CHAPTER SEVEN

LABOUR LAW

Content

INTRODUCTION

Dear management students, in the previous chapters, we have discussed about the definition of law, the Law of Persons and the Law of Contract that have relevancy in your day to day activities and some other laws that could play a pivotal role while functioning your profession as a manager and management related matters like Law of Agency, Law of Traders and Business Organization and Law of Banking, Negotiable Instruments and Insurance. Here in under, we will briefly discuss about labour law. Labour law is essential in order to keep industrial peace to maintain harmony and cooperation for the over-all development of the country, to guarantee workers and employers to form their associations, and to strengthen and define the power and function of regulatory organs in labour related matters. Therefore, in this last chapter, the main points to be discussed are duration of contract of employment, rights and duties of the employer and the employee, grounds for suspension and termination of contract of employment and the remedies available in case of unlawful termination of

contract of employment. For this purpose, proclamation No. 377/2003 and other amendment proclamations will be the target to wrap up the above issues.

Objective

After reading this chapter, you will be able to:

- Analyze how contract of employment is formed;
- Explain the rights and duties of the parties;
- Understand the rules on duration of contract of employment;
- Explain the grounds for suspension and termination of contract of employment;
- Explain effects of termination of contract of employment and
- Calculate the amount of severance pay and compensation in case of unlawful termination

7.1.Definition and Concept of Labour Law

What is labour law? What are the essential elements in a contract of employment?

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Labour law is a law that governs employment relations in which the work is rendered by a party called the employee under the authority of another party called the employer in return of wage. So, labour law regulates the labour relation that could exist between a private employer and his employees. The idea of labour relations may be understood from Art 4 of the Labour Law Proclamation. Accordingly, the following are the essential elements of the article.

Employer: in a contract of employment, the two parties are presupposed elements i.e. the employer and the employee. Employer is a person or an undertaking that employs one or more persons. An undertaking as per Art 2 (2) of the labour law proclamation means any entity established under a united management for the purpose of carrying on any commercial, industrial, agricultural, construction or any other lawful activity.

Employee: the other party in the employment relation is the person who undertakes for wage to render service under the direction of the employer for a definite or indefinite period. Person here relates to natural person only not for juridical person. Of course juridical persons can also enter in to contract to render service to another but this issue will be governed under Art 2610 of the Civil Code.

Work: the relationship of the two parties is base on the wok rendered by the worker to the employer. The work to be rendered should in one way or another should be related to production and productivity. Indeed, the work could be intellectual or manual but it must produce some material result.

Wage: this is another element of contract of employment. It is a regular payment given to the worker for the regular work that he has rendered. Wage is taken as a base for the economic nature of labour relations. As a result, our law doesn't recognize labour relations without wages.

Authority: the other essential element for the existence of contract of employment is authority. The employer-employee relationship exists when the person for whom the work is done has the right to control and direct the work. The law gives the employer to direct and control and to demand the performance of instructions at any moment with regard to the manner, duration and quality of work and to impose regulations which remains in force so long as it do not contradicts with the law promulgated by the government to regulate such matters.

Therefore, using the above essential elements, the law provides that a contract of employment is deemed to be formed where a person agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece work in return for wage. Contract of employment as any other of contract; it should fulfil all the legal requirements as provided under Art 1678 of the Civil Code to form a valid contract that could be enforced in a court of law. As you have seen in the law of contract part, capacity, consent, object and form are the essential elements in order to form a contract of employment. The worker and the employer should have capacity to enter in to contract of employment though it is possible for a 14 years old person to enter in to such contract as an exception for contract of employment. In other cases, incapable persons are not allowed to enter in to such kind of contract. Consent of both parties is also another requirement. The parties should give their free and full consent for a valid contract and the same holds true in a labour law relationship. If there is any vitiation of consent either by duress, fraud, false statement, mistake of for any

other reason as provided in the law, the contract of employment is voidable. In relation to object, the contract of employment should define obligation of the parties, such obligation should be possible, moral and legal. If their agreement contradicts with any of the requirement on object, it will be void. Form is also another essential element. As provided in the law of contract, parties are free to choose the form of their contract unless otherwise provided in the law. In this case, the question is, is it possible to make contract of employment orally or should it be in writing? As stated under Art 5 of the Labour Law Proclamation, parties can conclude contract of employment in any form unless a special form is prescribed by the law. That means a contract of employment may be made in writing or it may be oral save for special requirements by the law. The special requirements that contract of employment to be made in writing includes contracts for the existence of probation period, modification of contract of employment, and the termination of contract of employment by agreement are some of the examples to be mentioned. In conclusion, a contract of employment could me made either in writing or orally and if it is made in writing, it will have more evidential value than mandatory legal requirement.

7.2.Nature of Labour Law

Is labour law public or private? Why?

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As you have discussed under chapter one, in the introduction to law part, law is divided in to public law and private law. A law is classified as public and private according to whether the state interest in the matter has or has not prevalence on the interest of private individuals. So to which category labour law should be included? As a matter of fact it is difficult to categorize it as public or private because it has elements that make it both public and private.

For instance, employment contract is essentially between two private parties like any other contract i.e. between the employer and the employee. This shows the private nature of labour law. On the other hand, there is a clear inequality between the parties on a contract of employment as to their bargaining power. So the state interferes for the purpose of protecting the weaker party i.e. to the worker by providing some mandatory conditions for the contract to be legal. This by itself, indeed, may not make it public. In addition, it is the society which

is beneficiary from the goods and services of the undertaking and from the reduction of unemployment in the country. As a representative to the interests of the society, the government intervene to ensure an uninterrupted production of goods and services and to regulate unemployment. This enables the government to control industrial peace and to assure that society's interest is not jeopardized as a result of industrial conflict. From the above arguments, now you can conclude to which labour law it to be classified.

7.3.Sources of Labour Law

What are the sources of Labour Law?

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Generally speaking, there is no consensus on the sources of law. The same holds true in case of sources of labour law. Into to, formal and material source are the commonly accepted sources of law. Formal source is a source from which the law gets its force and validity. Whereas, material source is the source which supplies the matter and content of the law. Under these, the common consensus now a day is that, there are two sources of labour law. These are: private source of labour law and public source of labour law. Private source of labour law basically is the source from the agreement of the employer and the employee. These parties directly participate in the formation the agreement and their agreement is law between themselves as per Art 1731 of the Civil Code. Collective agreement of the parties as per Art 124 of the Labour Law Proclamation is also a source under this category. Public acts as a source of law includes international public acts. These have the purpose to govern labour relations across countries. For instance international labour standards have been issued by International Labour Organizations (ILO). ILO is established as a UNs special agency concerned with all labour matters for the promotion of democracy, fighting against poverty and for the protection of human rights in the working environment.

ILO has existed since 1919 and Ethiopia is a member to this organization. The principal means of actions of the ILO are technical cooperation and standards. The main standards of ILO are conventions and recommendations. Conventions are international rules or treaties which have the force of law after they are ratified by each member countries. Recommendations are international rules which are not binding but merely give advice on

policies. Both are adopted by international labour conference conducted each year in Geneva with the participation of labour ministers from member countries and trade unions of workers and employers too.

7.4.Duration of Contract of Employment and Probation Period

Duration of contract of employment shall be decided by the agreement of the parties. Do you agree? Why or why not?

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Contract of employment may be made for definite period or for indefinite period. Despite the parties are free to enter in to any kind of contract, as you have learned in the law of contract, the agreement of the parties should fulfil all the essential elements. But still, parties have no power to determine the duration of contract of employment. In other words, they can agree on the duration of contract of employment as long as they are not in contradiction with the law. The law has provided the situations in which a contract may be made for a definite or indefinite period.

Art. 9 and 10 of the labour law proclamation provides that a worker may be employed for indefinite period unless and otherwise the worker falls under Art.10 of the labour law proclamation despite their contract.

Accordingly, a worker is presumed to be employed for definite period in case of:

- The performance of specified piece of work
- To replace a worker who is temporarily absent from work due to leave or sickness or other causes.
- Abnormal pressure of work
- Urgent work to prevent damage or disaster to life or property
- Seasonal work
- Occasional work

- A temporary replacement of a permanent worker who has suddenly and permanently vacated from a post.
- Temporary placement of a worker or the time of structural adjustment of the organization.

If a worker has concluded a contract of employment in either of the above conditions that means his contract of employment will be terminated just after the completion of the work or the end of the situation. Further, a worker employed to temporarily replace a permanently vacated worker from his position suddenly and to fill such vacant position; the contract of employment in such situation shall not exceed 45 consecutive days and shall only be done once.

Unless a worker is employed as per Art 10 of the labour law proclamation; it will be concluded as if he is employed for indefinite period despite a contrary agreement between the parties.

Another point to be raised in relation with this is the issue of probation period. A worker may be employed for a probation period in order to test his competency for the position that he is to be assigned. In such cases, the agreement should be in writing and it should not exceed 45 consecutive days. When he is proved to be unfit for the job during in the probation period, the employer may terminate the contract of employment without notice and without payment of compensation or severance pay. In the same token, a worker can terminate his contract of employment without notice during the probation period for any reason. However, probation period may not be agreed when a worker is employed by the same employer for the same job.

7.5.Rights and Duties of the Parties

In a contract of employment, the existence of two parties is a mandatory requirement. Dear students, in this part of the discussion, our motive is to make you aware of the rights and obligations of the employer and the employee so that you would act accordingly.

Obligation of the Employer

An employer will have an obligation as stipulated by the contract of employment. But irrespective of what are provided in the contract, the employer has the following legally imposed obligations as per Art.12 of the labour law proclamation.

- To provide work, tools and materials necessary for the performance of the work
- To pay the worker wagers and other remunerations
- To respect the human dignity of the worker
- To take safety and health measures
- To give certificate of experience up on request of the worker free of charge
- To keep registered information about the situation of his worker
- To observe the provision of the law, rules and directives

Obligation of the Worker

In a contract of employment between the parties, the worker has the following obligations;

- To perform his work specified in the contract in person
- To work as per the instruction of the employer as provided in the contract and work rules.
- To handle all tools and materials of the employer with due care
- To give proper aid when there are accident occurs to life or property in a place of work
- To give information about any acts which endanger his life or his work fellows and the undertaking
- Not to take employers property without permission
- To observe the proclamation, regulation, directive or work rules and collective agreements issued in accordance with the law.
- Not to report for work in a state of intoxication

These are the major obligations that a worker should respect during his contractual relationship with the employer. A worker who feels to obey the law and his obligations may be subject for different measures by the employer. The next topic discusses about termination and its effect.

7.6.Suspension and Termination of Contract of Employment

What are the grounds of termination of contract of employment?

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Dear students, most of the workers choose to join government office for the fact that individuals think they have a better security in a government office than in private office. Do you think the same? Do you believe that a private employer can dismiss a worker at the will and wish of his own? We hope, you will have a different position after you go through this section.

Termination is the permanent suspension of the workers and employers relationship that they have established in accordance with the law. An issue to be raised here is the relation between suspension and termination.

7.6.1. Suspension

Suspension is the temporary cessation of rights and obligations of the parties arising out of a contract of employment and this does not mean termination. However, during the term of suspension, the worker will not perform his work and the employer will not make payment of wages. Further, the ground for suspension and the procedures to administer suspension are different from termination.

The following are valid grounds of suspension:

a. Leave without pay by the agreement of the employer

b. Leave for the purpose of holding office in a trade union or other social service

c. Detention for less than 30 days and if such is communicated to the employer with in 10 days.

d. National call

e. When the employer ceases operation for a period of not less than 10 days due to force majeure.

f. Financial problem that requires the suspension of the activities of the employer for not less than 10 days, if such problem is not attributed to the employer.

Therefore, when one of the grounds existed then will be suspension nut in case of grounds specified under (e) and (f), following procedures shall be followed.

When there is suspension of contract of employment due to these grounds specified under (e) and (f), the employer should inform the Ministry of Labour and Social Affairs within 3 days of the occurrence of such ground and the Ministry shall determine the existence of good cause for suspension within 3 days after the Ministry receives such written request. If the Ministry finds no good cause, it shall order for the continuation of the work and the payment of wage for the period of suspension. In such cases an aggrieved party by the decision of the Ministry, he may appeal to the labour court within 5 working days. In the other way, if the Ministry finds sufficient cause for suspension, it shall decide the duration of suspension, the worker shall report to work on the next day of the expiry of suspension and the employer shall reinstate to his work.

7.6.2. Termination

As said above, termination is the permanent cessation of rights and obligations of the employer and employee that arises from a contract of employment and from the law. A contract of employment may be terminated by:

- the employer
- the employee
- agreement
- law
- Collective agreement

A contract of employment shall terminate by the operation of the law in case of;

- The work for definite period or piece of work is completed
- Death of the worker
- Up on the age of retirement
- The undertaking ceases operation permanently due to bankruptcy or for any other reason.
- When the worker is unable to work due to partial or total permanent injury.

A contract of employment could also be terminated by the agreement of the parties as long as such agreement is made in writing. In such cases, any agreement to waive the rights that a worker has from the contract of employment or by the law shall have no legal effect.

The employer can also terminate the contract of employment on certain grounds with notice or without notice. That means, the employer may terminate the contract by giving one month notice when the worker has completed his probation and has a period of service not exceeding 1 year, the employer shall give one month notice, if a worker has between 1 year and 9 year experience, he shall be given 2 months notice and a worker with above 9 years experience, he shall get three months notice. Whereas, if a worker is to be dismissed as a result of reduction, the period of notice shall be for 2 months disregarding the year of experience as long as he has completed his probation. But, notice may not be given for all workers. In the following cases, the employer shall give notice in order to terminate the contract legally.

- When the worker losses his capacity to perform his work as designated;
- If such lack of skill continue as a result of his refusal to take the training proposed by the employer or if he fails to acquire the necessary skill after he takes the training;
- If the worker is permanently unable to work because of his health or disability;
- If the worker does not agree to change to the place where the undertaking is to move;
- When the post of the worker is cancelled for good cause and if he cannot be transferred to another position.

- In case of reduction of worker in accordance with the law.

Therefore, the above grounds are sufficient reasons to terminate the contract of employment after giving notice by the employer. However, the employer may also terminate the contract forthwith without giving notice to the employer where one of the following acts is committed by the employee.

- Repeated and unjustified tardiness despite warning to this effect
- Absence from work for 5 consecutive days or for 10 days in a month of for thirty working days in a year without good cause.
- Deceit or fraudulent conduct in his work having regards to the gravity of the case
- Misappropriation of employer's property intentionally for his or others enrichment.
- Being responsible for brawl or quarrels in the place of work
- Conviction for an offence and if such conviction renders the person incapable for the post.
- Causing damage to the property of the employer either intentionally or by negligence.
- Sentence of imprisonment for more than 30 days
- Taking away a property of the employer without express permission of the employer
- Refusal to observe safety and accident prevention rules.

These are sufficient for the employer to terminate the contract without notice but he shall take such measure within 30 working days after he becomes aware of the grounds of termination.

The employee has also the right to terminate his contract of employment with notice or without notice.

A worker can terminate his contract of employment by giving one month's notice to the employer for any reason as per Art 1 of the Labour Law Proclamation. In addition, he can terminate such contract pursuant to Art 32 (1) without giving notice if the employer violates his human dignity and moral or if he commits other acts punishable under the Criminal Code. The worker can also terminate the contract without notice if the employer fails to avert and

danger that threatens the life or safety of the workers despite the warning given by the competent authority. These are the reasons for a worker to terminate his contract. Otherwise, it the worker terminates his contract of employment unlawfully without following legal requirements, he should pay the employer compensation. This compensation however, shall not exceed 30 days wage of the worker notwithstanding any contrary agreement between the employer and the employee.

7.7.Remedies in case of Termination

Where the employer terminates the contract of employment with the worker in contradiction with the law regarding termination, it will be unlawful termination. Dear student, as you have seen in the first chapter about law, law has a binding authority on its subjects and if it is not respected, it will impose penalties upon those who violate it. In the same manner, a worker and the employer should act in accordance with the law. If the worker terminates his contract illegally, as said above, he shall pay one month's wage. Whereas, if an employer is to terminate his contract without following the rules and procedures as provided in the law, he shall pay the worker severance pay, compensation and other payments as enumerated in the law if the worker is not willing for reinstatement or if the labour dispute settlement tribunal decides for dismissal with payment of compensation when his reinstatement may cause serious difficulties by the nature of the work. He may also be obliged to make payment of severance pay and other payments if provided by the law even if the termination is legal. The following situations will force the employer to make payment of severance pay as per Art 39 of the Labour Law.

- When the undertaking ceases operation due to bankruptcy or for any other reason;
- When the employer terminated the contract unlawfully;
- When the worker is reduced as per the law (Reduction of workers)
- When the worker terminates the contract for the fact that the employer
    - hurts the dignity or morality of the worker;
    - commits criminal acts against the worker;

- does not take measures against the danger that threatens the security or health of the worker;

- When the contract is terminated because of partial or total disability and if such is testified by medical board.

Accordingly, the employer shall pay to the worker whose contract is terminated for any of the above reasons shall pay thirty times the average daily wage of the last week of service for a one year service and for a worker who has more than one year experience there will be an additional payment which shall be one third of the first year severance payment for each additional year. However, the total payment shall not exceed one year wage of the worker excluding other payments. For instance if a Kibrom has 10 years of experience with 2500 br. monthly wage, the amount of severance pay shall be calculated as follows.

Let's say: NY= Number of years of experience

SP= Severance Pay

W= Wage

SP= 30 X average daily wage of the last week of service

30 X 89.2 = 2676

This is the amount that will be paid for the first year of experience and to get the total amount you can use the following:

Now consider that when we say SP, we are talking about one year SP

TSP= SP + 1/3 SP (NY- 1)

TSP= 2676 + 2676/3 (10-1)

,, = 2676 + 892 (9)

,, = 2676 + 8028

TSP= 10704

This is the total amount of severance payment that Kibrom could get if his contract is terminated for any of the reasons enumerated under Art 39 of the Labour Law Proclamation and other amendment laws.

In addition to the above payment, if a worker has terminated without notice as per Art 32 (2) of the Labour Law, he shall be entitled to compensation which shall be thirty times his daily wage of the last week of service. A worker who is unlawfully dismissed and who is not reinstated to his position may be paid the following amount as compensation in addition to the severance pay.

For a worker unlawfully dismissed but employed for indefinite period, one hundred eighty times the average daily wage and s sum equal to his remuneration for the notice period.

For a worker who is unlawfully dismissed but employed for definite period, he shall get all the wages that he would get had he not been dismissed. But the amount shall not exceed one hundred eighty times his average daily wage. So, calculate the total payment that Kibrom would be paid as an additional payment to the severance pay if he is dismissed unlawfully.

Summery

Dear student, in this last chapter, we hope you are familiar with labour law. This law governs the relationship between the employer and the employee in a private organization. Here in after, you should be aware that an employer cannot terminate the contract of employment with his employees when he wishes to do so. You as an employee, however, should recognize your rights and duties and so you may not be worried about your security. However if the employer still dismissed a worker illegally, severance pay and compensation shall be paid according to the law.

Activity One

1. Who is to determine the duration of Contract of employment?

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2. What are the grounds for suspension of contract of employment?

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3. Discuss the legal grounds for termination of the contract of employment by the employer and the employee.

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4. Explain the legal remedies available in case of unfair dismissal in Ethiopia.

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5. What are the difference and similarities between suspension and termination, if any?

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Activity Two

Case Type Question

Melaku is teaching English in a Private College. He has concluded a contract of employment with the college which is to terminate at the end of Sene 2002 E.C. Due to this fact, the college has negotiated with another English instructor, Mitiku, with a lesser amount of salary beginning from sene 1, 2002 E.C. believing that the contract with Melaku comes to an end. This contract is made orally and they have agreed the contract to continue after 45 days of probation period.

Ato Zegeye is the Dean of the Collage with full power. He has been the Dean for the last five years with an amount of 3200 br. monthly salary. Unfortunately, the college decides to remove the dean from his post to which the Dean disagrees.

Based on the above facts, answer the following questions.

1. What would be your advice in relation to severance pay if Zegeye asks to calculate the amount?
2. If Melaku sued the College for unlawful termination, what would be your decision?
3. Had you been an adviser for Mitiku, what would be your advice if he is dismissed within 25 days of his employment?