

NJORD Estonia offers advice: How to distinguish an employment contract from other service contracts?

Since a person is granted more rights and better protection when working under an employment contract, disputes over whether the entered contract is an employment contract, or some other type of service contract (for example a contract for services or an authorization agreement) are very common.

The Employment Contracts Act (hereinafter ECA) § 1 subsection 1 enacts the most important characteristics on how to determine whether the contract can be classified as an employment contract: on the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays the employee remuneration for such work. To determine, whether the contract can be classified as an employment contract or not, we must, therefore, evaluate the extent of employee's subordination. For example, when the person is significantly independent in choosing the suitable manner, time and place for performing the work tasks, that person is not working under the employment contract and the provisions of the Employment Contracts Act will not apply.

The relevant case law confirms that the employment contract between the employer and employee can still be concluded, even when a third person gave the employee some of the work tasks and paid his or her salary. The court affirmed the employment contract had been concluded, because the employee was still, in a significant amount, subject to the management and control of the employer.

Since distinguishing an employment contract from other service contracts can be complicated, the ECA § 1 subsection 2 states, that if a person does work for another person which, under the circumstances, can be expected to be done only for remuneration, it is presumed to be an employment contract. That provision should motivate employers not to enter into contracts that are obscure, as in case of any doubt, such contracts will be considered as employment contracts, unless proven otherwise.

Need professional help regarding contracts? Contact NJORD's lawyers Katrin Sarap and Triinu Hiob.



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