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Federal Law on Registered Partnership Between Persons of the Same Gender Changes Benefits Requirements

By Dmitri A. Pentsov, Vibeke Jaggi and Jérôme de Montmollin, International Employment Practice Group, Froriep Renggli, Geneva (dpentsov@froriep.ch, vjaggi@froriep.ch and jdemontmollin@froriep.ch)

A Federal Law on Registered Partnership between persons of the same gender includes changes in employee benefits requirements to extend to such partners benefits that previously were accorded only to spouses and dependents. The law (*Loi sur le partenariat; LPart*¹), dated June 18, 2004 came into effect January 1, 2007,² and regulates various aspects of such partnerships, including the conditions and procedures for their formation and cancellation, the rights and obligations of the partners, their property relations, and termination of partnerships. Although Swiss law does not allow for marriage between persons of the same gender, these changes may be viewed as a reflection of the general trend in various countries to put registered partnerships on the same legal footing as traditional marriages.

The new law introduces a number of changes into existing Swiss Law, notably the the Federal Labour Law of March 13, 1964 (LTr)³ and the Swiss Code of Obligations (CO).⁴ Changes in the employment arena include the following.

Where an employee has a registered partner, the use of the employee's rights to a future pension (where the contribution is being paid equally by employer and employee) as a pledge for the purpose of acquiring housing for his or her own needs, as well as the use of the respective funds for such acquisition, is no longer possible without the written consent of the registered partner. Previously such consent only had to be obtained from a spouse.⁵

Following an employee's death, employers have a duty to pay the deceased employee's salary for an additional month (if the employment relations continued for more than five years, for two additional months) to a surviving registered partner of the deceased employee. Previously the law only covered a surviving spouse, minor children, or other persons with respect to whom the deceased had a duty of support.⁶

Under Article 12 of the new law, registered partners have a legal obligation of mutual assistance and support. As a result, the duty of employers to pay salary for a certain time where an employee is unable to perform work without his or her fault for reasons inherent in his or her personality such as sickness, a requirement of the CO,⁷ is now extended to cover

those cases when one of the partners is absent from work in order to care for his or her sick partner.

Under existing law⁸ employers are required to grant time off to their employees as customary at the respective enterprise, branch of economy, or place. In view of a generally recognized obligation of employers to grant such time off in case of family events (marriage, death of a spouse or close relative),⁹ employers now have the same obligation in case of similar family events involving registered partners of their employees.

¹ <http://www.admin.ch/ch/f/as/2005/5685.pdf>

² <http://www.admin.ch/ch/f/rs/2/211.231.fr.pdf>

³ <http://www.admin.ch/ch/f/rs/8/822.11.fr.pdf>

⁴ <http://www.admin.ch/ch/f/rs/2/220.fr.pdf>

⁵ Articles 331d and 331e of the CO.

⁶ Article 338, section 2 of the CO

⁷ Article 324a, section 1 of the CO.

⁸ Article 329, section 3 of the CO.

⁹ *See, e.g.*, Commentaire Romand: Code des obligations I, at 1733-1734 (Luc Thévenoz & Franz Werro, eds., 2003).

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