Temporary Suspension of Right and Obligation Arising out of Contract of Employment (Art 17 LP)

1. Suspension

-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.

-Nonetheless, their contractual engagement **remains intact.**

Therefore, suspension is a **grey area in b/n** termination and of employment relation.

Cont'd

A contract of employment may be suspended for a variety of reasons. Some of the grounds are:

- Voluntary arrangement of the parties;
- Societal interest;
- Due to reasons beyond the control of the employer;
- Due to disciplinary reasons.

1.1 Voluntary arrangement(Art 18 LP& 45 FCSP)

- Parties may agree to suspend their contractual relation for sometime.
- Here the employee may request to the employer to grant leave without pay for six months.
- And then If accepted, Voluntarily their r/n will be suspended

Cont'd

- here the employer will not pay the wages and other benefits to the employee and the employee will not be required to render service for the employer.
- At the expiry of the six months period, however, the parties will be **reinstated** to their previous employment relation.

1. 2 Suspension for the benefit of society

- An employee may be elected to hold office at higher level trade union structure which may demand full time engagement.
- may hold office at kebele or woreda level or he may be elected as parliamentarian.
- may be required to discharge national service (be it military service or otherwise)

Cont'd

- In such cases what will be the fate of his contract of employment? Should it be terminated? Should it be still considered as an employee and collect wage from the employer even if not rendering service ?
- It seems unfair to terminate the contract of employment of this individual because is rendering service which is important to society at large and should not be sanctioned for that.
- Individuals should be encouraged to serve society. This can be achieved by ensuring employment security to such individuals. Should the employer then be required to pay him wages while the employee is not rendering service to him? This is again unfair to the employer because as the service is being rendered to society at large it should be society which should incur such costs and not the employer individually.

Cont'd

- To strike the balance between these two concerns, the Labor Proclamation has come up with this solution.
- This solution is suspending the contract of employment until such time the employee accomplishes his societal service after which he will regain his employment

1.3 Suspension due to reasons beyond the control of the employer

- At times situations which will have an impact of temporary cassation of activities of the undertaking may occur. Most of these situations are economic reasons though there may also other reasons. For example, the Wonji sugar factory may be compelled to temporary suspend its operations fully or partially due to the over flow of the Awash River. This may be one incident where suspension may result from non-economic reasons. Financial problem may also be a ground for temporary cassation of operations.

Cont'd

- Suspension under these grounds is not within the sole discretion of the employer.
- It is subject to revision by the Ministry of Labor and Social Affairs or Regional Labor and Social Bureaus.
- In order for the Ministry to determine whether the stated reason is adequate to suspend operation or not, the employer should notify the Ministry within three days of the occurrence of the alleged ground of suspension.

- The Ministry is expected to determine whether or not there is sufficient ground for suspension or not within three working days after the receipt of the report.
- If the Ministry determines there is sufficient ground for suspension, it will approve it and fix the duration for it. **But duration shall not exceed ninety(90) days**

Cont'd

- If the Ministry determines that there is no adequate reason to withhold operation, it will order the resumption of the activities and payment of wage for the days on which the employees were suspended.
- The employer may appeal within five working days against this decision to the appellate court of the Region where it runs its business.
- If the employer fails to inform the Ministry of the occurrence of a ground for suspension, **it will not have valid ground to suspend its operation**. Furthermore it may be liable to fine for failure to notify (184/1/c LP)

1.4. Disciplinary Suspension

- One of the prerogatives of an employer is to take disciplinary action against an employee.
- The employee on its part is required to render faithful service to the employer.
- Failure to observe such faithfulness may subject the employee to disciplinary action.

Cont'd

But prior to taking action,

the employer is expected to undertake the necessary investigation into alleged misconduct of the employee.

Until the investigation is completed, it may be appropriate to suspend the employee so that investigation could go smoothly.

Cont’d

- disciplinary suspension is not to exceed one month in duration within which time the employer should complete its investigation and arrive at a decision.
- its length cannot exceed one month. Art.27(4) LP &.....(Pls Reffere to Vol-9 File no 53358)
- Art.70(2) cannot exceed two month FCSP.

Outcome of expiry of period of suspension

- Normally as soon as the duration for suspension expires, the employee will be reinstated to his/her previous employment.
- But there may also be circumstances where suspension may be transformed into termination. For instance, in case of disciplinary suspension (e.g. if the outcome of the investigation shows a serious misconduct attributed to the employee), the contract of the suspended employee may be terminated.

Cont’d

- In case of suspension for reasons beyond the control of the employer, particularly suspension due to economic reasons,(e.g. if the undertaking cannot resume operation **within ninety days)** suspension will be transformed into termination.

2. Termination

Termination Is a situation where by the employment r/n ship of the parties are abandon because of different reasons.

Both the LP and the FCSP spelt out grounds of termination.

Under the LP grounds of termination could be categorized into the following:

II. termination by the agreement of the parties (Art.25)

I. Termination of contract of Employment by Law (Art.24)

Grounds:

- on the expiry of the period of employment or on the completion of the work
- upon the death of the worker.
- upon the retirement of the worker
- when the undertaking ceases operation permanently due to bankruptcy or any other cause.
- when the worker is unable to work due to partial or total permanent incapacity.

II. Termination of contract of Employment by Agreement(Art 25)

- The parties may terminate their contract of employment by agreement provided, however, that **waiver** by the worker of any of his rights under the law shall have no legal effect.
- Termination by agreement **shall be effective and binding** on the worker only where it is made in writing.

III. Termination of contract of Employment by the Employer (Art 26)

Grounds

- connected with the worker's conduct or
- with objective circumstances(ability of the worker)
- The organizational or operational requirements of the undertaking.

Cont’d

But The following shall not be deemed to constitute legitimate grounds

- being membership in a trade union
- Being a worker's representative;
- submission of grievance against the employer his participation in judicial or other proceedings;
- his nationality, sex, religion, political outlook, martial status, race, color, family responsibility, pregnancy, lineage line & descendents

Cont’d

There are three ways of termination of contracts of employment by the employer-

- With out notice or summary dismissal (Art.27)

- With notice or ordinary dismissal (Art.28)

-Group termination or lay off (Arts.29&30)

Termination of contract of employment without Notice(Art. 27)

Grounds for termination

- repeated and unjustified tardiness despite warning to that effect;
- absence from work without good cause for a period of five consecutive working days or ten working days in any period of one month or thirty working days in a year;
- deceitful or fraudulent conduct in carrying out duties

Cont’d

- Undue enrichment to himself or to a third person;
- inefficiency /below the qualities and quantities
- responsibility brawls or quarrels at the work
- conviction for an offence where such conviction renders him incapable for the post which he holds;

Cont’d

- negligent or intentional damage
- commission of any of the unlawful activities
- absence from work due to a sentence of imprisonment passed against the worker for **more than 30 days**;
- commission of other offences stipulated in a collective agreement as grounds for terminating a contract of employment without notice

Requirements for termination Art. 27(3)

- ***shall give written notice*** specifying the reasons for and the date of termination.
- the right of an employer to terminate contract of employment in accordance with this Article, shall lapse **after 30 working days** from the date the employer knows the ground for the termination.
- the grounds for suspension of a worker from duty before termination***shall not exceed thirty working days***.

Termination of contract of Employment with Notice(Art. 28)

Grounds

- the worker's manifest loss of capacity to perform the work to which he has been assigned; or
- lack of skill to continue work as a result of his refusal to take the opportunity of training prepared by the employer to upgrade his skill or
- after having been trained, inability to acquire the necessary skill;

Cont’d

- permanently unable to carry out his obligations for reasons of health or disability,;
- the worker's unwillingness to move to a locality to which the undertaking moves;
- the post of the worker is cancelled for good cause and
- the worker cannot be transferred to another post;

Cont'd
Article 28(2) of LP says for good cause

- organizational or operational requirements of the undertaking, i.e
- any event which entails direct and permanent cessation of the worker's activities in part or in whole resulting in the necessity of a reduction of the work force

Cont’d

- When there is reduction of the volume of the work and profit of the undertaking;
- a decision to alter work methods or
- Introduce of new technology with a view to raise productivity resulting in the reduction of the work force.

Reduction of Workers Atr.29

Reasons for reduction of work force

- representing at least ten percent of the number of workers employed or,
- in the case of an undertaking where the number of workers employed is between twenty and fifty, a reduction of workers affecting at least five employees over a continuous period of not less than ten days.

number of workers means the average number of the workers in twelve months proceeding the date when the employer took measures of reduction of workers.

Order of reduction of Employees Art 29/3

- those having the shortest length of service in the undertaking;
- those who have fewer dependants;
- those who are disabled by an employment injury in the undertaking;
- workers' representatives;
- expectant mothers;
- ***Construction projects are not duty bound to follow these steps***

IV. Termination of Contract of Employment by the Employee

I. ***Termination of Contract of Employment with Notice(Art. 31)***

A worker who has completed his probation period, may, **by giving thirty days prior notice** to the employer, terminate his contract of employment

Termination of Contract of Employment without Notice(Art.32)

- if the employer has committed against to his human dignity and morals or other acts punishable under the Penal Code;
- if, in the case of imminent danger threatening the worker's safety or health, the employer, having been made aware of such danger, failed to act within the time limit to avert the danger;
- if the employer has repeatedly failed to fulfill his basic obligations.

Cont’d

- The worker **shall inform the employer in writing** the reasons for termination and the date on which the termination is to take effect.
- **Period of Limitation:** A worker's right to terminate his contract of employment shall **lapse after fifteen working da**ys from the date on which the act occurred or ceased to exist (Art. 32)

Notice to Terminate a Contract of Employment

Procedure for Giving Notice(Art.34).

- Shall be made in writing.
- shall specify the reasons of termination
- the date on which the termination shall take effect.

Cont'd

Notice by the Employer **shall be handed to the worker in person**. Where it is not possible to find the worker or he refuses to receive the notice, it **shall be affixed on the notice board** in the work place of the worker for **10** consecutive days.

Notice of termination by the worker shall be handed to the employer or his representative or delivered to **his office.**

Notice of termination given to a worker by an employer during suspension shall be null and void.

Period of Notice(Art.)

the period of notice given by the employer shall be

- one month in the case of a worker who has completed his probation and has a period of service not exceeding one year;
- two months in the case of a worker who has a period of service above one year to nine years.
- three months in the case of a worker who has a period of service of more than nine years;
- two months in the case of a worker who has completed his probation and whose contract of employment I terminated due to reduction of work force.

Cont’d

- Period of notice for definite employment shall be determined by agreement
- shall run from the first working date following the date on which notice is dully given.
- The obligations of the parties deriving from the contract of employment shall continue in force during the period of notice

Termination of Employment contracts under the FCSP
Grounds

- resignation (Art.78)
- termination due to illness (Art.79)
- termination on grounds of inefficiency (Art.80)
- termination due to force majeure (Art.81)
- nullification of employment (Art.82)
- retrenchment (Art.83)
- termination on disciplinary grounds (Art.84)
- retirement (Art.85)
- termination on the ground of death (Art.86)

Resignation (Art.78)

any civil servant may by giving a 1 month prior notice, resign at any time.

Any civil servant , who has terminated his service without giving a one month prior notice may be subjected to civil and criminal liability.

Where the service of the civil servant is indispensable and he could not be replaced easily, the Head of the government institution may delay his release for a period not exceeding three months including the date of application.

Effects of Lawful Termination

- Once a contract of employment is terminated in accordance with the stipulation of the law and the parties are separated for good, there will be some consequences which will follow the termination. Most of the consequences are attached with the ground for termination while few others are available to all terminations. These are the following: