

## **CHAPTER 34-02 OBLIGATIONS OF EMPLOYER AND EMPLOYEE**

### **34-02-01. Employer must indemnify employee for losses and expenses - Exception.**

An employer shall indemnify the employer's employee, except as prescribed in section 34-02-02, for all that the employee necessarily expends or loses in direct consequence of the discharge of the employee's duties as such or of the employee's obedience to the directions of the employer even though such directions were unlawful, unless the employee at the time of obeying such directions believed them to be unlawful. The obligation to indemnify does not include expenses incurred to purchase or rent tools of a trade or any other equipment that is also used by the employee outside the scope of employment.

### **34-02-02. Nonliability of employer for ordinary risks - Negligence of coemployees - Exception.**

Except as otherwise provided by law, an employer is not bound to indemnify the employer's employee for losses suffered by the latter in consequence of the ordinary risks of the business in which the employee is 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.

### **34-02-03. Liability for employer's negligence.**

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

### **34-02-04. Gratuitous employee - Performance and care required.**

One who undertakes to do a service for another without consideration is not bound to perform the same unless it is entrusted to the person at the person's own request, in which case the person shall perform the service fully. If the person commences performance, the person shall use at least slight care and diligence therein. Except as otherwise provided in this section, a gratuitous employee may relinquish the employment at any time.

### **34-02-05. Gratuitous employee under power of attorney.**

A gratuitous employee who accepts a written power of attorney shall act under the power as long as it remains in force or until the employee gives notice to the person's employer that the person will not do so.

### **34-02-06. Employee for reward - Ordinary care and diligence required.**

One who, for a good consideration, agrees to serve another shall perform the service and shall use ordinary care and diligence as long as the person is thus employed.

### **34-02-07. Employee for own benefit - Great care and diligence required.**

One who is employed at the person's own request to do that which is more for the person's own advantage than for that of the person's employer shall use great care and diligence therein to protect the interests of the latter.

### **34-02-08. Employee shall obey instructions of employer - Exceptions.**

An employee shall comply substantially with all of the directions of the employer's employer concerning the service upon which the employee is engaged except:

1. When such compliance is impossible or unlawful;
2. When such compliance would impose new and unreasonable burdens upon the employee; or
3. In case of an emergency which, according to the best information which the employee can obtain, was not contemplated by the employer, in which the employer cannot be consulted with the use of reasonable diligence, and in which the employee, in good faith and with the exercise of reasonable discretion, judges noncompliance with the

employer's instructions to be absolutely necessary for the protection of the employer's interests.

In any case arising under subsection 1, 2, or 3, the employee shall conform as nearly as is reasonably practicable to the directions of the employer.

**34-02-09. Employee to perform service in conformity with usage of place - Exception.**

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

**34-02-10. Skill required by employee.**

An employee is bound to use a reasonable degree of skill unless the person's employer has notice of the employee's want of skill before employing the employee. The employee is bound always to use all the skill the employee possesses so far as the same is required for the service specified.

**34-02-11. Products of employment belong to employer - Exception.**

Everything which an employee acquires by virtue of the employee's employment, whether acquired lawfully or unlawfully or during or after the expiration of the term of the employee's employment, except any compensation which is due the employee from the employee's employer, belongs to the employer.

**34-02-12. Employee shall account to employer - Demand required - Exception.**

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

**34-02-13. Deliveries to employer - Demand required - Restriction.**

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

**34-02-14. Employee to give 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 employee's employer shall give the latter the preference always. If an employee is entrusted with similar affairs by different employers, the employee shall give the affairs preference according to their relative urgency, or other things being equal, according to the order in which they were committed to the employee.

**34-02-15. Substitute employee selected by employee - Liability and responsibility.**

An employee who is authorized expressly 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.

**34-02-16. Liability of employee for culpable negligence - Liability of employer for services.**

An employee who is guilty of a culpable degree of negligence is liable to the person's employer for the damage caused to the latter thereby. Unless the service is gratuitous, the employer is liable to the employee for the value of services properly rendered.

**34-02-17. Surviving employee to perform service - Exception.**

When a service is to be rendered by two or more persons jointly and one of them dies, the survivor shall act alone if the service to be rendered can be performed properly without the aid of the deceased person, but not otherwise.

**34-02-18. Immunity for providing employment reference.**

1. An employer, or an employer's agent, who truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer of the employee is immune from civil liability for the disclosure and the consequences of the disclosure of that information.
2. An employer, or an employer's agent, who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith. Unless lack of good faith is shown, the employer or employer's agent is immune from civil liability for the disclosure and the consequences of providing that information. The presumption of good faith may be rebutted by a preponderance of the evidence that the information disclosed was:
  - a. Knowingly false;
  - b. Disclosed with reckless disregard for the truth;
  - c. Deliberately misleading; or
  - d. Rendered with malicious purpose.
3. The immunity provided by subsection 2 does not apply if the information provided is in violation of a nondisclosure agreement or was otherwise confidential according to applicable law.