take part in the negotiations, either party shall be entitled to request that the negotiations are to be continued with the assistance of a conciliator in accordance with rules laid down in sections 11 to 13 of this Act.

**11. -** (1) The conciliator mentioned in section 10 of this Act shall be appointed for each specific case, in Copenhagen and Frederiksberg by the Industrial Court and in the rest of the country by the prefect of the county in which the employer's enterprise has its registered office.

(2) Application for the appointment of a conciliator shall be made in writing and be accompanied by the records mentioned in section 10 (3) of this Act, as well as a brief statement of the facts of the case. However, in cases where conciliation is requested because one of the parties has refused to negotiate, only a brief statement of the facts of the case shall be enclosed.

**12. -** (1) Not later than five days after his appointment, the conciliator shall summon the parties for negotiations and fix the time and place for the meeting.

(2) In the negotiations taking place under his chairmanship the conciliator shall try to reach agreement between the parties. If no agreement can be reached, the conciliator shall submit a report on the negotiations to the authority which appointed him. A certified copy of the report shall be communicated to the parties at the same time.

**13.** Failure to keep the records of the proceedings mentioned in section 10 (3) of this Act and failure to appear before the conciliator shall be sanctioned by a fine which shall accrue to the public treasury.

**14. -** (1) The conciliator shall receive a fee which shall be fixed by the Minister of Labour.

(2) Expenses in connection with the conciliation procedure shall be advanced from public funds, but shall be shared equally by the parties and may be recovered by the levying of execution.

**15.** A salaried employee shall have the right to perform duties outside the service without the employer's consent, provided that such duties can be performed without inconvenience to the enterprise.

**16.** After a salaried employee has given or received a notice of termination of the employment relationship the employer shall, without reduction in the salary, grant him the necessary absence from work for the purpose of finding new employment. In this connection, the employee shall pay due regard to any wish of the employer that the job seeking activities should take place at such times as are most convenient for the operation of the enterprise.

**17. -** (1) A salaried employee shall at any time be entitled to demand from his employer a certificate in writing indicating the duration of his service, the type of work functions mainly performed by the employee, the amount of his salary and - in the case of dismissal - if he so requests, the reason for dismissal.

(2) Failure to comply with this provision shall be sanctioned by a fine which shall accrue to the public treasury.

**17 a.** If a salaried employee who - by agreement or usage - is partly remunerated in the form of a share of profits, bonus, or similar payments resigns from his post during the currency of a financial year, he shall be entitled to a *pro rata* share, having regard to the length of his service during the financial year of the payment he would have received if he had been employed in the enterprise at the end of the financial year, or at the time when the payments are made.

**18. - (1)** If a salaried employee has - for reasons of competition - committed himself not to carry on a trade or other business of a specified type, nor to accept employment in any such trade or business, the provisions of sections 36 and 38 of the Danish Contracts' Act shall apply. The commitment mentioned in the first clause of this section will only be valid if it is made by an employee holding a post of special responsibility or who has concluded an agreement with his employer on the right to use an invention made by the employee. Such a commitment will only be valid if the salaried employee receives compensation for the period during which the commitment is in force and only if a written contract has been made concerning the commitment and the right to compensation. The compensation per month shall, as a minimum, correspond to 50 per cent of the salary at the date of termination of the employment relationship. The compensation for the first three months shall be paid as a lump sum at the date of resignation and subsequently each month during the remaining period during which the commitment is in force. If the salaried employee is receiving salary during a period of notice after the actual date of resignation, the resignation shall be considered to run from the expiry of the period of notice. The right to compensation will lapse if the employer has summarily dismissed the salaried employee with good cause.

(2) An employer may terminate an agreement of the type mentioned in subsection (1). This may take place by giving 1 month's notice for expiry at the end of a month. However, the salaried employee shall be entitled to a lump sum as mentioned in clause 5 of subsection (1) in connection with his resignation provided that the resignation takes place within 6 months after the employer has given notice of termination and the resignation is due to circumstances under which the employer would have been justified in relying on the agreement.

(3) If the salaried employee obtains other appropriate work, the salary from such work may be set off in his claim for compensation under subsection (1) for the period after the start of this employment relationship. However, this shall not apply to the lump sum referred to in clause 5 of subsection (1) and clause 3 of subsection (2). Appropriate work shall be taken to mean work within the occupational field of the salaried employee for which he has been trained or in which he has been working.

(4) If the salaried employee has been employed for 3 months or less with the employer, an agreement according to subsection (1) may not be invoked and no compensation will be payable under subsection (1). If the salaried employee has been employed for more than 3 months but less than 6 months with the employer, the agreement may not be invoked for a period exceeding 6 months after the resignation.

(5) Clauses 3-7 of subsection 1 and sections 2 - 4 shall not apply if rules have been laid down by collective agreement concluded on 15 June or later concerning the content of and conditions for conclusion of the agreements mentioned in subsection (1).

**18.a (1)** A commitment on the part of a salaried employee not to be employed by or to have any direct or indirect contact with the customers of his former employer or other business connections after his resignation may only be invoked if there has been a commercial relation with the customer concerned, etc. within the past 18 months before the date of the notice of termination. Fur-

thermore, this commitment shall only be valid in relation to customers, etc. with whom the salaried employee has had personal business contact in the service of his former employer and in relation to other customers, etc. who have been included under the commitment by the employer by separate notice in writing prior to the notice of termination of the employment relationship. Section 36 of the Contracts Act shall also be applicable.

(2) A commitment made under subsection (1) will only be valid if the salaried employee receives compensation for the period during which the commitment is in force and only if a written contract has been made concerning the commitment and the right to compensation. The compensation per month shall, as a minimum, correspond to 50 per cent of the salary at the date of termination of the employment relationship. The compensation for the first three months shall be paid as a lump sum at the date of resignation and subsequently each month during the remaining period during which the commitment is in force. If the salaried employee receives compensation under section 18, the right to compensation under this provision will lapse. If the salaried employee is receiving salary during a period of notice after the actual date of resignation, the resignation shall be considered to run from the expiry of the period of notice. The right to compensation will lapse if the employer has summarily dismissed the salaried employee with good cause.

(3) If the salaried employee obtains other appropriate work, the salary from such work may be set off in his claim for compensation under subsection (2) for the period after the start of this employment relationship.

(4) If the salaried employee has been employed for 3 months or less with the employer, an agreement according to subsection (1) may not be invoked and no compensation will be payable under subsection (2). If the salaried employee has been employed for more than 3 months but less than 6 months with the employer, the agreement may not be invoked for a period exceeding 6 months after the resignation.

(5) An employer may terminate an agreement of the type mentioned in subsection (2) by giving 1 month's notice for expiry at the end of the month.

(6) Subsections (1) - (5) shall not apply if rules have been laid down by collective agreement concluded on 15 June 1999 or later concerning the content of and conditions for conclusion of the agreements mentioned in subsection (1).

**19. -** (1) It shall be prohibited to indicate in an advertisement that candidates who are not liable to perform national military service are wanted or preferred, or that the person seeking employment should not be liable to perform military service.

(2) It shall be prohibited to indicate in an advertisement that engagement is conditional upon contribution of capital or that preference will be given to an applicant who is able to make such a contribution.

(3) If an enterprise advertises for employees without stating the name and address of the enterprise, the advertisement shall clearly indicate what training and other qualifications the applicants must possess, as well as the minimum salary for the work in question.

(4) Where a cash deposit is required before the employee takes up his duties, the name and address of the enterprise must be stated in the advertisement.

(5) Failure to comply with these provisions shall be sanctioned by a fine which shall accrue to the public treasury.

**20. -** (1) Where a salaried employee is required to raise a sum of money or other assets by way of security, the said sum or assets shall be deposited with a financial institution and may be withdrawn only with the signatures of the employer and the employee.

(2) Failure to comply with this provision shall be sanctioned by a fine which shall accrue to the public treasury.

**21. -** (1) It shall not be possible to deviate from the provisions of this Act by agreement between the parties to the prejudice of the salaried employee, cf., however, section 8 (5) and section 18 (6).

(2) The Minister of Labour may lay down rules to the effect that deviation may take place from the provisions laid down in sections 2, 5 and 7 (2) of this Act if required in the best interests of the employee.

**22. -** (1) This Act, which shall not extend to the Faeroe Islands, shall come into force immediately (transitional provisions omitted).

(2) Act No. 168 of 13 April 1938 on the Legal Relationship between Employers and Salaried Employees in private enterprises shall be abolished with effect from the date of commencement of this Act.

(3) This Act may by Royal Order be given effect in Greenland subject to such modifications as are deemed appropriate having regard to the special conditions in Greenland.

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Section 2 of Act No. 77 of 20 March 1964, amending the Employers' and Salaried Employees' (Legal Relationship) Act, provides as follows:

2. - (1) This Act shall come into operation on 1 April 1964.

(2) The provision laid down in section 1 (v) shall not apply to any advance of commission granted before the commencement of the Act.

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Section 2 of Act No. 224 of 19 May 1971 amending the Employers' and Salaried Employees' (Legal Relationship) Act, provides as follows:

This Act shall come into operation on 1 July 1977

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Act No. 313 of 10 June 1976, amending various enactments operating with age limits of 20 years, etc. contains the following provisions concerning the commencement of the Act:

14. This Act shall come into operation on 1 November 1976.

15. This Act shall not extend to the Faeroe Islands and Greenland. The amendments in sections 1 to 4, 6, 8 and 10 may by Royal Order be given effect in the Faeroe Islands and the amendments in sections 4 to 11 may by Royal Order be given effect in Greenland.

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Act No. 162 of 12 April 1978 amending various enactments concerning equal treatment of men and women with regard to access to employment, etc. contains the following provisions concerning the commencement of the Act.

5. This Act shall come into operation on 1 July 1978.

6. This Act shall not extend to the Faeroe Islands and Greenland. The amendments in sections 1,3 and 4 may by Royal Order be given effect in Greenland, subject to such modifications as are deemed appropriate having regard to the special conditions in Greenland.

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Act No. 287 of 24 April 1996 amending the Employers' and Salaried Employees' (Legal Relationship Act) (Severance Allowance) contains the following provisions on the commencement of the Act:

2. This Act shall come into operation on 1 July 1996.

3. This Act shall not extend to the Faeroe Islands and Greenland.

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Act No. 340 of 2 June 1999 amending the Employers' and Salaried Employees' (Legal Relationship) Act (full salary to pregnant salaried employees during sickness, agreements in restraint of competition and trade) contains the following provisions on the commencement of the Act:

**2. -** (1) Section 1 (i) shall come into operation on the day following its publication in the Danish Law Gazette.<sup>1</sup>

(2) Section 1 (ii) and (iv) shall come into operation on 15 June and shall have binding effect in relation to all commitments entered into on 15 June 1999 or later.

**3.** Sections 18 and 18. a of the Employers' and Salaried Employees' (Legal Relationship) Act as drafted in section 1 (b) and (c) shall be taken up for revision on 1 June 2001, at the latest.

**4.** This Act shall not extend to the Faeroe Islands and Greenland.

Ministry of Labour, 20 July 1999

Ove Hygum /E. Edelberg
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<sup>1</sup> Act No. 340 of 2 June 1999 was published in the Danish Law Gazette on 3 June 1999.