

Download from
Dreamstime.co
This watermarked comp image
122741904
Alexandersikov | Dreamstir

Law of Employment

A handbook by Kassawmar Assefa

Editor – Ashenafi Fisha

2022 G.c

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

UNIT ONE

Employment law

Employment law is the legal regime that regulates employment relationships. Employment relationship presupposes the existence of employer and worker. Such relationships maybe relationship between government and civil servants what we call civil servants employment law.Some other argued that on the difference between employment and labor law, unlike employment law, labor law regulates employment relationships in the industrial sector.

- ✓ The source of labor law might be either public or private source.

When we say public source, we are referring that, it emanates government enacted laws whereas when we say private source, mostly, it comes from the private negotiation between the employer and employee including contractual agreements, work rules, collective agreements which requires the existence more than one person and common agenda. That established between associations of employees and associations of employers or it may be concluded association of employee and one employer.

SCOPE OF APPLICATION OF PROC. NO 1156/2019

This proclamation is applicable to any employment relationship in the industrial sector means it doesn't regulate government relationship. If we say there is employment relationship, there must exist a worker and an employer. If there is no such persons, we cannot talk about employment relationship because employment relationship is a contractual employment relationship since there is a free labor and voluntarily established employment relationship.

Regarding to the definition of worker, we can look art. 2(3) of the proc. no. 1156/2019.

The worker shall be a natural person as per art. 4(1) of the proclamation. But the employer maybe either natural or legal person.

The employment contract is established voluntarily. So the employee is not forced to work. The employee agrees with the employer directly or indirectly to perform work for employer to his employer and under the authority of the employer. So control requirement is one requirement. The duration maybe for definite or indefinite time. The presumption is indefinite period of time but the presumption is rebuttable. The other element is inconsideration for wage.

Read about wage under art. 53! For the proclamation, the following are not considered as payment over time payment, per dime, hardship allowance, transport allowance, service charge received from customers etc. የትም ፍጭው ዱቄቱን አምጭው ከሆነ, it is not employment relationship.

Who is employer?

When we see the definition of employer under art 2(1 and 2) of the proclamation, an employer is a person or an undertaking who employs one or more natural persons. The phrase [any lawfull activity] implies even the activities which are carried out for non-profit purpose art 3 (3(b)).

If the employment is unlawful activities what is the fate of employee?

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

WHAT TRIANGULAR EMPLOYMENT RELATIONSHIP MEAN?

E.g. The agency employs the guards and hired to the other organization.

UNCONDITIONAL EXCLUSION FROM THE SCOPE OF APPLICATION OF THIS PROCLAMATION

- Contract for the purpose of care or rehabilitation:
- Contract for the purpose of indicating or training other than apprentice.
- When the employee is managerial employee. The justification of this provision is that, the manager is somehow closer to the status of the employer so it maybe happened conflict of interest. Regarding to the definition of managerial employee, we can look under art. 2(10) of the proclamation. Managerial employment includes a legal service head.

Which law govern these relationship excluded from this proclamation?

The civil code is applicable from art. 2512 to 2593 as to employment relationship between managerial employees and the employer

Regarding to internal rules of organization as per the decision of cassation, their applicability is provided orderly as follows; Internal rule. If the internal rule is sufficient, there is no need of referring civil code. Vol 15, File No.84661

The proc. no. 1156/2019 is applicable if the employer and the employee agreed. If there are no other options, their contractual agreement is applicable. The civil code is applicable if the internal rule is insufficient.

The other exclusion is personal service e.g., home worker. However, their relationship is governed by their contractual agreement, general contract and the civil code starting from 2601 to 2604. Contract of service is employment relationship while contract for service is not employment relationship.

The other exclusion is special category of employees such as the member of armed force, police force, employees of state administration that is civil servants, judges, prosecutors and others whose employment relationship is governed by special laws.

The other exclusion is independent contractor. The governing law is art 2610 and ff.

CONDITIONAL EXCLUSION FROM THIS PROCLAMATION

We can see art 3(3) of the proclamation.

When the Ethiopian national becomes an employee of foreign missionary, this proclamation governs until the council of ministers come up with regulation that exclude this proclamation and so far there is no regulation enacted by such organ concerning this issue.

Pure religious service is excluded from this labor proclamation.

Now a day, the council of ministers enacted the reg. no. 342/2015. So the condition for the art. 3(3 b) is fulfilled.

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

The proclamation is applicable on the workers who engaged in income generating, pure administrative, pure charitable activities.

CONTRACT OF EMPLOYMENT LAW

The four requirements required under the general contract should be fulfilled under the employment law. E.g., it must be lawful and moral according to art. 4(4) of the proclamation, It is also formed by the consent of the contracting party, The contract of employment shall be stipulated clearly. There is no formality requirement.

We can read art. 5 Of the proclamation.

If the contract of employment is concluded in writing, it must be fulfilled art. 6 of the proclamation

If the parties fail to comply with art. 6 and 7, there is no problem as per art. 8.

Generally, there is no special formality requirement for employment relationships.

DURATION OF CONTRACT OF EMPLOYMENT Art 9 AND 10 OF THE PROCLAMATION

Every contract of employment shall be presumed as concluded for an indefinite period as per art. 9. But there are exceptions under art. 10 of the proc. so if the employment relationship falls under this provision, it can be for the definite period. Retired person can set a specific duration with the employer as indefinite period refers until his retired period.

Probation under art 11

Probation is a trial period for the employer to assess the suitability of that employee. And at the same time, the period which enables the employee to evaluate whether he fits to that position or not. Probation period is not actually mandatory. E.g., the contracting parties can avoid this probation period. The probation period agreement shall be made in writing. The period shall not be exceeding more than 60 working days. During probation period, the worker shall have the same rights and obligations with other workers. The only difference is, each parties can terminate the contract without giving notice, paying compensation, paying severance payment.

THE OBLIGATION OF PARTIES STARTING FROM Art 12 TO 14

Obligations of the employer are;

- ✓ To Provide work including necessary materials.
- ✓ To Respect human dignity.
- ✓ To take safety measure.

Obligations of the employee are;

To perform the work personally

To follow the instruction prvided by the employer.

To give a proper aid when an accident occurred

Prohibited acts for employers or managerial employees are;

Restrain to work.

Coerce the worker to enter or not to enter into the a certain organization.

Compelling the worker to execute any task which is hazardous to his life

Sexual harassment at work place

Physical abuse at work place

Prohibited acts for employees.

Committing intentional endanger.

Taking away property from the work place

Making falsified documents.

MODIFICATION OF CONTRACT OF EMPLOYMENT art 15

Conditions for modifying contract of employment;

Collective agreement which is concluded between association of employees and employer or association of employees and association of employers

Working rule issued in accordance with this proclamation.

Written agreement of parties this is concluded between employer and employee

Either amalgamation or division of the legal entity does not affect contract of employment relationships meaning, it does not have any effect of modification, termination, suspension.

The other related issue which has the nature of contract of employment element is transfer of worker from one work place to another and transfer of worker from one job grade to another. The stand of cassation concerning this issue is the employer has exclusive administrative power to do so.

SUSPENTION OF CONTRACT OF EMPLOYMENT Art 17

Suspension means suspending obligations and rights of parties for certain period of time (temporally). Suspension does not mean termination or interruption.

Grounds for suspension art 18;

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

Leave without payment.

Leave of absent for the purpose of social services.

Detention for a period not exceeding 30 days

What is the effect if the employer is not notified or is not supposed to notify the detention of the employee?

Force majeure for successive ten days is other ground for suspension

Financial problem for successive ten days

NB. we have seen so far is creation of contract of employment art 4, operational aspects, obligations of the parties, duration of the contract, modification of the contract, suspention of contract of employment.

TERMINATION OF CONTRACT OF EMPLOYEMENT RELATIONSHIP

Art. 23 and the Following provisions talk about termination.

Art. 24 stated that, operation of the law to terminate contract of employment

24(1) talks completion of work which leads to art. 10 that are exception for indefinite period of contract of employment

24 (2) states about death of the worker What if the employer dies ? The law is silent regarding to this issue

Retirement age of the employment is another ground to terminate the contract of employment in the operation of the law.

Bankruptcy or for any other cause. This sub-art states when the under taking cease. What about the physical person cease Or what about insolvency? It fails to provide insolvency of physical person. As the instructor thinking, it should be construed this issue in the way it includes insolvency.

When the worker is unable to work due to partial or total permanent disability. Read art. 24 [5] vs 28 [1] (b)! and read art. 24 [4] vs 28 [3] (a)!

Mister Abraham yohannes tries to identify by alleging that, 24 [5] talks about when the employee becomes disable due to work accident which means the disability of the worker is caused by the accident happned at work place. Whereas 28 [1] (b) talks about the cause for worker's disability happened out of work.

Termination of contract of employment upon agreement of parties as per art. 25. This has to be made in writing as per art. 25 [2].

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

Waver of any right by the employee has no legal effect. What if the employer wave his right? the assumption seems there is no problem if the employer waves his right.

Termination of contract of employment upon initiation of the contracting parties.

Art. 26, 27, 28 talk about Termination of contract of employment upon initiation of the employer.

As per art. 26, The employer can terminate Contract of employment on the grounds attributed the worker's conduct: with the objective circumstance arising from ablity to do work: related to the organizational or operational requirements. This means the employer cannot terminate the employement contract by another means except these listed grounds.

Termination without notice.

Unless otherwise determined by collective agreement, contract of employment shall be terminated without giving notice;

Being late eight days within six monthes. It requires written warning in each lateness. It requires written warning in each absence.

Being absent five days within six monthes.

Fraudulent or deceitful conduct at workplace.

Misappropriation of the property of the employer.

Quarrel at work place.

Commission of any prohibited acts under art. 14 [2] of this proclamation.

Absence from work due to a court sentence passed against for more than 30 days.

Violation of stipulation of collective agreement.

The purpose of notice is to give preparation time while announcement has the purpose of evidenciary role.

Period of limitation for the grounds provided under art. 27 [1] is 30 days from the date the employer knew as per art. 27 [3].

Arts. 34 and 35 talk notice and accordingly, notice for termination of contract of employment must be made in writing. Notice is given in person then, if it is not possible, it can be posted on notice board.

Termination with notice is prohibited while the worker is suspended.

Period of notice.

1 month for the worker whose experience is less than one year within that specific employer. 2 monthes for worker whose experience is less than nine years or equal to one year. Three monthes for the workers whose experience is greater nine years. Two monthes for workers who are dismissed for reason of work force reduction. For the worker who works for definite period, the parties can agree notice period. If they fail to set period of notice, there should be taken reasonable time as per general contract or according to their collective agreement. but as per the decision of the cassation in file no 22275, art 35)((1) of the proclamation is applied if there is no specific period of limitation in their agreement. It does not affect the validity of termination if procedural requirements of notice are missed according to art. 44 of the proclamation and file no. 22275.

Termination without notice. art. 27.

As per art. 27 (1), Unless otherwise determined by collective agreement, contract of employment shall be only terminated without giving notice so These listed grounds are exhaustive. The grounds are;

Being late eight days within six monthes. It requires written warning in each lateness.

Being absent five days within six monthes. It requires written warning in each absence.

Fraudulent or deceitful conduct at workplace.

Misappropriation of the property of the employer.

Quarrel at work place.

Commission of any prohibited acts under art. 14 [2] of this proclamation.

Absence from work due to a court sentence passed against for more than 30 days.

Violation of stipulation of collective agreement.

As per art. 27 (2), Wher an employer terminates a contract of employement in accordance with this article, he shall give written statements specifying the reasons for and the date of termination. This is notification or announcement.

The cassation division in file no.. 49797, which is unpublished, decided that, failure to provide written statement does not affect the legality of termination. so giving notification is not mandatory.

The purpose of notice is to give preparation time while announcement has the purpose of evidenciary role.

Period of limitation for the grounds provided under art. 27 [1] is 30 days from the date the employer knew as per art. 27 [3].

As per art. 27 (4), If parties agree, they can suspend their contract of employment relationship for not exceeding 30 days before termination even though there is a fulfillment of grounds of termination provided under art. 27 (1).

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

Arts. 34 and 35 talk notice and accordingly, notice for termination of contract of employment must be made in writing. Notice is given in person then, if it is not possible, it can be posted on notice board. Termination with notice is prohibited while the worker is suspended.

Period of notice.

1 month for the worker whose experience is less than one year within that specific employer. 2 monthes for worker whose experience is less than nine years or equal to one year. Three monthes for the workers whose experience is greater nine years. Two monthes for workers who are dismissed for reason of work force reduction. For the worker who works for definite period, the parties can agree notice period. If they fail to set period of notice, there should be taken reasonable time as per general contract or according to their collective agreement. but as per the decision of the cassation in file no 22275, art 35)((1) of the proclamation is applied if there is no specific period of limitation in their agreement. It does not affect the validity of termination if procedural requirements of notice are missed according to art. 44 of the proclamation and file no. 22275.

TERMINATION OF CONTRACT OF EMPLOYMENT RELATIONSHIP WITH NOTICE Art. 28 OF THE PROCLAMATION.

Grounds are related to the conduct of employee's loss of capacity and situations affecting the worker shall a good cause for terminating the contract of employment with notice.

Relating to art. 28 (1) (d), cancelling of the job position due to outsorcing is considered as a good cause by the cassation decision. So the employer is possible to terminate the contract of employment by giving notice.

The other grounds are operational or functional requirements.

The other ground is related work force reduction (lay of) on condition that the requirements are fulfilled provided under art. 29. The ground for work force reduction is art 28 (3) of this proclamation. the difference from art 29 is art 29 is at group level while art 28 (3) is at individual level.

Who should be reduced first?

As per art. 29 (3) of the proclamation:

A. Workers who have the shortest length of service.

B. Workers who have fewer dependants.

C. Workers who have disability.

D. Worker's representatives.

E. Expectant mothers and mothers with four monthes post natal.

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

The duration of time for work force reduction should not less than 10 days.

Exception for work force reduction art. 30:

The exception is employs of construction works. When we say an exception, the employer is not required to follow the orders of work force reduction stated under art. 29 (3). The employer is required to show only there is successive completion of the construction work. So whenever we are saying exception, it is the exception for notto follow the order.

Termination of contract of employment by the initiation of the employee.

The employee can terminate the contract by giving one month notice period. The employee is not required to show justification to terminate the contract with notice unlike the employer. However, employee is required to show the existence of grounds of termination of contract of employment to terminate without giving notice as per art. 32 of the proclamation. 32 (1) of the proclamation is constractive dismissal.

32 (2) of the proclamation is about notification.

Period of limitation to terminate contract of employment relationship upon the initiation of the employee.

The employee cannot terminate the contract of employment without notice after the expiry of 15 working days from the date on which the act occurs or ceased to exist. Whereas The employer cannot terminate the contract of employment without notice after the expiry of 30 working days from the date on which the act occurs or ceased to exist as per art. 27 (3). Why there is different period of limitation for the employee and the employer? Since the employer has many tasks, it seems like to give long time. But the worker is one individual so he/she knows immediately and accordingly, short time is sufficient..

Art. 36 payment of wage and payments upon terminations be it lawfull or unlawfull.

Wages and other payments connected with termination due to the worker shall be paid within seven working days From the date of termination. The justification of this provision is to give chance for the employee to look for another jobs.

But exceptions have been provided under art. 36 (6), which stated that, the time of payment may be extended where the worker delays because of his own fault to return property or any some of money which he receives from the employer. Incidentally, failure to effect payment within seven working days has penalty to the employer.

The other exception stated under art. 37 is dispute as to the amount to be paid. So if there is dispute regarding the amount to be paid to the employee, the employer can delay payment.

Another exception is provided under art. 38 due to causes beyond the control of the employer.

Remedies for termination.

What is the effect if the employer fails to effect payment within seven working days? The effect is penalty of payment to the employee up to three monthes wage.

SEVERANCE PAYMENT AND COMPENSATION THAT IS PROVIDED UNDER Art 39 AND THE FOLLOWING. Severance payment is payment which is going to be paid to the employement upon termination of the contract of employement relationships. The objective of such payment is to enable the employee to look for other jobs, or to cover expenses that he may incur until he gets other job. The purpose of compensation is to reinstate to the position that the person were befor the occurrence of that event.

To claim severance payment, the requirements are that, the employee must complete his probationary period and he is not eligible for pention, or provident fund.

Who can be beneficiary of severance payment?

A. employee whose contract of employment relationships is terminated because of permanent ceazation of operation of the undertaking due to bankruptcy or for any other reasons.

B. His contract of employment is terminated by the initiation of the employer in violation of the law.

C. He is reduced as per the conditions prescribed under this proclamation.

D. When the worker resigned due to sexual harassement or sexual violence by the employer or managerial employees or co-workers and the incident was reported to the employer.

E. Contract of employement is terminated due to the employer's maltreatement affecting human dignity. ……

These lists are exhaustive.

Amount of severance payment art. 40.

Severance payment shall be 30 times the average daily wages of the last week of service for the first year of service and and for the service of less than one year be calculated in proportion to the period of service. What does it mean wage? Look at art. 53!

The employee who has served more than a year payment shall be increased by one third of the amount record to this sub-articl for every additional year of service however, that the total amount shall not exceeed 12 monthes of wage of the worker.

If the termination is falls on art. 24 (4) and art. 29 (work force reduction), additional payments shall be 60 times the average daily wages of the last week of service. This additional payments are additional to the severance payment.

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

COMPENSATION FOR TERMINATION OF CONTRACT OF EMPLOYEMENT WITHOUT NOTICE Art. 41.

The termination must be in accordance with art. 32 (1) which are constructive dismissal to claim compensation as per art. 41 of the proclamation. the compensation is paid in addition to severance payment as well as it is paid in addition to pention. The compensation must be 30 times of the last week average wage.

If the termination is in accordance to art. 32 (1) (b), the worker shall in addition to severance payment entitled to receive 90 times of the average of daily wage.

CONSIQUENCES OF UNLAWFUL TERMINATION OF CONTRACT OF EMPLOYMENT RELATIONSHIPS ART. 42.

Where an employer or employee fails to comply with the requirements laid down in this proclamation or other relevant contract of employement the termination shall be unlawful:

REINSTATEMENT OR PAYMENT OF COMPENSATION ART. 43.

The employer is obliged to reinstate the employee if the contract of employement terminated based on art. 26 (2). But it has an exception, the employer must pay compensation if the employee does not want to reinstate to his position.

Without prejudice sub-art. one of this provision, where the contract of employment is terminated contrary to the provisions of 24, 25, 27, 28 and 29, the labor dispute settlement tribunal may order the reinstatement of the worker or payment of compensation. If the employee is not reinstated, he is entitled to receive compensation. Exception for compensation is art. 44 of the proclamation that is termination inviolation of notice requirements.

Calculation of compensation.

a) For indefinite period, Compensation shall be calculated 180 times the average daily wage and some equal to his wage or appropriate notice period in accordance to art. 44 of this proclamation.

b) For definite period, Compensation shall be calculated 180 times average day wage not exceeding six monthes.

Provided that the employee is reinstated to the work as per sub-art. 1 and 2 of this article, the first instance court shall order back pay of wage for a period of not exceeding six monthes and if the appellate court conformed, it shall be paid 12 monthes wage.

PERIOD OF LIMITATION Art. 163.

1. An action arising out of employment relationship shall be barred within one year From the date of which the right becomes exercised.

2. Claim to be reinstated shall be barred within three monthes from the date of terminating.
3. Claim to other payments before termination shall be barred aftor six monthes.
4. Any payment arise from termination of the employment contract shall be barred within six monthes.

As per the dicision of the casation under vol. 11, file no. 53523, period of limitation to claim execution of reinstatement decree is one year

SPECIAL CONTRACT OF EMPLOYMENT and employees. art. 46.

Firstly, special category of special contracts:

a. homework contract. This is when a natural person habitually performs work for an employer in his own home or any other place freely choosen by him without direct supervision. This is an exception for art. 4 ((1)
b. contract of apprenticeship which has provided under art. 47.

Secondly, special category of employees:

Probationary employees

Apprentice which has provided under art. 48.

Young employees who has attained 15 years old. Art. 89.

Female employees.

Foreign employees art. 176.

MINIMUM WORKING CONDITIONS.

The minimum working conditions cannot be derogated by contracting parties in any case. one way or another, These conditions are protection for employees whose bargaining power is so weak. regarding to working hour, it has provided under art. 61, and accordingly, working hour in day is 8 hours and 48 hours in a week. This means in principle, this working hour should not exceed 8 hours daily and 48 hours in a week. However, by considering different reasons, under art. 63, there are exceptions: parties can allocate this 48 hours without extending the daily limits of 8 hours by more than 2 hours. This means the extention of 8 hours is allowed up to ten hours. But the total working hours per a week must not exceed 48 hours. As per art. 65 there are exclusions and accordingly, maximum working hour shall not be applicable on Commercial travelers or commercial representatives unless otherwise provided under collective agreement or employment contract.

The other condition is over time provided under art. 66. Without affecting the exceptions regarding to time allocation, The worker may work beyond the time limit provided under the law due to imminent danger, force majeure or any other reasons. Meaning, if working hour is exceeding 8 hours daily and 48 hours in a week, it is deemed to be over time. Under art. 67, limitation of overtime has been provided. the main justification of This provision is to protect the interests of the workers Whose bargaining power is so weak. therefore, overtime is strictly prohibited unless it is allowed only by the existence of conditions provided under art. 67 That an employee may be obliged to work beyond the time limit provided under art. 61-64. Conditions are: a. aactual or imminent accident. B. force majeure. C. substitutions of absent worker assigned on that work runs continuously without intruption "to substitute the absent worker".

Overtime shall not exceed 4 hours on a day and 12 hours in a week. Regarding overtime, there are aditional payments provided under art. 68.

weekly rest day art. 69. The justification of rest is making the worker to be ready for the next working day.

Art. 70 stated about special weekly rest day which fixes the exact day if the nature of the work cannot follow Sunday.

What is the effect if the worker works on his weekly rest day? The worker shall be entitled to compensatory weekly rest day since the objective of the rest is making the worker to be productive. Nevertheless the employee shall be compensated in the form of cash if his contract of employment is terminated before he used the compensatory rest period.

holiday leave art. 73. As a principle, holidays are paid. And if we see art. 74, no reduction of wage. 74 (1) talks about when the werker a one whose wage is paid monthly and other workers paid other than monthely, the contracting parties can fix such issue.. The question is are the workers who are paid daily or weekly is entitled to be paid their wage on holiday or not? Or in other speaking, is this provision is discriminatory or not? "the worker who is paid weekly should interpreted in a way it is equivalent the werker who is paid monthly". if two holidays come on one day, there is no claim for two holidays meaning, the worker is given only the payment of one holiday.

Annual leave art. 76. Its objective is to prepare the worker for productive capacity for the coming year. Because of that rational, principles are 1. agreement to wave such right shall be of no effect. 2. Even payment of wage instead of annual leave is prohibited unless otherwise provided under the proclamation.. the exception is the worker whose contract of employment is terminated before he uses his annual leave, he is entitled to receive mony instead of annual leave. the amount of annual leave is 16 days for one year service as per art. 77 (1) (a). for additional two years there is additional one day leave. if the service is less than one year, the worker is entitled annual leave proportional to the length of his service as per art. 77 (5). What is the effect regarding additional one day leave for additional two years if the worker who serves for less than one year and uses his annual leave? The base to calculate such leave is like other annual leave, it is 16 days.

Employment law short note BY. Kassawmar Assesfa
Edited By Ashenafi Fisha

Postponing of annual leave art. 79. If the parties agreed, annual leave may be divided into two parts. What is the justification granted dividing into two? Why do not into three and other?

If the parties agreed, annual leave may be postponed. For how long time postpone is permitted?

Any leave postponed in accordance with sub arts. 2 and 3 of this article shall not be postponed for more than two years. What is the effect of postponeing for more than two years? The position of cassation regarding to this issue is the time is expired if it is more than two years. But the purpose of the law is not limiting the right of the employee.

Special leaves art. 81. leaves Such as For family purpose. The other special leave is provided under art. 82 which is union leave that may be association of employer or association of employee. The other special leave is provided art. 83 that is leave to hear labor dispute. Labor dispute is categorized into individual and collective labor dispute. If the decision affects only the worker concerned On that specific issue, that is individual labor dispute. When we say individual labor dispute, the number of the workers may be above one and more which means number of the workers does not matter. The question is what about other legal litigation?

Sick leave (art. 85). The duration of sick leave is up to six monthes as per 85 (2). Regarding the wage given to the worker who leaves due to sickness is stipulated under art. 86.

OCCUPATION SAFETY AND HEALTH AND WORKING INVIRONMENT Art. 92.

Article 92 talks about the obligation of the employer to protect the workers from occupational injury (accident)and occupational disease. This obligation is additional obligation since there is the obligation of the employer under art. 12 of this proclamation.

The law is not only imposes obligation on the employer but also it imposes obligation on the worker under art. 93. Therefore, workers have also their own obligation towards avoiding or minimizing occupational injury (accident) or occupational disease. For employer, Failure to obey the obligation may result in liability to pay compensation while for worker, failure to observe instructions may result in not to be paid compensation.

LIABLITY FOR OCCUPATIONAL INJURY Art. 96.

The employer has strict liability towards any employment injury for the worker. So the employer shall be liable irrespective of fault for the employment injuries sustained by his worker. However, there are exceptions or defenses that the employer could try to defend him And the Exceptions are:

1. If there is non-observance of express safety instruction given by the employer.
2. If there is intoxication caused by taking alcoholic beverage or drug.
3. Making the employer's strictly liable does not mean that the worker cannot bring another legal action by using other legal regime. This means if there is a fault on the part of the

employer, the worker can bring legal claim by using tort law. The cassation gives decision by alleging that the worker can claim compensation by using two legal regimes And different amount of compensation at a time. Therefore, the worker claim compensation against the employer by using strict liability provided under this proclamation and also he can claim compensation by invoking fault based liability of the employer if the occupational injury is a result of fault on the part of the employer Based on extra-contractual law.

As per art. 97, Occupational injury can be categorized into occupational accident and occupational disease. Occupational accident is any organic injury functional disorder sustained by a worker As a result of any cause extraneous to the injured worker or any effort make during or in condition with the performance of his work which includes:

1. Any injury sustained by worker while caring out his employer's order Even away from the work place or outside of working hours.
2. Any injury sustained by worker before or after his work or during any intruption of work provided that he is present at work place or premises of the undertaking By the reason of his duties.
3. Any injury sustained by worker while he is traveling to or from a place of work in transport service provided by the undertaking which is available for the common use of its workers or hired and expressly destined by the undertaking for the same purpose.
4. Any injury sustained by worker as a result of an action of the employer or a third party during the performance of his work.

art. 98 stated about occupational diseaseWhich is any disorder happened at work place. Exceptionally, epidemic and indemic disease are not occupational disease eg, covid nineteen. Therefore, so as to say occupational disease, that disease must arise from the nature of the work that the workers carry out.

OCCUPATIONAL DISABLEMENT Art. 99.

Occupational accident or occupational disease may result in occupational disablement. When we say occupational disablement, the decrease or loss of capacity to work as a result of these occupational accident or occupational disease what we call it in general occupational injury.

Occupational disablement can be categorized into temporary, permanent and death. By temporary, it is to mean that, it is curable. it might be eitherpartial or total temporary disablement. In case of permanent, it is to mean that, it is not curable and the worker will not regain his capacity to work. Permanent disability can be categorized into partial and total permanent disabilities. In the case of partial permanent disability, the worker looses his capacity partially or in other speaking, decrease of working capacity. However, when we say total permanent disability, the worker cannot be employed in any form which is income generating

work for life. Art. 101 (3) stated that, injuries which although not resulting in incapacity for work cause serious mutilation or disfigurement of the injured person shall for the purpose of compensation is considered as permanent partial disability.

INJURY BENEFITS.

The first injury benefit is medical service which has provided under art. 105.

The other benefit is cash benefit which has provided starting from art. 107-112. If the worker sustains temporary disablement, he is entitled to periodical payment until one year come to an end. As to the amount of payment that is paid, look at Art. 108 (2)!

art. 107 (1) (b) talks regarding permanent disablement. The worker who sustained permanent disability will be paid disablement pension or disablement gratitude. Disablement pension has the nature of pension but that pension is paid for the worker due to the fact that he sustained a permanent work injury. And the disablement pension is paid for life. private organization employee's pension Proc. no. 1268/2022 under art. 34 and the following stated about disablement pension. To be paid disablement pension, the worker should loss 10 percent of working capacity. The amount of payment is 47 % of his wage.

Dependant's benefit art. 110. If the worker dais, his dependants will be paid dependant payment. Who are dependants? Look art. 110 (2)! widow or Widower, children of the deceased, any parent who was being supported by the deceased. So this disablement pention or disablement gratitude is paid for those dependants If the worker dais.

DISABLEMENT PAYMENTS. Art. 109.

The amount of compensation is determined:

1. if the collective agreement regulates the amount of compensation to be paid to the victim, we should aply it unless that collective agreement is less favorable condition to the worker Compaired with this proclamation art. 109 (4).
2. , if the collective agreement does not regulate, we should apply workmen's insurance.
3. If there is not workmen's insurance, we should apply pention scheme.
4. If there is not pension, we should apply art. 109 (4).

UNIONIZATION. Art. 114.

To form trade union , members of the union shall not be less than 10. If the number of workers of a single undertaking is less than 10, the law allows such workers to form trade union with other undertaking's workers. The purpose of this trade union is to claim their rights together, to acquire strong bargaining power with their employers.

Worker's federation. This is association of trade unions. These trade unions on the one hand, they represent the interests of their member workers. On the other hand the representative of these trade unions may become members of the federation and they may represent the interests their individual trade union.

Worker's confederation. It is association of federations. Its purpose is to defend the interests of federations.

Employers have also the right to form associations In their sector. employer's association is the counterpart of trade union.

There is also employer's federation.

As well as there is employer's confederation.

Generally, the purpose is unionization of workers, unionization of employers, to facilitate collective bargaining, to bring sustainable development, economic development, peace in the sector of industry.

collective agreements and collective bargaining. art. 125.

collective bargaining presupposes the existence of collection of individuals. so it is the process of negotiation to reach on certain agreement to look for a certain soulution which is called collective agreement. look at art. 125 (2)!

collective agreement is allowed so long as it provides more favorable conditions to the workers as per art. 134. Collective agreement is legally binding until three years.

labor dispute. art. 137.

This means dispute between workers and employers. The dispute may be about minimum working conditions or any other. And the dispute may be between the individual worker and the employer Or among association of workers and association of employers. When we say any dispute, it is in connection with their employment relationship.

Labor dispute may be either individual or collective dispute. Go to arts. 139 Vs148! Labor dispute is categorized into individual and collective labor dispute. If the decision affects only the worker concerned On that specific issue, that is individual labor dispute. When we say individual labor dispute, The dispute affects only the disputant parties who are engaged in that dispute. the number of the workers may be above one and more which means number of the workers does not matter. Whereas if the dispute affects the interests of the whole employees even those workers who are not actually engaged in that dispute, it is collective dispute. In conclusion, What matters is that, whose interest is going to be affected by that dispute.

individual labor disputes are going to be entertained by regular courts while collective labor disputes are going to be settled by labor board. labor board may be either permanent or adhoc. as

per art. 148 (1) (a), permanent board entertain collective labor disputes except art. 143 (1). so look at Art. 143 (1) (a)! the provision stated that, conserning wages and other benefits which are not determined by work rules or collective agreements, permanent board have not power to intertain the case. and this power is expressly given to adhoc labor boards as per art. 148 (2). Therefore, except 143 (1) (a), 143 (1) (b c d) are intertained by permanent board.

in addition to these organs, there are also alternative dispute resoulution mechanisms.

JOB STRUCKOUT AND LOCKOUT.

when we read art. 158 (1), workers shall have the right to strike to protect their interests. Regarding the definition of strike we can read art. 137 (5). Strike shall fulfill the procedures provided by this proclamation starting from art. 158 and the following. The counterpart of strike is lockout which is going to be exercised by employers that has provided under arts. 134 (4) and 158 (2).

there is no court fee only if the claim is brought by the worker.

PERIOD OF LIMITATION Art. 163.

1. An action arising out of employment relationship shall be barred within one year From the date of which the right becomes exercised.
2. Claim to be reinstated shall be barred within three monthes from the date of terminating.
3. Claim to other payments before termination shall be barred aftor six monthes.
4. Any payment arise from termination of the employment contract shall be barred within six monthes.

As per the dicision of the casation under vol. 11, file no. 53523, period of limitation to claim execution of reinstatement decree is one year

art. 168 stated that, any claim by worker emanating from employment relations shall be paid first of all. what is the effect if workers, secured creditors, tax collector come together to be paid? who shall be paid first?