EMPLOYMENT LAW

CHAPTER III:
INDIVIDUAL EMPLOYMENT RELATIONS

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1. CONTRACT OF EMPLOYMENTS

- **Employment contract is special contract.**
- *A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him(Art.* 2512).
- **The control test** – control of the employer over the employee is most important test to distinguish employee from other workers. If a large amount of control existed in relation to the method & content of the work, the person was in an employment relationship.
- What if the employee is more skilful than the employer? May the control test work?
- **Organization/integration test** - 'under a **contract of service** a man is employed as part of the business & his work is done as an integral part of the business but under a **contract for services** his work,

- The labor proclamation requires the employment contract to be strictly clear for the parties as to their rights & duties (**protection against disguised contract**);
- The **details** of the contract have to be provided by the parties but shall include (Art. 4(3)):
  - ❖Type of employment
  - ❖Place of work
  - ❖Wage
  - ✓Method of its calculation; manner & interval of payment;
  - ❖duration of the contract

Validity requirements?

- The general validity requirements of law of contract applies to employment contract, too (as the case may be _ age?);
- There is no need for formality requirement (can be made in **any form (Art.5)),** except for legally stipulated form (e.g., apprenticeship (art. 48 (3)), modification of labor conditions not provided by the proclamation (Art. 15(3));
- But in case of civil servant employment relations, contract of employment may be required to be made in writing (see Art. 1724 of Civ. Code (*K with public administration*)); but the civil servant proclamation provides for unilateral letter of appointment (Art. 20(1)) Proc. 1064/2017);

- **Written employment k needs to specify (Art.6):** name & address of employer; name, age, address & work card number (if any) of the worker; details under Art. 4(3); their signature.
- **NB: the contract should not provide (for employee)** a less favorable conditions than the minimum conditions stipulated under the **proclamation**, **collective agreements**, or **work rules** (Art. 4(5) see also 135(2)).
- **Unwritten contract of employment**
- Specifics under Article 6 will be provided for the employee within 15 days of employment (Art. 7);
- What if Articles 6 & 7 are not complied with?

✓Do not deprive the employee's rights (Art. 8);

2. DURATION OF CONTRACT OF EMPLOYMENT

- Employment contracts can be made for definite or indefinite period or for a piece work (Articles 9 & 10);
- Art. 9: presumption & principle of permanency;
- Art. 10: exceptions to **permanency;**

Article 10: Temporary employment

a) **Piece work**

b) Replacement of a temporary absentees (due to leave or sickness)

c) Work to be performed in abnormal pressure of work

d) Urgent work to prevent damage or disaster to life or property, to repair defects or breakdowns in works, materials, buildings or plants of an undertaking

e) Irregular work related to permanent part of work of the employer but performed on irregular intervals

f) Seasonal works related to permanent part of work of employer but performed only for specified period of a year but which are regularly repeated in the course of the year

g) Occasional work that does not form part of the permanent activity of the employer but done intermittently

h) Temporary placement of worker who has suddenly & permanently vacated from a post having a contract of indefinite period

i) Temporary placement of worker to fill vacant position in period between the preparation of an organizational structure & its implementation

NB: "h" or "i" shall not exceed 45 working days & shall be done only once.

- **Are the lists under Article 10 exhaustive or illustrative?**

- A, B, C, and D were employed by *Ethiotelecom* to assist major technicians during field network installations. Their specific job is carrying ladder, digging hole for poles, installing cables (assisted and guided by major technicians). **Their wage is calculated on a daily basis and paid every 15 days. They are also required to sign attendance sheet every working days of they come to the office**.
- Recently, however, the employer dismissed them on the ground that they are temporary employees.

Probationary employment

- Probation period is a permissive stage that enables both the worker and employer to determine each other's suitability. Art. 11(4)
- Unless probationer employment is agreed expressly and in writing, silence about it doesn't amount to presumption of probation period.
- the duration of the period of probation the maximum ceiling they can stipulate in the contract is only 60 days.
- **Why does the law provide maximum of 60 days while the period extends to 9 months under the civil servant proclamation? (**Arts. 11(3) LP vs. Art. 19(3) FCSP)

3. RIGHTS & DUTIES OF THE PARTIES

- **Obligations of the Employer (Art. 12)**

1. Duty to provide work
2. Obligation to provide tools and materials
3. Obligation to pay wages and other remunerations and to respect the worker dignity
4. Obligation to take measures protecting workers from occupational hazards
5. Duty to give certificate of service
6. Other obligations set in the collective agreement, work rules etc

Obligation of the worker (Art. 13)

- the positive obligations, the worker is with the duty to:

1. perform in person the work specified in the contract of employment;
2. to follow instructions given by the employer based on the terms of the contract and work rules;
3. to handle with due care all instruments and tools entrusted to him for work;
4. to report for work always in fit mental and physical conditions;
5. to give all proper when an accident occurs or an imminent danger threatens life or property in his place of work. Without endangering his safety and health;
6. to inform immediately the employer any act which endangers himself of his fellow workers or which prejudice the interests of the undertaking; and
7. To observe the law, collective agreement, work rules and directives

Prohibited acts (Art. 14)

- **Discrimination**

✓ **Art. 14(2)(b)(f) + ILO Conventions (Conventions No.100 (Equal Remuneration Convention of 1951) & Convention No. 111 (Discrimination (Employment & Occupation) Convention of 1958))**

✓ **FDRE Constitution Art. 25**

Variation of a Contract of Employment

- Economic activities by their very nature are changing from time to time. This ultimately calls for flexibility in the relations of the employer and the employee.
- In order to cope up with the changing work environment as a result of promotion, demotion, transfer, change in place of work and the like, parties to the contract of employment may need to modify their contract. ??????????????
- Thus, parties are allowed to modify the conditions of a contract of employment that are not determined under the Proclamation through collective agreements, work rules or by written agreement of the worker and the employee.

4. SUSPENSION OF A CONTRACT OF EMPLOYMENT (Arts.17–22)

- Suspension is a situation where the employee will not be required to provide service to the employer and the employer will not be obligated to pay wages and other benefits to the employee (primary obligations);
- It is a temporary interruption of rights & obligations of the parties but, doesn't bring about the interruption of the contract of employment;
- Grey area lying b/n termination & existence of labor relations;
- At the lapse of the period of suspension the suspended contract revives and the interrupted obligations become effective;

The grounds for suspension of contract of employment are;

1. **Voluntary arrangement of the parties (e.g., leave without pay (Art. 18(1)) -** It exists whenever the employer grants leave for the employee up on the latter's demand.
2. **Public/societal interest:**
   - ✓leave of absence for the purpose of holding office in trade unions or ***other social services (Art. 18(2))***
   - ✓the worker’s absence from work due to **national call** (art. 18(4)).
3. **Suspension due to disciplinary reason**
   - ✓To be determined by collective agreement, but cannot exceed one month (Art. 27(4))
   - ✓In civil service law it is solely the employer’s discretion to decide suspension & the period of suspension may extend up to 2 months (Art. 72 of Proc. 1064/2017)
   - ✓**(Why double standard?**

4. Detention of employee for not more than 30 days (notice required) (Art. 18(3)))

- ✓Detention exceeding 30 days leads to unilateral termination (Art. 27(1)(j)).

5. Situations beyond the Control of the employer - Examples:-

- ✓Force majeure extending for not less than 10 consecutive days – Art. 18(5)) (e.g., Awash river overflow necessitating *Wonji Sugar Factory* to suspend operation)
- ✓*Fault-free financial problems that suspend operation for* **not less than 10 consecutive days (Art. 18(6))**

- **What if these causes lead to cease of operation for less than 10 days? Is the employer required to pay wage in vain?**

NB

- Suspension arising out of **force majeure** or **financial problem** are required to be supervised seriously (**Art. 19 -22**)

✓Informing the Ministry or competent authority within 3 days in writing (art. 19)

✓The Ministry/CA needs to notify its decision within 3 days (art. 20(1))

- ‘No good cause’ → resumption of work with back payment (art.20(2))
- Decision of the Ministry/CA is appealable (Art.20(3))

✓If the Ministry/CA find good cause for suspension it fixes suspension duration w/c cannot exceed 90 days (Art. 21(1))

✓What if the employer is proved to be unable resume its operation? Termination that entitles employees to severance &

5. TERMINATION OF CONTRACT OF EMPLOYMENT

- In general, a contract of employment can be terminated either lawfully or unlawfully.
- It is lawful if the termination is made in accordance with the labour law provisions. The law categorizes lawful termination into 3 broad grounds. These are:

1. Termination by the operation of the law (Art. 24);
2. Termination by the agreement of the parties (Art. 25); and
3. Termination upon the initiation of either party (Arts. 27 – 33).

3.1. Termination by initiation of the employer (**dismissal**) (Arts. 27-30)

- 3.1.1. without notice (summary dismissal) (Art. 27)
- 3.1.2. with notice (ordinary dismissal) (Art. 28)
- 3.1.3. group termination (lay offs) (Art. 29&30)

3.2. Termination by initiation of employee (**resignation**)

Termination by the Operation of the Law

- This results from the law itself without initiation from the parties. These are;

1. Expiry of the period of employment- it is only on contracts that are concluded for a definite period or completed works.
2. Death of the worker- because it is personal service
3. Retirement of the worker - What is the retirement age in labor law?
4. Employer's permanent cease of operation due to bankruptcy or for any other cause - eg. change of purpose or activity
5. Workers inability to work due to partial or permanent incapacity

Q. Compare art.24(5) and 28(1(b))

Termination by Agreement of the parties

- Parties to contract of employment are liberty to terminate their contract, (**freedom of contract = entering into + walking away**)
- But it should be made in *writing (Art. 25(2))* and that *the worker cannot waive any of his rights under the law (Art. 25(1))*.
- What are the worker's rights under the law?

✓Payments or any other benefits due to the worker (may arise from overtime, unused leaves, …)

Termination upon the initiation of either party

- Termination by the initiation of the employer is also known as dismissal.
- If grounds allow the employer to dismiss the worker without need for giving advance notice for the worker, it is summary dismissal. Art 27
- It is ordinary dismissal if the causes for termination of a contract of employment by the initiation of the employer requires granting an advance notice for the worker. Art 28
- When termination is upon the demand of the worker it is resignation.
- It is ordinary resignation if it is undertaken upon duty to give notice. Art 31
- If it can be exercised without notice, it is constructive dismissal

A) DISMISSAL (Unilateral termination by employer)

- Dismissal can be decided by employer only on grounds related to the conducts of the worker or objective circumstances arising from his ability to do work or organizational or operational requirements (Art. 26)
- Art. 26(2) provides inappropriate grounds of dismissal such as membership in union or participation in its lawful activities, submission of grievance against the employer, discriminatory grounds like nation, race, religion etc.
- Read art. 14(1) *cum* 26(2): unlawful conducts by employer

Summary dismissal

- **Summary dismissal** may arise from unsuitable conducts of the employee such as lack of diligence, unfaithfulness, *absence from work without good cause*, work place quarrel or fight, etc (Art. 27)
- Unlawful conducts under Art. 14(2) can also serve a ground for summary dismissal.
- **Procedural requirements for summary dismissal**

✓Giving written statement showing reasons for the decision & the date of termination (art. 27(2))

✓Should be exercised only within 30 working days from the date the employer knew ground of termination (art.27(3))

Ordinary dismissal

- **Grounds/reasons for ordinary dismissal relates to:**

A. loss of capacity by, and situations affecting, the worker's conditions, or

B. organizational and operational requirements of the undertaking.

A) <u>Possible grounds related to worker's capacity & working conditions are:</u>

- ✓ manifest loss of capacity (to be assessed by periodical job performance evaluation);
- ✓ inability to carry on obligation due to health or disability;
- ✓ unwillingness to move to a locality where the undertaking relocated;

B) <u>Possible grounds related to organizational & operational requirements of the undertaking are:</u>

1. Any event entailing cessation of worker's activities;
2. Fall in demand of the employer's products/services thereby resulting in reduction of volume of work or profit of the undertaking;
3. Alteration of work method or introduction of new technology so as to raise productivity (Art. 28(3))

- **NB:** if cancellation of job position results in "reduction of work force" defined under art. 29(1), we need to be guided by Art. 29(3)

Layoffs (reduction of work force)

B) RESIGNATION (Unilateral termination by employee)

- **Ordinary resignation:**
- The worker too has the right to unilaterally terminate the contract; i.e. he is at liberty to resign without necessarily mentioning the cause.
- The only requirement imposed on the worker is to give notice of 30 days for his employer about his decision.
- This is regardless of the nature of the post of the worker or his replace ability.
- The purpose of notice is to give the employer an opportunity to look for a substitute worker.

activity

- ***Why does the law segregated rate of notice for the employee and a flat rate for the employer***?
- ***Why does the law maker differentiate between employees under the FCSP and Labour Proclamation post held by the employee?*** Compare art. 31 of labor proclamation with article 83 of FCSP.

Extra-Ordinary Resignation

- It is referred to as termination of a contract of employment by the initiation of the employee without notice.
- It presupposes a valid ground for a lawful termination of a contract.
- As a counterpart to summary dismissal, the worker is at liberty to automatically terminate his contract of employment.
- Sometimes, the employer may do certain acts deliberately so that the worker bring the contract to an end, so it is called **“indirect dismissal” or constructive dismissal**.

- The grounds are;
  - ❖Sexual harassment
  - ❖Acts contrary to the workers dignity
  - ❖Discrimination

6. Entitlements in Lawful Termination

- It is only when a worker is dismissed by his employer upon lawful grounds and with the grant of an advance notice, whenever necessary, that a contract of employment is deemed to be lawfully terminated.
- On the other hand, it is only when a worker resigns by giving an advance notice or based on a lawful ground that his resignation/termination becomes lawful.
- Similarly, it is in times when the parties freely agree to end their relationship or when the contract comes to an end by the operation of the law that the contract of employment ceases to operate.

- The fact that the worker’s contract is terminated lawfully doesn’t mean that the worker goes empty handed.
- There are various entitlements for the worker which includes:-
  - ❖Severance pay
  - ❖Compensation
  - ❖Letter (certificate) of service, &
  - ❖Unutilized annual leave converted in to cash.

i) Severance payment

- Severance pay is a payment which a worker is entitled to get from the employer whenever there is termination of a contract of employment.
- It is only when the worker would get pension payment that he would not get severance pay.
- In principle, this payment has been made irrespective of the party who terminates it and the manner in which the contract is terminated.
- Therefore, it is no more benefit that is given for all workers whose contract is lawfully terminated.

- The grounds for severance pay are in case the contract of employment is terminated;
  - ❖By operation of the law
  - ❖Illness or death
  - ❖5 years' service and resignation
  - ❖Sickness due to HIV/AIDS
- Severance pay equals to thirty times the average daily wages (***of the last week of service***) of the worker for the first year of service, plus one-third of the amount for each additional year (with the maximum not exceeding a 12 months wage of the worker).
- S = 30 x ADW **(+ 1/3xS for each additional year of service**)
- This implies that the amount of severance pay is contingent upon years of service and amount of wage of the worker.

Activity

- ***Is the 12 months' wage a maximum ceiling above which unacceptable and hence no negotiation is allowed on it?***
- ***What purpose does the legislator have to fix the maximum if the parties agree to that effect?***

ii) Compensation

- Compensation is another entitlement for a worker whose contract is lawfully terminated by his initiation under certain circumstances.
- In the majority of cases compensation is paid for a worker only when the termination is unlawful one. But, compensation can be awarded for a worker though the termination is based on a lawful ground.
- A worker who terminates his contract of employment due to the misdeeds of the employer entitled one additional benefit in the form of compensation amounting to his one month’s wage. The formula is **T= S+X**

ii) Letter (certificate) of service

- As an obligation the employer has to grant the worker with a letter (certificate) of service whenever the worker so requests; and upon termination of their contract. Art. 12(7)
- On the other side, it is also an entitlement for the worker, especially for one whose contract comes to an end.
- The worker is allowed to get this certificate free of charge and with no negative indications on it.

iv) Unutilized Annual Leave Converted into Cash

- Another entitlement that is accorded for a worker when a contract terminates is the payment of unused annual leaves in cash form.
- In principle, annual leave should be taken by the worker. Unless otherwise provided by the law, it is strictly prohibited to pay wages in lieu of annual leaves. Article 76(2)
- But, as an exception a worker can get payment in lieu of the leave he has not used (upon termination of his contract).
- ***Does this exception inclusive of employees whose contract is terminated due to death?***

7. UNLAWFUL TERMINATION OF A CONTRACT OF EMPLOYMENT (Arts.42-45)

- Unlawful termination refers to a termination that contravenes the provisions of the Labour Proclamation.
- A termination is unlawful if it contravenes the substantive or procedural requirements for lawful termination provided under the LP or any other laws (**Arts. 42, 14(1)(c), 23(1), 26(2)**).
- Substantive requirements are those rules providing or recognizing reasons or grounds for a lawful termination, whereas procedural requirement is related to duty to give prior notice for termination.
- Substantive unlawfulness, therefore, are terminations of employment contract held against the grounds of termination the law stipulates (termination suffers from substantive unlawfulness whenever it is conducted without lawful grounds).
- Procedural unlawfulness shows non-compliance with notification

Effects/consequences of substantive unlawful termination of labor relations

1) *Severance payment (Art.43(4))*
2) *Reinstatement (Art.43(1)(2) cum Art.26(2)) (Reinstatement + back payment not exceeding 6 months or 1 year (Art. 43(5)).*
3) *Compensation (Art.43(1) cum Art.26(2)); (Art.43(2) cum Arts.24, 25, 27, 28 & 29)*

   ** *This compensation applies to pensioned workers, too.*

❖ *Calculation of compensation (Art. 43(4))*

1) *For contract of indefinite period = **180 x ADW + Wage for default notice***
2) *For definite period or piece work = **a sum of wage he would have obtained (but shall not exceed 180 x ADW**.*

Effects/consequences of procedural unlawful accompanying termination of labor relations

- **Employer**: Wage in lieu of notice period (Art. 44 *cum* 35)
- **Employee**: Compensation not exceeding 30 days' wages (Art. 45 *cum* 31 or 35(2))

TIME FOR QUESTIONS