

Director's Contract

COMPREHENSIVE INFORMATION ABOUT YOUR POSITION AS A DIRECTOR.

WHO SHALL WRITE A DIRECTOR'S CONTRACT?

Before you begin a new employment position, it is important that you have some form of employment contract. This applies to everybody. They are most often simple agreements that specify when you shall begin, the salary you shall receive and that your employment position is otherwise covered by the agreement that applies to all salaried employees at the company.

For directing employment positions there are often reasons for writing a personal director's contract. This is even more important for those who work at a company without a collective agreement or those who are not covered by the existing collective agreement. This applies to directors who hold direct managerial positions including CEO, deputy CEO and some personnel directors. A director's contract is an individual document and can have extremely varied content depending on personal requirements and how the company normally manages these issues. It can also vary in scope. If the workplace has a collective agreement, a director may choose to regulate certain parts in an individual contract and refer to the collective agreement otherwise. If you are covered by the collective agreement, it always provides the basis of your employment terms and conditions. You may agree upon improved terms and conditions in an individual contract, but never worse.

WHEN THE LAW DOES NOT APPLY

Those who are directors and hold direct managerial positions or who are members of the employer's family are not covered by the Employment Protection Act (LAS). It then becomes even more important to regulate issues relating to the cessation of the employment position.

EMPLOYMENT FORMS AND DUTIES

It is common that the employment position applies until further notice with an agreed upon notice period from both parties as well as an agreement regarding severance pay. (You can read more about severance pay on page 3.) It is not unusual within municipal and state operations that an employment contract lasts for a specific length of time, for example, 6 years. This can also be the case in private companies. In these cases, it is important to regulate what the conditions are for renewing the contract, and what applies if the contract is terminated prematurely. The employment contract shall specify the directors' areas of responsibility and the main duties are stated. It is also preferable to stipulate what applies if the company changes location or if longer term work abroad becomes necessary.

THE SALARY IS MORE IMPORTANT THAN THE BENEFITS

It is common that directors above a certain level receive fringe benefits in addition to a fixed monthly salary. The variable salary component may take the form of different results-based remuneration such as profit sharing, bonuses etc. Furthermore, other forms of remuneration that are not purely fringe benefits are becoming more common, such as convertible shares and options. Remuneration in addition to the fixed monthly salary should be regulated in a similar way so that no disputes regarding interpretation can arise in the future. It is also important that it is possible to make an estimation of the value of these remunerations in order to establish a reasonable level for the fixed salary component. If it is difficult to make this estimation, its value as a proportion of the total salary should be limited so as not to jeopardise income security. Any discussion regarding options and convertibles should be separate to the salary discussion as these are associated with risks and have limited connection to the work contribution. It is also important to ensure that all salary components constitute the basis of pension and other social benefits, that is, that the company reports all salary components to the relevant authorities.

It is essential that the expectations which the employer has of you regarding your availability for work are discussed when the salary is set. It is not viable for recreation time and working hours to merge entirely with one another and for you to feel that as a director you should be at the company's disposal 24 hours a day.

With regard to salary increases, there are a few different models to choose from. The most simple is to follow the salary agreements that have been ratified within the industry. Another method of protecting against inflation is to regulate the salary with consideration of the consumer price index or base price amount.

Holidays

Directors usually have a greater number of holidays than the 25 days that the law prescribes. Otherwise, issues regarding holidays are regulated sufficiently by law and collective agreements.

Sick pay

Sick pay is regulated to a large enough extent by law and collective agreements. But if the salary consists partly or completely of variable salary components, it is recommendable that a separate agreement is concluded with the employer concerning the amount of sick pay, since the calculation of sick pay can be quite complicated.

Pension and insurance

the "ITP - Occupational pension insurance - plan" should be followed. There are alternate or salaried employees at the higher salary levels. Calculate carefully what is most beneficial for you. The possibility exists, for example, of agreeing with the employer upon a lower pension age than 65, within the ITP plan. Make sure that the employer takes out occupational pension scheme and insurance for work injury which corresponds to that which is included in the collective agreement.

Company car and other benefits

A common benefit for more senior salaried employees is a company car, that is, the company covers all expenses related to the car. Other benefits that may be relevant and that should be regulated in the employment contract include rent-free accommodation, company phone, free newspapers and free medical care. However, the tax consequences of these other benefits should be investigated with the local tax authority in order to avoid any unpleasant surprises.

Thank you and goodbye

Many of Unionen's directors work for smaller companies and organisations. In our experience, when confidence no longer exists between you as a director and the board of directors, owners or other directors, the best solution is for the collaboration to be terminated as soon as possible. The possibilities for transfer are extremely limited in the majority of cases.

In order for you to have the opportunity to find new employment without economic loss for a reasonable length of time, the employment contract shall contain rules concerning severance pay. One method is for an agreement to be reached regarding a fixed sum to be paid when the employment position con-

cludes, which is adjusted to indexes annually. Another method is for the salary and an average of other benefits to be paid for an agreed upon length of time after the employment position has terminated. A reasonable level is that severance pay should entail an unchanged income level for 12 months after the employment position has terminated.

COMPETITION CLAUSE IN THE CONTRACT

It is not unusual for employers to want to have a competition clause written into the employment contract. This entails, among other things, that for a certain length of time after the termination of the employment position, a director commits to not accepting employment with a competing company or competing through the launching of a private company. These competition clauses may possess different content and vary in scope. What is going to happen after the termination of an employment position is not generally considered when a new employment position is commenced. We would, however, encourage great caution with regard to signing a competition clause, as this can greatly limit the sources of income after the termination of an employment position. It is best to contact Unionen before the employment contract is signed.

ARBITRATION CLAUSE OR COURT

Employers often want prospective disputes to be resolved through arbitration proceedings instead of through the court ("award") and that this shall be regulated in the employment contract. The costs for arbitration proceedings can be considerably higher than a court hearing, which is because in the former case, the parties must also "remunerate" the arbitration tribunal in addition to covering the usual legal costs. The costs for the employee can amount to several hundred thousand Swedish kronor. Outcomes from the arbitration tribunals cannot be appealed. The normal practice should therefore be for disputes between employees and employers to be settled by a regular court. If an arbitration clause is accepted anyway, it should be ensured that the employee will cover all costs for arbitration proceedings, regardless of the outcome.

MORE INFORMATION

If you have questions about a director position or would like assistance with reviewing your contract, you can contact the ombudsman for directors in your region. You can find contact details at unionen.se/chef, or call Unionen's Directors Line on 0771-344 344.