

Ethiopian Labour Law

BY: Mikiyas.D

Contact at: mickysmart43@gmail,com or +251925503628

Micky short notes

Chapter One

General introduction to Employment Relations

- It is important to highlight the fact that employment law as a branch of law is of relatively recent origin in Ethiopian legal history.
- Traditionally labour relation was considered as economic relation and was left to private regulation through contract.
- *The role of the government in such relations was intended to be nothing more or less than enforcement of promises of the parties.* Nevertheless, the principle of freedom of contract failed to bring about equitable outcome in employment relations due to the bargaining position of the parties.
- Thus the situation called for state intervention and internationally concerted action, in particular the formation of ILO 1919.
- *Therefore, employment law is a phenomenon of industrial era where freedom of contract and free movement of persons are being respected. Such freedom has been obtained with the abolishment of slavery and tenancy.*

Source of Ethiopian Employment Law

- These sources could be categorized into national and international or into public and private instruments.

a) **The international Sources:** are mainly Conventions and Recommendations of ILO and all conventions related to employment relationship ratified by Ethiopia (see art 9(4) of FDRE Constitution.

b) The sources of employment law of national origin may be classified into public and private ones.

- **The public acts:** include; the FDRE Constitution, the Labour Proclamation together with its amendments, the Federal Civil Service Proclamation and the Regional Civil Service Proclamations of the respective Regions; Pensions' Proclamation, Cassation decisions and etc..
- **The private acts:** are instruments of private nature but binding as though they are law (Art.1731 (1) Civil Code). Thus, strictly speaking they are not law; all the same they are assimilated to law. These are: Contracts of employment, Collective agreements and Work rules.

N.B. ***Private act as a source of law for the Civil Service does not seem to be applicable. For one thing, the contract of employment between the Civil Servant and his/her employer (i.e. the government office) will be an administrative in nature and public law in branch.***

N.B. Labour law is within federal jurisdiction (see art 55(3) of FDRE Constitution while Civil Service law is within the concurrent jurisdiction in the sense that the federal civil service is within the federal competence while the regional civil service is left to the respective Regions.

Scope of Ethiopian labour law

Q. What are the importance of determining the scope of labour law?

- ✓ Determining the scope of application of a legal instrument would enable us to apply it in its appropriate context.
- ✓ It will also help us identify the addressees of the instrument together with their rights and corresponding duties.

Q. If so, what is employment relationship mean in Ethiopian labour law and its elements?

Employment relation is established through a contract of employment and *it shall be deemed formed where a person (the employee) agrees, directly or indirectly, to perform work for and under the authority of another (the employer) for a definite or indefinite period or piece work in return for wages.* (see art 4 of proc. 377/03)

- Accordingly, the major definitional element of employment relation are;

a) **Agreement:** *indicate that agreement is the basis for employment relation and this automatically excludes forced labour from the ambit of employment relations. Moreover, agreement to employment relation may be expressed directly (personal negotiation) or indirectly (through agent).*

b) **Performance of work:** *Through this arrangement the employee is putting his skill and working capacity at the disposal of the employer. Although the employee may express his/her agreement indirectly, his/her service is to be provided personally. S/he cannot, as of right, delegate another person to render service in his/her behalf.*

c) **Under the authority of the employer:** *The employee will be required to render the said service within the frame work of the instruction of the employer. (within the terms of the contract). however, that the authority granted to the employer over the employee is not meant and intended to establish a master and servant relationship.*

d) **Length of employment:** *As regards to duration, a contract of employment could be entered into either for definite period or for indefinite period or for a specific assignment.*

e) **Wage:** *employment relation is not a pro bono service. On the contrary, it is a service in return for wages.*

N.B. If and when these elements are cumulatively satisfied, the status of the parties will be held as employer and employee relationship.

Triangular" Employment Relationships

Q. What is triangular relationship?

- **"triangular" employment relationships** are workers employed by an enterprise (the —provider‖) who perform work for a third party (the —user‖) to whom their employer provides labour or services. ***It is also known as outsourcing.***
- A wide variety of contracts can be used to formalize an agreement for the provision of work. Such contracts can have beneficial effects for the provider's employees in terms of ***employment opportunities, experience and professional challenges***.
- From a legal standpoint, however, such contracts may present a technical difficulty as the employees concerned may find themselves interacting with two (or more) interlocutors, each of whom assumes certain functions of a traditional employer. The best known is the use of contractors and private employment agencies.



Employer or user (e.g commercial Bank)

Employee (e.g private guard of commercial bank)

Provider (e.g commercial nominee)

Q. what are the worker‘s rights – are they the rights agreed by the employee with his or her employer (the provider), or those of the employees employed by the user, or a combination of the two?

- employers are primarily responsible for the rights of their employees, whether they are a contractor, an employment agency, a cooperative or any other employing enterprise or entity.
- However, the role of the user can be crucial with respect to ensuring respect to these rights (such as limits on working hours, rest breaks, paid leave, etc.).
- *Depending on the circumstances and national law, the employer (or provider) and the user may bear joint and several liability, so that the worker can claim against both or either of them without distinction.*
- In other circumstances, the user bears subsidiary liability, in the sense that a claim may only brought against the user in the event of non-compliance by the provider.
- *In summary, in cases of —triangular‖ employment relationships, employees are frequently faced with multiple interlocutors. In such circumstances, it is essential that such employees know who the employer is, what their rights are, and who is responsible for them.*
- ***It is equally important to determine the position of the user with respect to the employees of the provider enterprise***

Individual Employment Relation

- Individual employment relation, means is, a contractual relation between an employee and his/her employer in their individual capacity.
- Art.2 (3) conjointly read with Art.4 (1) of the LP will assist us in understanding who an employee is for purposes of the LP.
- It must be underlined that employer under the labour law is *any natural or legal person which is engaged in any lawful activity, be it profit making or otherwise*

Q. What is the difference between labour law proc and federal civil servant proc. definition of individual employment relation?

- In the labour law setting, the legal instrument is limiting itself towards stipulating minimum conditions of labour providing sufficient room for flexibility for further bargain by the parties either through contract or collective bargaining. *Under the Civil Service, however, conditions of work are rigorously regulated by law and there is little or no room for negotiation*

N.B. *In this sense most (if not all) the work conditions spelt out in the Civil Service instruments are not only minimum but also the maximum.*

Q. Does Ethiopian labour law is purely dual?

- *Specific employment relations which are outside of the ambit of both the labour and civil service employment regime should be mentioned in order to show that* ***Ethiopian employment regime is not purely dual.***

- ***It rather has a —third regime at the margin.*** For example employees such as the police and armed forces, domestic workers, management staff and others are within the third regime.

Forms of Employment Contact

- As regards to forms of contract, the labour law regime in principle does not require any special form for contractual validity. It is under exceptional cases that it requires written form. See Art. 5 LP
- The Civil service regime on its part requires written instrument in all cases. As a contract of employment is a contract with public administration, the civil code requires a special form for the purpose (Art.1724 C.C.) see (Art.18(1) of civil servant proc.

Q. What are the main duty and right of the contracting parties?

- Articles 12-14 of LP and Articles 61-65 of the FCSP may be helpful in elucidating this issue. The duty to provide work and the agreed wage to the employee is among the most important obligations of the employer. On the other hand, the employee is duty bound to provide personal and faithful service with due diligence.
- As the main element in a contract of employment has been the consent of the parties to the contract, they are at liberty to modify the terms of their contract and to suspend it if and when the need arises so long as their consent have been externally and clearly manifested as required by the law. See art 15 of LP

Suspension of Employment Relation

Q. What is 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 the sense that it has attributes of termination on the one hand and of employment relation on the other hand.*

Q. What are the main grounds of suspension?

- 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.

A. Voluntary arrangement of the parties

- The employer and the employee may agree to suspend their contractual relation for sometime. ***For example, the employee may get an offer for a better pay for six months of employment. In such case she may request her employer to grant her leave without pay for six months.***

- Within the agreed six months, the employer will not pay the wages and other benefits to the employee and the employee will not be required to render service for her employer. At the expiry of the six months period, however, the parties will be reinstated to their previous employment relation. See art Art. 18(1) LP & Art.45 (1) FCSP.

B. 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.
- The other possibility is he may hold office at kebele or woreda level or he may be elected as parliamentarian. It is also possible that the employee may be required to discharge national service (be it military service or otherwise)
- It seems unfair to terminate the contract of employment of this individual because he 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.

C. 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.***
- Suspension under these grounds is not within the sole discretion of the employer. It is subject to revision by the Ministry of Labour and Social Affairs or Regional Labour 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.

D. Disciplinary Suspension

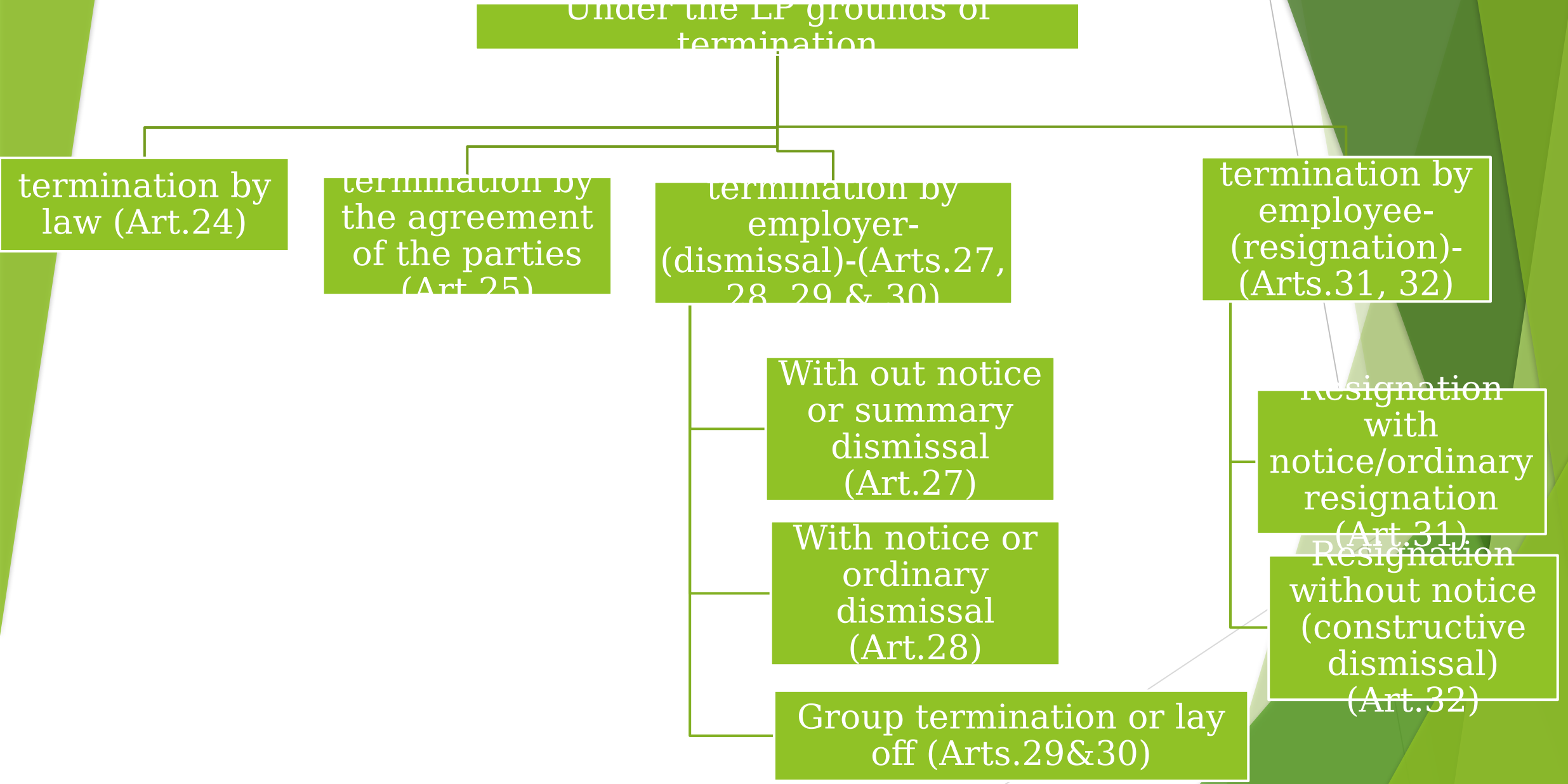
- the Labour Proclamation delegated collective agreements to deal with the matter. Nevertheless, disciplinary suspension is not to exceed one month in duration within which time the employer should complete its investigation and arrive at a decision.
- Thus, as the Labour Proclamation now stands, disciplinary suspension is not within the unilateral power of the employer, it is rather to be determined by the employer and the trade union (i.e. collective agreement). Besides, its length is not even left to collective agreement; it is rather fixed by law and cannot exceed one month. Art.27(4) LP & Art.70 FCSP.

Q. What is the Consequences 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.
- What is more, 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.

Termination of Employment Relation

Q. What are the major ground of termination?



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. The major are;

A. Certificate of Service (see art 12(7) of LP

- This document is available free of charge to all terminations except for termination due to death of the employee as it will not have a purpose to be served in cases where the termination is the result of death. As regards to the content of this certificate, reason for termination is not an essential element to be spelt out in such document.

B. Payment instead of unutilized annual leave

- In principle it is prohibited to convert annual leave into cash. See art 76(2) of LP, However, if the contract of employment is terminated prior to the utilization of the annual leave, the employee is entitled to his pay for the leave he has not taken. See art 77(5) of LP
- As annual leave cannot be postponed for more than two years,(see art 79(5) of Lp) the payment for this cannot be in excess of two years annual leave converted into cash.

C. Severance payment

- *Unlike Certificate of Service and payment instead of annual leave which are available to almost all grounds of termination, severance payment is available to employees whose contract of employment is terminated on specified grounds*
- The most important limitation is, an employee who is entitled to pension payment immediately after termination is denied of severance payment. Whether an employee is entitled to pension scheme as soon as s/he is terminated or not will be determined on the basis of the Pension Proclamation. See art Labour Proclamation No.494/2006 Art.2 (g)

- Once the employee is entitled to severance payment, the amount of such payment will be determined on the amount of wage the individual was earning prior to termination and his/her length of service. See art 40 of LP.

D. Compensation

- Employees whose contract of employment have been terminated due to —the permanent cessation of operation of the undertaking because of bankruptcy or any other cause‖ (Art.24 (4) or due to lay off (Art.29) are entitled to compensation. Moreover, employees who resigned on an extra ordinary procedure (Art.32) are also beneficiaries of such compensation.
- Unlike severance payment which takes length of service into consideration, the amount of compensation in both cases does not take the length of service of the employee into account.

E. Period of limitation

- The time within which the entitlements are to be claimed is also relevant. In principle, the labour proclamation tends to fix short durations after the expiry of which the claim may be barred by limitation.(refer Art.162)
- In addition to fixing short of period of limitation, the law obligates the employer to effect all payments due to the employee within seven working days from the time of termination.(refer.Arts.36-38).

Unlawful termination and its effects

- Any termination which fails to observe the substantive or procedural requirements of termination shall be held unlawful.(refer Arts.14(1)(c),23(1) & 42 of Labour Proclamation.

Q. Are all remedies for unlawful terminations are the same?

- Be this as it may, the remedy for unlawful termination is not one and the same in all cases. It rather depends on the nature of the unlawfulness
- Generally,
  - reinstatement(Arts.26(2)& 43(1)),
  - compensation together with severance payment(Art.43(2),(3)(4) &39(1)(b)),
  - payment inleu of notice period(Art.44 & 45),
  - fine(Art.14(1)(c)&184(2)(c) are the remedies stipulated by law for unlawful terminations.

Special categories of Employees

Q. Who are the special categories of employees?

The rational for the special treatment is associated with the specific condition the employee is in. We will try to examine these features one by one.

A. Probationary employees (see art 11 of LP)

- The purpose of probation is to test the suitability of the employee to a post in which she is intended to be assigned. Within the trial period, the employer is entitled to dismiss the employee with out any procedure if the employer is convinced that the employee is unfit for the post.
- whenever a person is dismissed for unfitness, it is sufficient that the employer ***honestly believes on reasonable grounds*** that the person is unfit. ***It is not necessary for the employer to prove that she is in fact incompetent.***
- Under the Civil Service, probation period is mandatory in the sense that every new employee should pass through the test and its length is specified by law and hence it is not subject to contractual bargain. This does not seem the case under the Labour Proclamation.

B. Apprentice (see art 47/48 of LP)

- This is a situation through which the employer agrees to provide a person (i.e. the apprentice) complete and systematic training and the apprentice in return agrees to obey the instruction given to carry out the training.
- As far as the law is concerned, not all trades are open to apprenticeship and hence the Ministry is empowered to spell out the list of trades open to apprenticeship and other related issues (Art.170 LP).

C. Young employees (see art 89/90 of LP)

- These are employees between the age of 14 and 18. As we all know, entering into a contract of employment is a juridical act. Hence it must be noted that the issue of young employees is an exception to the general rule.
- Actually it must be further noted that this is not the only exception in this respect. At the age of fourteen, a minor may be emancipated. (Art.312 (2) of Revised Family Code) Furthermore, a minor may make a valid will at the age of 16. (Art.295 (2)) Marriage is also possible at the age of 16. (Art.7 (2))

D. Female employees

- The law tries to regulate the situation of female employees from two angles.

a) The first type of regulation is providing flat protection available to all females by virtue of being female. *Women shall not be discriminated against as regards employment and payment, on the basis of their sex*‖ (Art.87 (1) Labour Proclamation).

b) The other type of regulation is providing special provisions for females under particular circumstances such as pregnancy and maternity. (refer Arts. 87(3), (4),(5) &88 of Labour Proclamation) It must be noted however that the principle of non discrimination may be deviated from through what is so called —inherent job requirement or genuine occupational qualification‖ (***please provide an example to elaborate the case)***

E. Employees with disability

- ✓ LP prohibits discrimination among employees —…on the basis of nationality, sex, religion, political outlook or ***any other condition***.‖(Art.14 (1) (f) emphasis added) It may be logical to assume that the phrase —…any other condition‖ may be construed to include disability as a protected ground.

F. Non Ethiopian employees

- As expression of the sovereign authority, the Ethiopian legislature lays down conditions on the basis of which foreign nationals may be employed in Ethiopia. (refer. Art.174 LP & Art.15 & 22(2) FCSP). Ethiopian law seems to give priority of employment to its nationals which is in consistent with the general practice of states world wide.
- It is when a particular type of service is not available in the domestic market that a foreigner may be employed. Moreover, employment of foreign national is temporary and for limited duration.
- It must also be noted that there are specific areas of employment where foreigners may not have access to employment such as defense, security and foreign affairs.
- *As a requirement, for a foreigner to be lawfully employed in Ethiopia, he/she needs to possess double permits.(namely; Residence Permit & Work Permit)*

Legally stipulated minimum working conditions

Q. Why minimum conditions of work?

- *The rational behind stipulating minimum working conditions is predominantly attributed to what economists call market failure*.
- *As employer and employee are not on equal bargaining strength, leaving them alone to define their terms of contract failed to bring about equitable out come. As the market did not work well in this respect, manifestations of failure such as injustice and instability of industrial peace became the order of the day.*

Q. What are the major minimum conditions of work?

- Most provisions of minimum labour conditions are related, but not limited, to prescribing *minimum wage*; limiting daily/weekly working hours; provision of paid leaves; employment security; maintenance of safe and healthy working condition and compensation for employment injury.

A. Minimum Wage

- Many jurisdictions have succeeded in prescribing minimum hourly/monthly wages to employees working within their territory. Others leave this issue to the contracting parties. *The Ethiopian employment regime seems to adopt a hybrid of the two approaches (to be determined by the parties as one aspect of market oriented economy)*
- The civil service regime has prescribed a minimum monthly wage for those working in the civil service; (minimum wage 320 birr) while the labour law regime has left the issue to the parties themselves.

B. Employment security

- Although the employee is still at liberty to terminate his/her contract of employment with cause or without cause subject to prior notice,(Art.31 LP & Art.78 FCSP), such entitlement is not widely available to the employer. This is an aspect of expression for ensuring employment security to the employee as employment is a means to survival for him/her

C. Normal Working hours

- By normal working hours, we mean those periods in a day or in a week when the employee regularly renders service to the benefit of his/her employer

- Under the civil service, it has been stipulated that —regular working hours of civil servant shall be determined on the basis of the conditions of their work and shall not exceed 39 hours a week.‖(Art.32). Under the Labour Proclamation, however, —normal hours of work shall not exceed eight hours a day or forty eight hours a week‖ (Art.61 (1)) see also art 90 of LP

Q. What are the additional legal protection of normal hours of work to be respected?

- In order to ensure the reliable application of this limitation, the law has further introduced additional safety valves.

a) **it declared that overtime work is in principle prohibited**. It is only in cases where exceptional circumstances expressly stated by law have occurred that overtime work is allowed. (Arts.66 & 67 LP; Art.34 FCSP).

b) even if conditions for overtime work are met, the rate of payment for overtime work is being made expensive partly to discourage the employer from requiring overtime work. (Art.68 LP).

c) an employer who —causes workers to work beyond the maximum working hours set forth by or contravenes in any manner the provisions relating to working hours is liable to fine‖(Art.184(1)(a) LP).

D. **Safe and Healthy working conditions**

- under the —deeper pocket‖ principle, the employer is an economically better position to cover such cost even if it fails to pass it off to society. Be that as it may, employer‘s liability in this connection has two levels (namely; at the level of prevention and at the remedial stage).

➢ **Preventive measures**

✓ At the level of prevention, the employer is duty bound to prevent preventable risks. For this purpose, it is required to provide safety equipments and train how and when to make use of them (Art.92 LP).

Nevertheless, it is worth noting that the employee has also a corresponding duty at the level of prevention. He/she is required to make use of the protective tools appropriately and at appropriate time and place (Art.93 LP).

Furthermore, he/she is obligated to obey all health and safety instructions. Hence prevention demands the care of both parties (i.e. bilateral care).

- **Remedial measures**

By remedial stage what we mean is, taking compensatory measures after the damage has already been sustained.

Hence employer‘s liability is not limited to the stage of prevention. It rather covers the remedial stage also so long as the injury is associated with the employment. This will take us to identifying what employment injury is.

Q. What is employment injury?

Employment injury could be categorized into two. They are either occupational accident or occupational disease (Art 95(2) LP & Art.47 (1) FSCP).

a) Occupational Accident

Occupational accident is any organic injury or functional disorder sustained by an employee:

- while carrying out the employer‘s order at a place and time of work ;(***e.g. Bekele‟s right hand was seriously injured while he was operating a machine at his place of work.)***
- while at the place of work before or after his work or during tea or lunch breaks *;(**e.g. Sosna sustained injury when fire broke out at a cafeteria within the compound of her place of work during a tea break while she was drinking tea. Although she was not performing work at the time of the injury, she was there for the purpose of the work and hence her injury is assimilated to occupational accident.)*** –
- while the employee is proceeding to or from place of work in a transport service provided by the employer ***(e.g. Seyoum was going to his place of work when the car he was in collided with a train. He thereby sustained serious bodily injury. The vehicle he was in was a bus assigned by his employer to transport employees to and from place of work.).***

b) Occupational disease

- *on its part, is any pathological condition whether caused by physical, chemical or biological agents which rises as a consequence of* :
  - the type of work performed by the employee or
  - the surroundings in which the employee is obliged to work.

N.B. Nevertheless, occupational disease does not include endemic and epidemic disease which is prevalent in the area where the work is done. Such disease will be occupational disease for those employees who are exclusively engaged in combating such diseases by reason of their occupation.

E.g. *Osman was a store keeper in a certain cotton plantation in Afar for five years. While at work, he contracted malaria and died due to it. His family instituted a court action against the cotton plantation for compensation claiming that their breadwinner died due to occupational disease.*

- The claim of the deceased's family is untenable under the law. Malaria in afar is an epidemic disease and hence contracting malaria in Afar is a ***generally available risk*** to inhabitants of the locality whether employed or not. Thus, it cannot be held as occupational disease.
- Another example, *Seid is a health officer in the same cotton plantation. His job responsibility was looking after the well being and health of the employees including malaria prevention. While on duty, he contracted malaria*.
- It is an occupational disease for Seid because he is exposed to increased risk of malaria contraction more than anybody else due to his job responsibilities. Hence he should be protected from such risk if he is to effectively render service under the contract.

Exemption from Liability

Q. Is always the employer is liable for occupational risks?

- Employer‘s liability is limited to employment injury cases. Employment injuries as indicated above are predominantly injuries sustained at the place and time of work and injuries some how related to work. ***Thus, the employer is not an all time (i.e. twenty four hours) insurer of the employee as regular working hours is only eight hours per day***.
- Even for injuries sustained at the time and place of employment, there are exceptional situations where the employer can validly avoid liability. A case in point is where the employee intentionally caused the injury on her/himself.

Q. How the employer can prove the intentional act of the employee?

- Although it may be difficult for the employer to show that the employee intentionally caused the injury on her/himself, the law has laid down presumptions in its favour.
- *Among the presumptions are, when the employee does not obey safety instructions of the employer or when the employee reported to duty under the influence of alcohol or chat and sustained the injury while in such circumstances. The employer will be exempted from liability and the damage will rest where it falls*.
- It has been stated earlier that one of the statutory obligations of an employee is to report for duty in fit physical and mental condition (Art.13 (4) &14(2) (c) LP). Thus when an employee reports for duty under the influence of intoxication, s/he, in effect, is violating one of his/her primary obligations. This seems the reason why such an employee is denied of employment injury benefit.

Extent of liability

- Once a certain injury is held to be employment injury and the employer has no ground to invoke in view of avoiding liability, the next step will be determining the scope of its liability.
- Although the scope of liability is closely related to the degree of injury sustained by the employee, there are common obligations which are applicable to all injuries. These are:

a) **Immediate obligation** As soon as the employee is known to have sustained employment injury, the first step the employee is expected to do is: *-provision of first aid service to the injured employee; -transporting the injured employee to the nearest medical facility. - notifying the appropriate government organ about the incident*.

b) **Medical expenses** covering the following costs of medical expense: -costs of medical and surgical care; -hospital and pharmaceutical costs; -cost of artificial facilities for the injured when recommended by Medical Board, ***however, it does not include the foreign medical expenses, provided that it is only about domestic medical expenses of the employee***.

Disability Benefits

- The employer‘s liability is not limited to cost of medication. It will further be obligated to provide disability benefit to the employee. The amount of the disability benefit is to depend on the degree and duration of disability.
- Ordinarily, disability may be temporary or permanent. It may also be total or partial; the worst scenario, of course, is death
- Finally, if an employee dies due to employment injury, the employer will be obliged to pay dependent‘s benefit to the dependents of the deceased. The amount of such payment will be the employee‘s five years wage to be paid in the form of lump sum. Furthermore, the employer will cover the funeral expenses for the deceased employee

Collective Bargaining & Collective Agreement (see art 113 of LP and ffg)

- Unlike, the individual employment relations, collective employment relation‖ what we mean is a relation of an employer or employers' associations with trade unions or a collectivity of trade unions.
- It must be underlined that formation of association is not an end by itself. It is in view of defending and furthering the interests of the collectivity that association is mainly established. Thus the issue of collective bargaining and collective agreement are important concepts in unionization.
- Once an association is formed, it should be registered before the relevant organ upon satisfying the requirements laid by law (Art.117&119 LP). Registration as envisaged by the law could take two forms; actual and default registration.

a) **Actual registration** occurs where the registering organ is provided with the necessary documents and found the documents adequate and legal after which it entered the registration (Art.118 (3) first sentence).

b) **Default registration**, on its part, occurs when the registering organ upon being provided with the necessary documents failed to respond positively or negatively on the application for fifteen days from the date of receipt of the documents. Hence, in such circumstances silence amounts to acceptance (Art.118 (3) second sentence.).

Q. What are the central principle of collective agreement?

- The main principles are;

a) Principle of free negotiation and

b) Principle of good faith

Employment Dispute Settlement Mechanisms

- Ordinarily, labour disputes are either individual or collective. The labour proclamation has employed an illustrative listings of what constitutes individual labour dispute and what constitutes a collective one (*refer Arts.138 (1) &142(1) respectively).*

Q. What is the difference between labour relation board and labour division of or

Labour relation board	Labour divisions of court
Entertains collective labour disputes (meaning the outcome of the case affects the interest of all parties to the case)	Entertain individual labour dispute (meaning the outcome of the case affet only the plaintiff and the defendant, e.g question of unlawful dismissal)
composed of representatives of the employers' and employees associations in addition to the appointees of the government(i.e. tripartite arrangement	operated by sitting judges of the ordinary courts
Does not follow the strict procedures provided under civil procedure code	Follow the regular civil procedures in their judicial proceeding
Win-win principle here, its role is negotiating the parties to solve their dispute amicably	Winer loss is the outcome of the case (either of the party shall win and the other shall pay)
The first remedy for the parties to resolve their dispute	The last resort, only when parties failed to resolve their dispute through the board
The decisions of the Boards are appealable, *on issues of law only*, to the Federal High Court	the decision of the appellate division is final irrespective of whether the appellate division

N.B. *It is important to note, however, that the final decisions are both open to challenge before a Cassation Bench provided that fundamental error of law is shown to have been committed in the final decisions.*

- Submission of cases before Boards is free of charge to all parties while exemption of payment of court fee only applies to the employee and the employees' association when cases are submitted to labour divisions.

The place of Arbitration Under Ethiopian Labour Laws

The Labor Proclamation, Art.143, provides thus;

(1) *Notwithstanding the provisions of article 141 of this proclamation parties to a dispute may agree to submit their case* to *arbitrators or conciliators, other than the Minister for settlement in accordance with the appropriate law*.

(2) If the disputing parties fail to reach an agreement on the case submitted to arbitration or conciliation under Sub-article (1) of this Article the party aggrieved may take the case to the Board or to the appropriate court.

- Therefore, paragraph (1) of the above Provision could be briefly put as enabling disputing parties to agree to submit their case to arbitrators for settlement in accordance with the appropriate law.
- Or simply put, parties to a collective labor dispute have the right to enter into an arbitration agreement either by inserting it in the main contract, i.e., arbitral clause (probably in the collective agreement) or concluding it as a separate agreement, i.e., arbitration submission. At this juncture, it should be born in mind that if a party relies on a valid arbitration agreement, courts will stay their proceedings in deference to it.

Lock out and Strike out

Q. What is the difference between the two?

- "lock-out" means an economic pressure applied (***by employer)*** by closing a place of employment in order to persuade workers to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute; see art 136 (4) cum 157(2)
- "Strike" means the slow-down of work ***by any number of workers*** in reducing their normal out-put on their normal rate of work or the temporary cessation of work by any number of workers acting in concert in order to persuade their employer to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute. See art 136 (5) cum 157 (1)

N.B. read from art 158-160 on the procedure to be followed for both forms of mechanism to ensure their respective rights

Some Important Additional Notes

Q. What are the main distinguishing feature of Labour law of Ethiopia from other laws?

- There are three main areas of the labour proclamation, that entitle for the employee special privilege by departing from the normal civil laws of the country;

A. **Burden of Proof:** in the normal course of things the substantive civil laws of Ethiopia provides the one who alleges shall prove his claim and has the burden production thereof. Accordingly the plaintiff shall have the burden of proof for his claim, unless the defendant come up with counter claim.

however, this logic does not work in labour proclamation. Since the bargaining power of the employer and the worker is unequal, the law provide an affirmative presumption to the employee that, the employer shall be under the burden of proof even if the plaintiff is the worker who alleges against the employer. *See e.g. art 9 of the proclamation provided that the employer shall prove the employment relation is for definite period, unless it is presumed to indefinite one.*

B. **Favorable treatment:** the proclamation also devised a mechanism that any stipulation on employment contract, which provides more favorable treatment for the worker shall prevail the proclamation. Thus, any stipulation or the terms of the contract which is at least in accordance with the minimum conditions of work or provides more favorable treatment for the employee is valid. See art 4(5) of the proclamation.

e.g. according to art 133(1) Any provision of a collective agreement which provides for conditions of work and benefits which are less favorable than those provided for under this Proclamation or other laws shall be null and void. Morever, art 134 of the same provided that Where the collective agreement is more favorable to the workers in similar matters than those provided for by law, the collective agreement shall prevail. However, where the law is more favourable to the workers than the collective agreement the law shall be applicable

C. **Dispute settlement by independent board:** as we discussed before in case of collective labour dispute the parties are not required to resort to judicial proceeding, but to the labour relation board.

Note regarding Art 3 of the Labour Proc.

- In principle the proclamation applicable to all employment relations based on employment contract (in accordance with art 4)
- However, art 3(2) provides exclusions of employment relation mainly on 2 broad categories;

a) **Unconditional exclusions**: under art 3(2), it is unconditional because the law expressly provided that the scope of the proclamation does not extend to employment relations listed under this provision sub art.

It should be noted that managers are excluded because of their expertise and knowledge they are capable of bargaining with the employer, unlike the ordinary employee, who is in need of favorable treatment. See art 3(2) (c)

Regarding art 3(2) (e), state administration are excluded unlke, state enterprise. The main difference between the two are;

State enterprise are work for profit, even if owned by the states and has their own independent budget (e.g commercial bank of Ethiopia, Ethiopian air line…), the reverse is true for the state administration. So state enterprise are covered under the proclamation

b) **Conditional exclusions:** see art 3(3), it is conditional because when the council of minister enactes the exclusion regulation or independent governing law they will be excluded from the labour proclmtion. Thus, they are still under the ambit of the labour proclamation. Since they awaits the enactment of specific regulation. However, still the council does not enact any regulation so they are the concern of labour proclamation

Note on art 18(3) of Lp

One of the ground of suspension of employment relation is detention for a period not exceeding 30 days, provided that the employer is notified within 10 days or is supposed to know of the detention.

But what if the detention exceed 30 days?

- According to art 27(1)(j) of LP it results to the termination of the contract, which clearly indicated that the absence from work due to a sentence of imprisonment passed against the worker for more than 30 days is one of the ground of termination of employment relation without notice

Retaliatory Termination of Contract of Employment

- One of the prohibition in termination of employment relation is retaliation of workers by dismissal, provided that the employer cannot dismiss the employee from his positions as a means of revenge due to the workers exercise of his legal rights.
- The major examples of retaliatory termination prohibition are;

a) **Art 14 (1) (a):** it is unlawful for the employer to impede the worker in any manner in the exercise of his rights or take any measure against him because he exercises his right;

b) **Art 26 (2) (c),** it is unlawful to terminate the contract of employment due to his (the worker) submission of grievance against the employer his participation in judicial or other proceedings

Note on Art 27(1) (c)

- According to art 27 (1) (c) one of the ground to terminate the employment relation is a deceitful or fraudulent conduct ***in carrying out his duties*** having regard to the gravity of the case;
- however, it should be noted that the deceitful or fraudulent conduct ***are not necessary to be while carrying out his duties, but even before or during the formation of the employment relation.***

e.g. employee employed by providing forged educational documents or qualification papers

The Principle of First in Last Out (see art 29 (3) (a)

- When the employer needs to reduce the number of the employees for different reasons mentioned under art 28 (2), he shall follow the order of the works to be reduced.
- *Accordingly the first type of employees subject to reduction are those who provide the shorter period of time. So they are employed recently so they have to be reduced first to protect the rights of employs who serves the employer organization for a long period of time.*
- *However, there is exceptions to the above principle in particular and to reduction of workers in general. Accordingly art 30 (1) of the LP provided that* The procedure laid down in this Proclamation shall not apply to the reduction of workers due to normal decrease in the volume of a construction work as a result of its successive completion unless the reduction affects workers employed for parts of the work before the work for which they are employed is completed



The end..