

Employees Switzerland



What I've always wanted to know about employment law but never dared asking

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- **Loyalty towards the employer**
 - How far does my duty of loyalty extend?

- **References and interim reports**
 - How to decode them...

- **Prohibition of competition**
 - A mighty dragon or a lot of hot air?

- **Notice periods**
 - Can the end of my employment relationship be as long as the end of The Lord of the Rings?

- **The new Collective Employment Agreement**

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Key facts on your duty of loyalty



- **Intent and purpose: Achieving and maintaining successful work**

- **First and foremost a duty of omission**
 - Don't work for rival businesses
 - Don't disclose manufacturing or trade secrets...

- **Also active duties**
 - Obligation to perform overtime
 - Obligation to inform
 - Careful operation of machinery...

Employer's right of instruction



- **Not a right, but a duty**

- **Content: performance of work (goals/means) and conduct of employees**

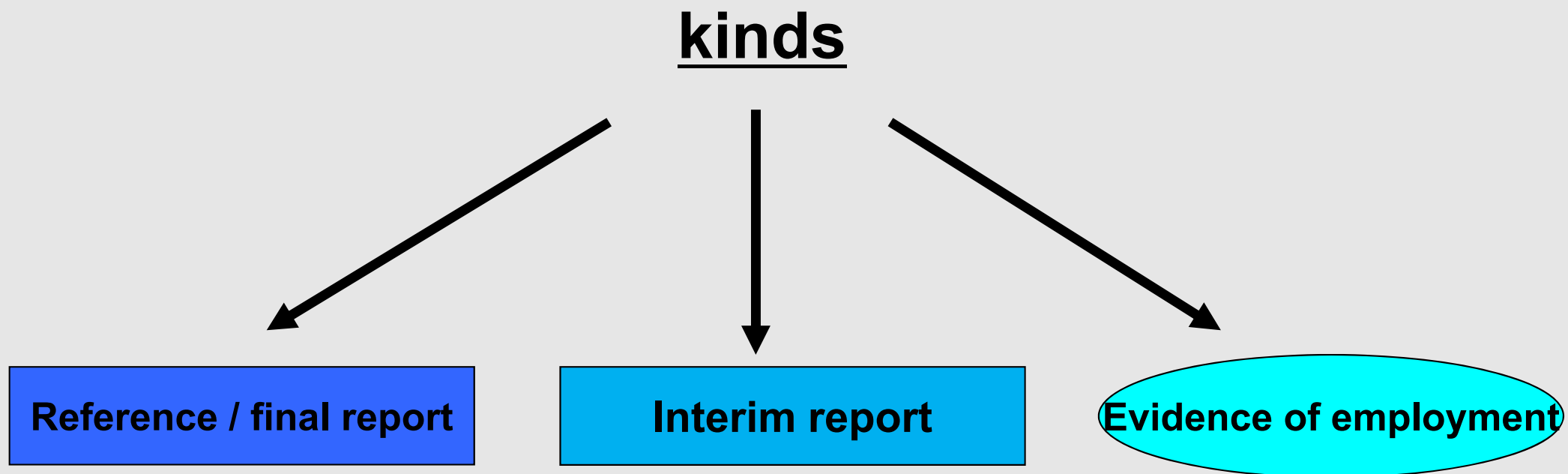
- **Limits:**
 - Illegal, improper or unethical actions
 - Adherence to contract
 - Employees' personal rights
 - Prohibition of arbitrary action and principle of equal treatment

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Different kinds of references

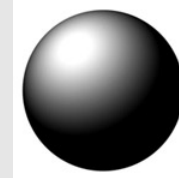


References - Principles

Truthfulness



Completeness



Clarity



Benevolence



Reference – standard elements



- I. Personal details
- II. Extensive job description, including hierarchical position
- III. Date of entry and leaving (**Initiative for termination**)
- IV. Promotions and transfers with date
- V. Qualification of performance
- VI. Qualification of conduct towards supervisors, colleagues and customers
- VII. Closing formula (thanks, good wishes)
- VIII. Date, location
- IX. Signatures

What does not belong in a reference

Anything that contradicts the principles of truthfulness, completeness, clarity and benevolence

→ „He was up to the task“



The secret codes – contradicting the principle of clarity



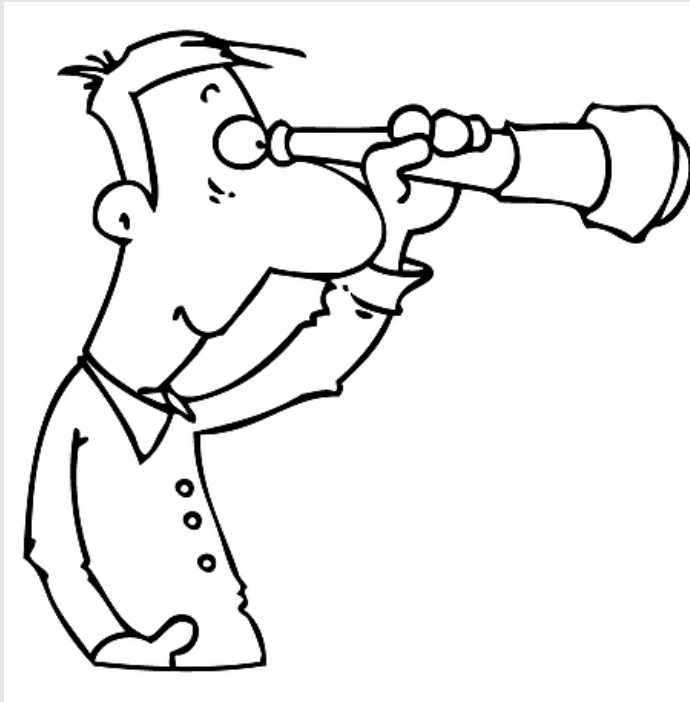
- „This reference is not coded" is futile
- The standards for references have to be met nevertheless.
- For some HRs this usually means that they believe they can give a little less favorable assessments.
- The purpose of «codes» is to articulate negative aspects in seemingly neutral or even positive terms.

Frequently used codes for performance

Text in the reference	Interpretation
No remarks	Performance was generally speaking insufficient.
He tried to master his responsibilities as good as...	His performance was insufficient, despite his effort.
She always tried to manage her tasks in a satisfying way.	Skills are minimal, but was motivated and had will to perform.
He managed the tasks directed to him with great diligence.	He made efforts to manage his tasks properly, but wasn't very proficient.
He was eager to manage the tasks directed to him in the best possible way.	His performance was insufficient, even though he tried to do better.
She employed all of her skills.	Her performance was bad.
She showed understanding for her work.	No motivation, she was lazy.
We appreciated his eagerness.	He was a striver without being good.
She was always eager to give good inputs.	She was a know-it-all, without benefit for the employer.

The checklist I

On first sight



Omissions



The checklist II

Special responsibilities



Personal development



If nobody complains...

References are suspect to the principle of party disposition, which means that if you refrain from complaining, it is interpreted as consent.



Recommendation for action



Complaint and modification

Ask for modification within 5 years after leaving
(some say 10 years)

Assumption of approval (don't make statements that prematurely raise the notion of approval)

→ If you accept your reference unconditionally, don't say anything

→ If you explicitly express your gratitude for the reference in writing while referring to the content

You risk that they assume your approval

The Zurich labor court rule of thumb



Golden B

Burden of proof (onus) in case of dispute

The employee is generally entitled to a satisfying reference, but....

- The employee has to prove why they should receive a reference that is better than the norm
- The employer has to justify/provide proof if the reference is worse than the norm

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Important conditions (selection)



- **Written, signed agreement**

- **Special position within the company:**
 - Knowledge of clientele or manufacturing and/or trade secrets
 - The use of which might cause substantial harm to the employer

- **Restrictions with regard to place, time and scope**

- **Balancing of interests**

Extinction of prohibition of competition

4. Extinction

Art. 340c

¹ The prohibition of competition is extinguished once the employer demonstrably no longer has a substantial interest in its continuation.

² The prohibition is likewise extinguished if the employer terminates the employment relationship without the employee having given him any good cause to do so, or if the employee terminates it for good cause attributable to the employer.

Consequences of a violation



Depending on what was agreed on:

- **Damages**
- **Contractual penalty**
- **Obligation to cease and desist**
 - (requires balancing of interests)

« *Predictable is bad* »
(Donald Trump)

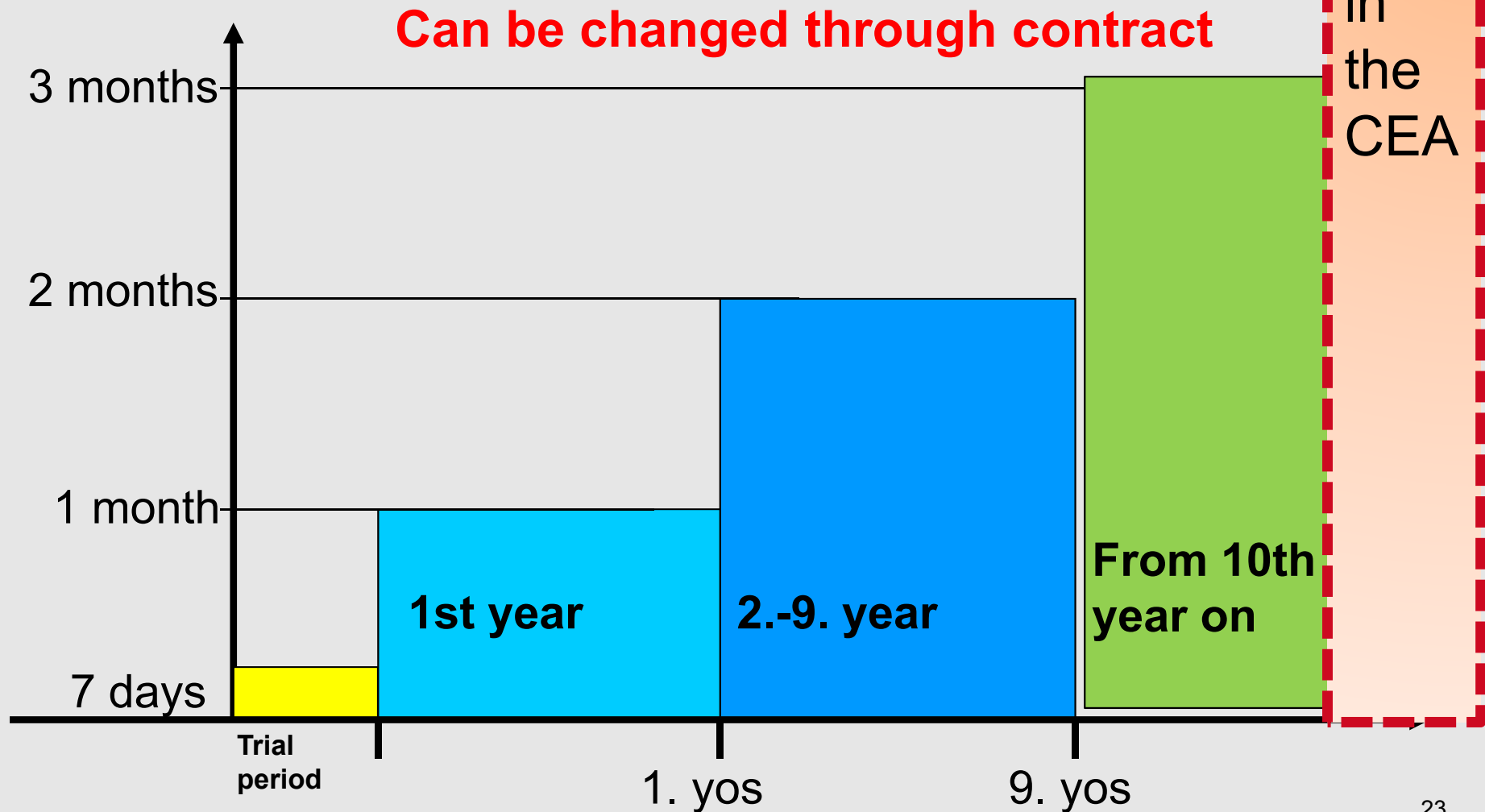
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Ordinary termination – notice periods

Notice periods according to the Code of Obligations



Terminations – vesting periods



Vesting periods (Art. 336c Code of Obligations)




Art. 336c

Termination at an inopportune juncture

After the probation period has expired, the employer may not terminate the employment relationship:

- a. while the other party is performing **Swiss compulsory military or civil defence service** or Swiss alternative civilian service or, where such service **lasts for more than eleven days, during the four weeks preceding or following it;**
- b. while the employee through no fault of his own is **partially or entirely prevented from working by illness or accident** for up to 30 days in the first year of service, 90 days in the second to fifth years of service and 180 days in the sixth and subsequent years of service;
- c. **during the pregnancy** of an employee and the sixteen weeks following birth;
- d. while the employee is participating with the employer's consent in an overseas **aid project** ordered by the competent federal authority.

Termination with immediate effect (Art. 337 CO)



Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause.

In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.

Important:

The employer has to react within 3 to 5 days. After that, a termination with immediate effect is no longer possible.

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Collective employment agreement pro memoria



	Legal minimum	CEA
Vacation	20 days	25 / 27 / 30 days
Weekly hours	45 hours	40 hours
Overtime hours	ev. = 0 compensation	Optional compensation / + 25%
Minimum wage *)	Ev. < Fr. 2'000.-	➤ 13 x 3'850.— ➤ 13 x 4'150.--
Notice period	1. Jahr → 1 month 2. Jahr → 2 months 10. Jahr → 3 months	55 y. + 10 y. of service → 1 month extra
maternity leave paternity leave	14 weeks 0	16 weeks 5 days

New in the CEA



- Minimum wages shall rise according to the official index for costs of living. Region C grows Fr. 30.– annually.
- Annual professional evaluation
- Elderly employees shall get protection
- «**Passarelle**», entitlement for a second professional diploma
- Art. 57, temporary rise of the weekly hours, new regulation

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