

CHAPTER 60-2

OBLIGATIONS OF EMPLOYER AND EMPLOYEE

- [60-2-1](#) Indemnification of employee by employer--Exceptions.
 - [60-2-2](#) Losses for which employer not required to indemnify employee.
 - [60-2-3](#) Employer to indemnify for his own negligence.
 - [60-2-4](#) Service with ordinary care and diligence.
 - [60-2-5](#) Duties of employee for his own benefit.
 - [60-2-6](#) Contract for service limited to two years.
 - [60-2-7](#) Obedience to employer required--Exceptions.
 - [60-2-8](#) Duty of employee to conform to usage--Exception.
 - [60-2-9](#) Degree of skill required of employee.
 - [60-2-10](#) Products of employment belong to employer--Exception.
 - [60-2-11](#) Duty of employee to account.
 - [60-2-12](#) Employee not bound to deliver without demand.
 - [60-2-13](#) Preference to employer's business.
 - [60-2-14](#) Preference between employers according to urgency.
 - [60-2-15](#) Responsibility of employee for substitute.
 - [60-2-16](#) Responsibility to employer for misconduct.
 - [60-2-17](#) Duty of surviving employee.
 - [60-2-18](#) Day's labor defined.
 - [60-2-19](#) Duty of employee to deliver things received.
 - [60-2-20](#) Use of genetic information in employment practices prohibited--Exceptions--Action for damages.
 - [60-2-21](#) "Genetic information" defined.
-

[60-2-1](#). Indemnification of employee by employer--Exceptions.

An employer shall indemnify an employee, except as provided in § [60-2-2](#) for all that the employee necessarily expends or loses in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the direction of the employer, even though unlawful, unless the employee at the time of obeying such directions believed such directions to be unlawful.

Source: CivC 1877, § 1129; CL 1887, § 3752; RCivC 1903, § 1448; RC 1919, § 1072; SDC 1939, § 17.0201; SL 2008, ch 276, § 6.

[60-2-2](#). Losses for which employer not required to indemnify employee.

An employer, except as otherwise specially provided, is not bound to indemnify an employee for losses suffered by the employee in consequence of the ordinary risks of the business in which employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the employer has neglected to use ordinary care in the selection of the culpable employee.

Source: CivC 1877, § 1130; CL 1887, § 3753; RCivC 1903, § 1449; RC 1919, § 1073; SDC 1939, § 17.0202; SL 2008, ch 276, § 7.

[60-2-3](#). Employer to indemnify for his own negligence.

An employer shall in all cases indemnify an employee for losses caused by the employer's want of ordinary care.

Source: CivC 1877, § 1131; CL 1887, § 3754; RCivC 1903, § 1450; RC 1919, § 1074; SDC 1939, § 17.0203; SL 2008, ch 276, § 8.

60-2-4. Service with ordinary care and diligence.

Any person who agrees to serve another for a good consideration shall perform the service with ordinary care and diligence so long as employed.

Source: CivC 1877, § 1135; CL 1887, § 3758; RCivC 1903, § 1454; RC 1919, § 1078; SDC 1939, § 17.0303; SL 2008, ch 276, § 9.

60-2-5. Duties of employee for his own benefit.

Any person at the person's own request to do that which is more for the person's advantage than for an employer shall use great care and diligence to protect the interest of the employer.

Source: CivC 1877, § 1136; CL 1887, § 3759; RCivC 1903, § 1455; RC 1919, § 1079; SDC 1939, § 17.0304; SL 2008, ch 276, § 10.

60-2-6. Contract for service limited to two years.

No contract to render personal service may be enforced against the employee beyond the term of two years from the commencement of service under the contract, but if the employee voluntarily continues services under the contract beyond that time, the contract may be referred to as affording a presumptive measure of the consideration.

Source: CivC 1877, § 1137; CL 1887, § 3760; RCivC 1903, § 1456; RC 1919, § 1080; SDC 1939, § 17.0104; SL 2008, ch 276, § 11.

60-2-7. Obedience to employer required--Exceptions.

An employee shall substantially comply with all the directions of the employer concerning the service on which the employee is engaged, even though contrary to the provisions of law on the subject of employer and employee, unless obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency, which according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, and in which the employer cannot with reasonable diligence be consulted, and in which noncompliance is judged by the employee, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases, the employee shall conform as nearly to the directions of the employer as may be reasonably practicable and most for the interest of the employer.

Source: CivC 1877, § 1138; CL 1887, § 3761; RCivC 1903, § 1457; RC 1919, § 1081; SDC 1939, § 17.0305; SL 2008, ch 276, § 12.

60-2-8. Duty of employee to conform to usage--Exception.

An employee shall perform a service in conformity to the usage of the place of performance unless otherwise directed by the employer, or unless it is impracticable, or manifestly injurious to the employer to do so.

Source: CivC 1877, § 1139; CL 1887, § 3762; RCivC 1903, § 1458; RC 1919, § 1082; SDC 1939, § 17.0306; SL 2008, ch 276, § 13.

60-2-9. Degree of skill required of employee.

An employee shall use reasonable skill unless the employer has notice of the employee's want of skill before employing the employee. The employee shall always use all skill that the employee possesses, as far as required, for the service specified.

Source: CivC 1877, §§ 1140, 1141; CL 1887, §§ 3763, 3764; RCivC 1903, §§ 1459, 1460; RC 1919, §§ 1083, 1084; SDC 1939, § 17.0307; SL 2008, ch 276, § 14.

60-2-10. Products of employment belong to employer--Exception.

Anything that an employee acquires by virtue of employment, lawfully or unlawfully, during or after the term of employment belongs to the employer, excepting any compensation due the employee.

Source: CivC 1877, § 1142; CL 1887, § 3765; RCivC 1903, § 1461; RC 1919, § 1085; SDC 1939, § 17.0308; SL 2008, ch 276, § 15.

60-2-11. Duty of employee to account.

An employee shall, on demand, render to the employer just accounts of all the employee's transactions in the course of the employee's service as often as may be reasonable, and shall, without demand, give prompt notice to the employer of everything which the employee receives on account.

Source: CivC 1877, § 1143; CL 1887, § 3766; RCivC 1903, § 1462; RC 1919, § 1086; SDC 1939, § 17.0309; SL 2008, ch 276, § 16.

60-2-12. Employee not bound to deliver without demand.

An employee who receives anything on account of an employer in any capacity other than that of a mere employee, is not bound to deliver it to the employer until demanded, and is not at liberty to send it to the employer from a distance without demand, in any mode involving greater risk than its retention by the employee.

Source: CivC 1877, § 1144; CL 1887, § 3767; RCivC 1903, § 1463; RC 1919, § 1087; SDC 1939, § 17.0310; SL 2008, ch 276, § 17.

60-2-13. Preference to employer's business.

An employee who has any business to transact on the employee's own account, similar to that entrusted to the employee by the employer, shall always give the employer the preference.

Source: CivC 1877, § 1145; CL 1887, § 3768; RCivC 1903, § 1464; RC 1919, § 1088; SDC 1939, § 17.0311; SL 2008, ch 276, § 18.

60-2-14. Preference between employers according to urgency.

If an employee is entrusted with similar affairs by different employers, the employee shall give the different employers preference according to their relative urgency, or other things being equal, according to the order in which the different employers were committed to the employee.

Source: CivC 1877, § 1145; CL 1887, § 3768; RCivC 1903, § 1464; RC 1919, § 1088; SDC 1939, § 17.0311; SL 2008, ch 276, § 19.

60-2-15. Responsibility of employee for substitute.

An employee who is expressly authorized to employ a substitute is liable to the employee's principal only for want of ordinary care in the employee's selection. The substitute is directly responsible to the principal.

Source: CivC 1877, § 1146; CL 1887, § 3769; RCivC 1903, § 1465; RC 1919, § 1089; SDC 1939, § 17.0312; SL 2008, ch 276, § 20.

60-2-16. Responsibility to employer for misconduct.

An employee who is guilty of willful and wanton misconduct is liable to the employer for the damage thereby caused to the employer. The employer is liable to the employee if the service is not gratuitous, for the value of the service only as is properly rendered.

Source: CivC 1877, § 1147; CL 1887, § 3770; RCivC 1903, § 1466; RC 1919, § 1090; SDC 1939, § 17.0313; SL 2008, ch 276, § 21.

60-2-17. Duty of surviving employee.

If service is rendered by two or more persons jointly, and one of them dies, the survivor shall act alone if the service to be rendered is such that the survivor can rightfully perform without the aid of the deceased person, but not otherwise.

Source: CivC 1877, § 1148; CL 1887, § 3771; RCivC 1903, § 1467; RC 1919, § 1091; SDC 1939, § 17.0314; SL 2008, ch 276, § 22.

60-2-18. Day's labor defined.

A day's labor for employees is to the extent as is usual in the business in which they serve not exceeding ten hours in the day unless the employer and employee expressly agree to the contrary.

Source: CivC 1877, § 1161; CL 1887, § 3784; RCivC 1903, § 1480; RC 1919, § 1104; SDC 1939, § 17.0505; SL 1984, ch 332.

60-2-19. Duty of employee to deliver things received.

An employee shall deliver to the employer as soon as with reasonable diligence the employee can find the employer, anything that the employee receives for the employer's account, without demand. However, the employee is not bound, without orders from the employer, to send anything to the employer through another person.

Source: CivC 1877, § 1162; CL 1887, § 3785; RCivC 1903, § 1481; RC 1919, § 1105; SDC 1939, § 17.0506; SL 2008, ch 276, § 23.

60-2-20. Use of genetic information in employment practices prohibited--Exceptions--Action for damages.

It is an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information, as defined in § [60-2-21](#), of an employee or a prospective employee to distinguish between or discriminate against employees or prospective employees or restrict any right or benefit otherwise due or available to an employee or a prospective employee. However, it is not an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information if:

- (1) The employer is a law enforcement agency conducting a criminal investigation; or
- (2) The employer relies on the test results from genetic information obtained by law enforcement through a criminal investigation, the employer legally acquires the test results, the employer keeps the test results confidential except as otherwise required by law, and the employer uses the test results for the limited purpose of taking disciplinary action against the employee based only on the alleged misconduct.

Any employee or prospective employee claiming to be aggrieved by this unlawful employment practice may bring a civil suit for damages in circuit court. The court may award reasonable attorney fees and costs in addition to any judgment awarded to the employee or prospective employee.

Source: SL 2001, ch 290, § 1.

60-2-21. "Genetic information" defined.

For the purposes of § [60-2-20](#), genetic information is information about genes, gene products, and inherited characteristics that may derive from the individual or a family member. This includes information regarding carrier status and information derived from laboratory tests that identify mutations in specific genes or chromosomes, physical medical examinations, family histories, and direct analysis of genes or chromosomes.

Source: SL 2001, ch 290, § 2.