Chapter- II-

Individual Employment Relation

- Individual employment relation, means is, a contractual relation between an employee and his/her employer in their individual capacity.
- Discussing who an employee is and who an employer is will be important mental exercises to begin discussion at this level. 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. When it comes to the Civil Service, Art.2 (1) of the FCSP has already defined who a Civil Servant is.

As regards to employer for purposes of labor law and civil service, Art.2 (1) & (2) of LP and Art.2 (3) of FCSP will be helpful for the analysis.

- Employer under the labor law is any natural or legal person which is engaged in any lawful activity, be it profit making or otherwise; whereas
- Employer under the civil service is a status assigned to an exclusively federal legal organ established by a legal instrument and fully or partially financed by government budget.

Employment relations under the labour law and under the Civil Service have their own peculiar features. 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. In this sense most (if not all) the work conditions spelt

- 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 s taff and others are within the third regime.

2.2. 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.

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

- **Voluntary arrangement of the parties;**
  - The employer and the employee may agree to suspend their contractual relation for sometime
- **Societal interest**;

An employee may be;

- elected to hold office at higher level trade union
- he may hold office at kebele or woreda level or
- he may be elected as parliamentarian.
- the employee may be required to discharge national service (be it military service
- Due to reasons beyond the control of the employer;
  - Economic or natural reason
- **Due to disciplinary reasons**
  - 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.

- **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.

2.3. Termination

Termination of a contract of employment and its effects are important issues to be discussed in this course. Both the LP and the FCSP spelt out grounds of termination in their respective regimes of employment.

Under the LP grounds of termination could be categorized into the following: -termination by law (Art.24) -termination by the

agreement of the parties (Art.25) -termination at the initiation of the employer-(dismissal)-(Arts.27, 28, 29 & 30) - Without notice or summary dismissal (Art.27) - With notice or ordinary dismissal (Art.28) -Group termination or lay off (Arts.29&30) - termination at the initiation of the employee-(resignation)-(Arts.31, 32) -Resignation with notice/ordinary resignation (Art.31) -Resignation without notice (constructive dismissal) (Art.32)

Under the FCSP, the following are the lawful grounds for termination: -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

2.4. Effects of Lawful Termination

2.4.1. Certificate of Service

This is a document to be issued by the employer which testifies how long the employee had been employed at the employer; the position he/she held; and the wage he/she was earning while employed. (Art.12 (7) LP & Art.87 FCSP) Actually this document may be requested and issued while the employee has been still employed (i.e. even without termination), in practice however, employees request for it after termination. It would be helpful for the employees in their effort to look for other employment.

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. At times reason of termination may be unhelpful to the employee’s future effort for employment. For example, if the contract of employment was terminated due to the serious misdeed of the employee, mentioning such ground of termination in the certificate may negatively affect the employability of the individual.

2.4.2 Payment instead of unutilized annual leave

In principle it is prohibited to convert annual leave into cash. 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. As annual leave cannot be postponed for more than two years, the payment for this cannot be in excess of two years annual leave converted into cash.

Problem What if the contract of employment was terminated by death? Are heirs of the deceased employee entitled to claim conversion of annual leave into cash? Why? Why not?

2.4.3 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.24 Whether an employee is entitled to pension scheme as soon as s/he is terminated or not will be determined on the basis of 8the Pension Proclamation.

If the enterprise has already established a provident fund on the basis of work rule or collective agreement which is more beneficial to the employee than the severance payment available to him/her, the provident fund will be payable and severance payment will be denied in such cases.25 For grounds of termination which entitle severance payment, readers are advised to consult Art.39 (1) of LP No.377/2003; Art.2 (2) of Proc. No.494/2006 and Arts. 83 & 88 of FCSP Proc. No.515/2007

2.4.4 Compensation

These entitlements are applicable only to employees under the labor law regime.

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.

2.4.5 Period of limitation

The time within which the entitlements are to be claimed is also relevant. In principle, the labor 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). It is interesting to note that the FCSP does not possess similar stipulations except in cases of disciplinary measures.

2.5 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 Labor Proclamation

At this point in time, it may be appropriate to examine as to who has the burden of persuasion whether a certain termination is lawful or not. Under the traditional concept of contract law, “someone who demands the performance of an obligation should prove its existence.”27 As a contract of employment is a special contract, the general of contract law will be applied on it unless and until it possesses its own specific principle on the issue. Based on this general principle, if and when the employee alleges that s/he has been unlawfully terminated and requests for reinstatement or compensation or both, s/he will be required to show to the satisfaction of the impartial that the termination was indeed unlawful. Nevertheless, both the labor proclamation and the ILO convention on termination of employment28 seem to deviate from this general principle. They seem to adopt the reverse burden of proof approach.

Usually employers terminate employment contracts without having lawful reason for so doing. At other times, they may have lawful reasons for termination at their disposal, but they may not follow the requisite procedure of termination (such as failure to provide notice where the law requires prior notice (Art.28 & 29) or provision of inadequate notice (Art.35) or failure to observe form & content of notice (Art.34)). All the same, broadly speaking, all of them are unlawful terminations. However the law tends to treat them in

different manners. Generally reinstatement (Arts.26(2)& 43(1)), compensation together with severance payment(Art.43(2),(3)(4) &39(1)(b)), payment in lieu of notice period(Art.44 & 45), fine(Art.14(1)(c)&184(2)(c) are the remedies stipulated by law for unlawful terminations.

Chapter III- Special categories of Employees

3.1. Probationary employees

- At the commencement of a contract of employment, the employer is entitled to set a probationary period (i.e., trial period).
- 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 without any procedure if the employer is convinced that the employee is unfit for the post.
- It is not necessary for the employer to prove that she is in fact incompetent." With regard to probation period, it is worth noting that the Labour law and the Civil Service Proclamation adopt varying positions.
- 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 Labor Proclamation.

3.2. Apprentice

- 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.
- An apprenticeship agreement is an appropriate route in transferring skill in those trades where skill could be acquired through "learning by doing" mechanism.
- An apprenticeship arrangement is only available for the employment regime under the labour law while civil service regime does not have such an arrangement. Even under the labour employment regime, it is strictly regulated in the sense that it must be made in writing and be attested by the Ministry (Art. 48(3)) 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).

3.3 Young employees

- These are employees between the age of 14 and 18.
- Legally speaking, persons below the age of 18 are minors and due to this status they are not allowed to enter into juridical acts personally.

- 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.
- The Civil Service Proclamation, in principle, prohibits civil service employment below the age of majority (i.e. eighteen years of age). It, nevertheless, promises to come up with the Federal Civil Service Agency's Directive on how persons below the age of majority will be employed as civil servants (Art.14(2)). Be this as it may, young employees, owing to their tender physical and mental makeup, are treated differently under the labor law.
- Their differential treatment is manifested in the following terms of employment.

- As regards to length of working hours and its timing:
  -Normal working hours seven hours per day (refer Arts.61 (1) & 90)
  -It is prohibited to employ young employees on:
  - Night work (i.e. between 10pm-12am)
  -Weekly rest days
  -Overtime work
  -Public holidays
- b) As regards to types of work
  –No employment for young workers in the transporting of passengers and goods by road, rail air and internal water;
  -No employment for young workers in dock sides and warehouses involving heavy lifting;
  -No employment for young workers in electric power generation and transmission lines;
  -No employment for young workers in under ground works (such as mines &quarries)
  -No employment for young workers in sewerage systems and digging tunnels.

3.4. Female employees

- In order to bring about equity the principle of non-discrimination must be complimented by another equally important principle so called "affirmative action".
- Unless and until these two principles are reinforced each other, past misdeeds and previous marginalization may not be rectified and thereby true equality will not be attained.

- In this connection, the Ethiopian legal system appears to be on the right track. The FDRE constitution has already incorporated both principles in its body of provisions.
- As an extension of these approaches both the Civil Service Proclamation and the Labour Proclamation have included provisions with similar tone and content. Arts.13 & 41of the Federal Civil Service and Arts. 14, 87, 88 of the Labour Proclamation could be of some help in understanding the position of the laws.
- The law tries to regulate the situation of female employees from two angles.
    - 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).
    - 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 Labor Proclamation).

3.5. Employees with disability

- Ethiopian legal instruments have incorporated relevant provisions with a view to widening the employment opportunity of persons with disability. A case in point is the FDRE constitution which stipulates,

" The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian" (Art.41 (5) emphasis added).

- Proclamation No.568/2008 has also important provisions for persons with disability. The principle of "reasonable accommodation" for persons with disability seems to have been incorporated in this Proclamation (Art.6 of the Proclamation)

- The principle of non-discrimination on grounds of disability has also been expressly inserted under the FCSP (Art.13 (1)). Though not as express as the FCSP, the 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.

3.6. Non-Ethiopian employees

- Every country has an express or implied policy on how non-nationals are to avail themselves to its domestic labour market. As expression of this 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 worldwide. It is when a particular type of service is not available in the domestic market that a foreigner may be employed.
- As a requirement, for a foreigner to be lawfully employed in Ethiopia, he/she needs to possess double permits. (namely; Residence Permit & Work Permit)
- Residence Permit is vested on the Security, Immigration and Refugee Affairs Authority; while Work Permit is to be issued by the Ministry of Labor and Social Affairs. (Art.174 LP)
- Under the Civil service employment regime, there is an express provision which stipulates "a person who is not an Ethiopian national may not be eligible to be a civil servant". Nevertheless, the same instrument seems to provide exceptions to the general rule with respect to foreigners of Ethiopian origin (Art.15 FSCP).
- Even in situations where it is impossible to fill a vacant position that requires high level professional by an Ethiopian, it is only for temporary bases that a foreigner may be employed (Art.22 (2)).

- Such measure also requires a directive from the Federal Civil Service Agency. (article 22(3) of FCSP).