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College of Continuing and Distance Education

College of Law

Employment and Labour Law

Module - I

(Laws 342)

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COLLEGE of Continuing and Distance Education

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Introduction

Dear students, in this module you will be introduced to the laws regulating and protecting people at work in an employment relations. In doing so, the main instruments; Labour Proclamation (i.e. Proc. No.377/2003) and the Federal Civil Service Proclamation (i.e. Proc. No.515/2006) will be frequently consulted throughout the course. Furthermore the FDRE Constitution and the relevant ILO legal instruments will also be items to be consulted in due course. In so doing topics such as issues related to the concept of Employment Law, Individual Employment Relations, Special categories of employees, Legally stipulated minimum labour conditions, Collective Bargaining & Collective agreement, Dispute Settlement mechanisms, and related points will be treated

Up on the completion of this module, students will be able to attain the following general objectives:

- discuss the historical development of employment law in Ethiopia;
- identify the forms and contents of contract of employment and their peculiar features;
- outline the special categories of employees and the need for their special treatment;
- explain the concept of minimum working conditions and their significance;
- understand the need for cooperation rather than confrontation between employers and employees;
- compare and contrast the labour and civil service employment regimes;
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reflect on the role of employment law in maintaining industrial peace, in affecting investment positively or otherwise and in affecting delivery of qualitative public service.

In addition to these, specific objectives spelt out hereunder will be some of the learning outcomes of this course:

1. identify the essential definitional elements of employment relation;
2. outline the historical development of labour law;
3. define what suspension is and the grounds thereto;
4. grasp how and why historically disadvantaged groups such as women & persons with disability are being preferentially treated in employment;
5. spell out the grounds for termination of contract of employment;
6. enumerate the respective legal consequences for lawful and unlawful terminations;
7. describe the treatment accorded to the so called special categories of employees and the rationale of such treatment;
8. identify the items of minimum employment conditions.
Chapter One

General Introduction to Labour Law

Meaning and Nature of Labour Law

Labour law in its generic term is a body of rules that govern, guide and supplement the labour relations that exist between workers and employers. There are many laws that are enacted for the purpose of employment relation and these laws together form the body of law forming the system of labour law. So different labour laws guarantee protection to workers in their employment relation though such entitlements may vary depending on the nature of the employment relation the worker has and the personal status of the worker.

With this in mind, this course will explore and discuss the different types or categories of laws that govern different types of labour relations but with a special emphasis on those labour relations which are formed on the basis of contract of employment and as governed by the Labour Proclamation No. 377/2003.

Dear students, at this initial stage you would be introduced briefly on how the employment relation would be created and the legal basis for the applicability of the labour laws. It is through the parties agreement to the employment relation that the reciprocal rights and obligations of the worker and the employer would arise and assumed. The employment relationship itself is usually created with the agreement of both parties. However, it does not mean that it is an economic relation which is left to private regulation through contract, in which case the role of the government is nothing more than enforcement of the promises or agreements of the parties. Rather, there is government intervention in the employment relation between the worker and
the employer as experiences in the past revealed the fact that the principle of freedom of contract could not brought about equitable outcome in employment relations due to the unequal bargaining position of the parties.

There is a general consensus on the need to have the government intervention to protect the workers from undue exploitation and unfavorable conditions of work. Such government involvements render the employment relation to have tripartite parties. To begin with, the government is required to enact a law in accordance with the international labour standards as enshrined in different conventions to which the country is a party. Accordingly, the government would device mechanisms and procedures, and establishes institutions that prevent infringements and ensure effective enforcement of the labour laws. for instance, the government has to form a labour inspection board which have the power to visit any enterprises or undertakings, detect shortcomings, impose corrective measures and so on for the purpose of labour enforcement.

Therefore, in this module you would be introduced to these and other aspects of the labour law in different chapters of the same.

1.2 Historical Development of Labour Law

1.1.1 Birth of the International Labour Law

The first moves toward international labour conventions date back to the beginning of the 19th century. Robert Owen in England, J.A. Blanqui and Villerme in France, and Ducepetiaux in Belgium are considered precursors to the idea of international regulation of labour matters. However, David Legrand, an industrialist from Alsace, put forward this idea most systematically, defending it and developing it in repeated
appeals addressed to the governments of the main European countries from 1840 to 1855.

In the second half of the 19th century, the idea was first taken up by private associations. Thereafter, a number of proposals to promote international regulation of labour matters were made in the French and German parliaments. The first official initiative came from Switzerland – where, following proposals made in 1876 and 1881 and in consultation with other European countries, the Swiss government suggested convening a Conference on the matter in Bern in May 1890.

The establishment of an International Association for the Legal Protection of Workers, the seat of which was in Basle, was followed by a congress held in Brussels in 1897. The activity of this private organization led the Swiss government to convene international conferences in 1905 and 1906 in Bern, where the first two international labour conventions were adopted. One of these related to the prohibition of night work for women in industrial employment, and the other to the prohibition of the use of white phosphorus in the manufacture of matches.

During World War I, the trade union organizations of both sides, as well as those of neutral countries, insisted that their voice be heard at the time of the settlement of peace, and that the peace treaties contain clauses for improving the condition of workers. The peace conference entrusted the examination of this question to a special commission known as the Commission on International Labour Legislation. The work of the Commission led to the inclusion in the Treaty of Versailles and the other peace treaties of Part XIII, which dealt with labour matters. This section of the treaties provided for the establishment of an International Labour Organization, which might adopt conventions and recommendations in this field. Conventions would be binding
only on those states which ratified them. (See Constitution of the International Labour Organization, adopted by the Peace Conference in April of 1919)

In October 1919, the International Labour Conference met in Washington to adopt the first Conventions and to appoint the Governing Body. Since then, the International Labour Conference has met regularly in general once a year, except during the Second World War.

1.1.2 The ILO in the Post-War Period

Human rights concerns received little attention by the ILO in the period between 1919 and 1939. Instead, the conventions adopted were generally more technical and prescriptive in orientation. For example, among the early conventions adopted were the Hours of Work Convention, which mandated adherence to the eight-hour workday/forty-eight-hour workweek standard, and conventions restricting night work for women and young persons. Human rights concerns came to the fore in the period after 1945, beginning with the adoption of the freedom of association Conventions 87 and 98 in 1948 and 1949, respectively.

Decolonization and the Cold War had been identified as the two main challenges confronting the ILO in the period following World War II. The former more than tripled the ILO’s membership in a little over 50 years, taking it “[f]rom an elite of 52 mainly western industrial states in 1946” to its present composition of 179 member nations, many of which are poor, developing countries. This mass admission of developing countries had been noted as having profound repercussions. Their main preoccupation was with technical co-operation, such as assistance with the drafting of labour codes, which would help them to claim compliance with international standards although the reality was often much different.
The Cold War, in turn, hampered the ILO’s functioning due to strife between Western and Communist nations. Western countries argued that the ILO’s principle of tripartism, which requires member countries to staff their delegations not only with government functionaries but also with independent workers’ and employers’ representatives, was threatened by the Soviet Union and its allies. Those countries, after all, had governments that neither permitted independent labor organizations nor private employment. When ILO committees ruled that practices of the Communist countries, such as the “trade union monopoly, . . . and rules concerning ‘social parasitism,’” violated the ILO’s conventions on freedom of association and forced labor, the Communist bloc countries leveled charges of Western bias at the ILO’s supervisory machinery and sought to change it.

During the Cold War, the United States, which waited to join the ILO until 1934, grew increasingly disenchanted with the organization. From the U.S. perspective, the agency had become too politicized. The United States took particular issue with the ILO’s denunciations of South Africa and Israel, the ILO’s criticism of the United States for its involvement in Vietnam, its approval of observer status for the Palestine Liberation Organization, and its perceived willingness to disregard the Soviet Union’s record on human rights violations. In 1977, the United States withdrew from the ILO, citing, inter alia, these issues but vowing to return when its concerns were effectively addressed. As a country that contributed 25 percent of the ILO’s budget, the U.S. withdrawal represented a means of applying political and economic pressure to the agency. By 1980, the United States sensed enough movement on some of its concerns to rejoin the ILO.
Today, the ILO’s focus is on addressing the policy challenges posed by globalization. Since 1999, the ILO has described its primary goal as that of securing “decent work” for all people. The four strategic objectives encompassed within the decent work program are:

(1) promoting rights at work;
(2) creating actual employment opportunities of acceptable quality;
(3) obtaining and enhancing social protection for the risk of job loss; and
(4) promoting social dialogue, the modern term for tripartism, as a mechanism to resolve conflicts, obtain equity, and create and implement policy.

In addition to those recent initiatives, the ILO is engaged in promoting the 1998 Declaration on Fundamental Principles and Rights at Work, the pledge by ILO member nations that they will adhere to four core labor rights – freedom of association and collective bargaining; the elimination of forced or compulsory labor; the abolition of child labor; and the elimination of discrimination.

Apart from the ILO standards, an increasing number of bilateral and regional agreements have been concluded in the field of labour. The general trend of agreements has been the constant broadening of their scope, both as regards the fields covered, the categories of persons protected and the framework within which the matters are treated.

Many commentators note that the ILO’s new agenda “shifts the focus of the ILO to workplace outcomes: once core labor standards are satisfied, attention shifts to how much work there is, how remunerative and secure” it is, and the conditions under which it is carried out.
1.3 Purpose of International Labour Law

A) Competition

Various arguments have been advanced over the years in support of international labour law. The argument concerning international competition was used in its most extensive form throughout the 19th and at the beginning of the 20th century. The argument was that international agreements in the field of labour would help prevent international competition from taking place to the disadvantage of workers, and would constitute a kind of code of fair competition between employers and between countries.

This argument is generally given less prominence today, since it has been realized:

- that competition did not prevent the main industrialized countries of Europe from adopting the first labour laws
- that the cost and the competitive value of products depend on many factors other than labour costs (in fact, factors that increase labour costs, such as investments in training, safety and health, etc., can increase competitive value)
- that countries that are the most successful in world markets are not those where the conditions of work are the less favourable.

However, globalization (and especially trade liberalization) have again brought up discussions on the relationship of competition to very poor working conditions in developing countries and loss of jobs in developed countries. The discussion is focused mainly on developments in industries where manual labour and low skills dominate production.

In his report, the Director-General of the ILO reacted to this discussion by pointing out:
that "lifting restrictions on international trade lays the foundations for social progress – as the ILO has always implicitly acknowledged, even during the worst years of economic depression. But, at the same time, this liberalization carries the risk, as the Preamble to the Constitution of the ILO warns us, that international competition, by inhibiting the will of certain Members to introduce progress, might be 'an obstacle in the way of other nations, which desire to improve the conditions in their own countries'."

that "globalization has forced many States to carry out legislative reforms to be able to cope with international competition as best they can. It is likely – although this is not entirely clear from the replies – that the relative decline in the ratification rate of Conventions might, at least in some cases, be due to a reticence to make long-term international commitments in these circumstances."

that "the aim is not for the International Labour Organization to achieve uniformity in the level of social protection in order to ensure a proper international competition. Rather the idea is simply to place social progress into a relationship with the economic progress expected from the liberalization of trade and globalization."

that "differences in conditions and levels of protection are linked to a certain extent to differences in levels of development. Denying developing countries the advantages (relative and transitory), which ensue from these differences would be tantamount to denying them a share in the profits of globalization and, by extension, the possibility of subsequent social development. The Declaration of Singapore, to which I shall refer later in the text, shows that we have come a long way in universally accepting these principles." Most proposals for a social clause are based upon the. In the context of international trade, a social clause essentially refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take
trade measures against exporting countries which fail to observe a set of internationally agreed minimum labour standards.

B) World peace

At the end of World War I a new argument appeared, namely that injustice in the social field endangers peace in the world, and that action against such injustice therefore serves the cause of peace.

It has been pointed out that measures of social justice – which provide, among other things, for trade union rights – are bound to strengthen democratic regimes, which are more likely than authoritarian governments to be peace loving. Social peace within countries may also sometimes be related to international peace, inasmuch as internal tensions may have repercussions abroad. Stress has equally been laid on the positive and dynamic concept of peace, involving the establishment of stable, just and harmonious conditions both within individual countries and between different countries. This would be accomplished by eliminating, inter alia, rivalry on world markets arising out of too great a disparity in labour conditions. It has also been claimed that the establishment of international labour standards aimed at improving the condition of mankind develops a common sense of solidarity internationally, and fosters a climate of mutual collaboration and understanding that transcends racial and national differences.

Yet progress toward these goals is threatened by many forces. Extremism – religious, ethnic, and political – is on the rise, often fuelled by growing disparities in levels of development. Despite the growth of democratic forms of government, violations of human rights continue in too many countries. The number of armed conflicts currently under way is only slightly less than at the end of the Cold War. Although the threat of
nuclear war between the superpowers seems less likely, there is the frightening prospect of nuclear weapons loosely controlled by weak governments.

C) Social justice

The driving force behind the idea of international labour law was the notion of social justice. In the field of labour, the humanitarian concern originally appeared in the face of conditions of great hardship imposed on the workers by industrialization. It was the mainspring of the movement, the first achievement of which was the adoption on both the national and international levels of measures to protect children from conditions of work that had shocked the public conscience.

The expression "social justice" itself was introduced in 1919 in the course of the discussions which took place at the peace conference, when the original Constitution of the ILO was being drafted as part of the Treaty of Versailles. This notion has certainly been the most powerful driving force in the development of international labour law.

It has often been stressed that economic growth does not automatically ensure social progress. Nevertheless, there remains a widespread tendency to give economic development precedence over social considerations. It is, therefore, the function of international labour standards to promote balanced economic and social progress.

D) Consolidation of national labour legislation

Even when the labour legislation or practice of a country has reached a certain level, it may be desirable for the country to ratify a Convention that provides for a standard corresponding to the existing national situation. This is because, even if no substantial change is called for, ratification of the respective Convention could contribute to the consolidation of national labour legislation by acting as a guarantee against
backsliding. There have been cases in which the existence of international commitments based on ratified Conventions has prevented governments from adopting retrograde measures they had contemplated, particularly in times of crisis.

As a result of the widespread economic, commercial, technological, social and even cultural changes that have taken place in the past two decades, governments have been amending their labour legislation to meet new needs and accommodate new circumstances.

E) Source of inspiration for national action

In addition to the international commitments to which they may give rise, international labour standards can serve as a general guide and as a source of inspiration to governments by virtue of their authority as texts adopted by an assembly composed of representatives of governments, employers and workers of nearly all countries of the world. They may also for that reason provide a basis for the claims of workers and guide the policy of employers. International labour standards have thus developed into a kind of "international common law". Their influence is in many ways similar to that found elsewhere in various periods in the history of civil law – for example, the influence of Roman law, or of certain later European legal codifications. Those in charge of social policies in various countries have often highlighted this role of international labour law.

1.4 Historical Development of Ethiopian Labour Law

NOTES (Extract from Historical Development of Labour Law in Ethiopia); by Mehari Redae
Labour relations in Ethiopia have been very low and slow in development. The cultural, religious and legal settings have had their respective shares for such an outcome.

Culturally, the Ethiopian society’s attitude towards labour and labourers has been very discouraging. The traditional Ethiopian society despised both trade and manual work. All the remaining occupations excluding priesthood were relegated to members of the population who were thought of as a lower class. Metal work, for instance was left to one group of the population with such a low reputation that nobody dared to mingle with segment of the population.

It was by realizing this cultural attitude and its negative impact to labour development that the then emperor (King Menelik) issued a proclamation in 1908 with the following content:

Let those who insult the worker on account of his labour cease to do so. You, by your insults and insinuations, are about to leave my country without artisans who can even make the plough. Hereafter anyone of you who insults these people is insulting me personally.

This provision might serve as a testimony as to the then prevailing official Imperial position towards labour and labourers was positive. Nevertheless, in a situation where such an attitude is deeply entrenched in society, legal provisions will have little or no impact unless and until they are accompanied by cultural revolution. The latter was the missing item then.

The religious rules as well were unfavourable to industrial activity and industrial development. Although there have been many religions in Ethiopia, the Ethiopian Orthodox Church, which had been a state religion for many years was by far the most
influential one in Ethiopian history. Accordingly, orthodox religious holidays which have been strictly observed by the population are non working days and there may be as many as fifteen or more per month.

Legally, though Ethiopia has been a member of the ILO since 1923, slavery had legal protection and was entrenched as a system for long time in Ethiopian history. It is well understood that for labour relations to exist and flourish, there should exist a free labour that is capable and ready to render service in return for wages on the basis of a contractual arrangement. However, in a system where slavery as mode of production is legally recognized, there is no such a free labour that is capable of freely contracting.

It was in 1931 that an attempt to abolish Slavery, through law, was undertaken in Ethiopian history. During this period, emperor Haileselassie issued a proclamation with this purpose in view. The relevant part of the proclamation contained the following:

“All slaves who wished to be free could become free by asserting their freedom before a judge”.

It seems fairly obvious that the above cited stipulation cannot claim to have abolished slavery because it did not officially do away with the system. For one thing, it addressed itself only to slaves ‘who wished to be free’ and not to all slaves. Secondly, even for those who wished to be free, the freedom was not automatic and as of right; it rather required appearance before judge to assert freedom. Accessibility of the judges to slaves may also be an issue at the time.

It was only in 1942 that clear governmental commitment to abolish slavery was manifested. At this period, a proclamation which stipulated the abolishment of the
status of slavery and which criminalizes possession, sale and transfer of slaves was
issued. It is therefore with the doing away with the legal status of slavery that one can
speak of labour development in Ethiopia as a freeperson capable of freely contracting
has been an essential precondition.

1.5 Sources of Labour Law

Within the introductory section, it may be appropriate to discuss the sources of
employment law. The phrase “sources of law” may mean different under different
contexts. Material and formal sources of laws are the most usual ones. Be that as it
may, sources of law in this context should be understood to mean “legal instruments
which will have impact in regulating employment relations or in resolving
employment disputes if and when they arise.” (i.e. formal sources of law). These
sources could be categorized into national and international or into public and private
instruments. The international ones are mainly Conventions and Recommendations.

International Labour Conventions and Recommendations differ from the point view
of their legal character: Conventions are instruments designed to create international
obligation for the states which ratify them, while Recommendations are not designed
to create obligations but provide guidelines for government action. At this juncture,
mention should be made as to “any international agreement ratified by Ethiopia in an
integral part of the law of the land”. (Art.9 (4) FDRE Constitution). As of 2006, Ethiopia
ratified 21 ILO Conventions.

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 etc. Furthermore, subsidiary instruments such as Regulations of Council of Ministers and Directives of the Ministry of Labour and Social Affairs; Directives of Civil Service Agency and the Regional actors need to be consulted. Due emphasis should be given to the constitutional principles such as the right to association; the right to freedom of movement; the rights of labour; equality and non discrimination and other relevant items of the same document.

Last but by no means least, decisions of the Federal Supreme Court Cassation Bench should be noted as sources of employment as these decisions are binding by virtue of Proclamation No.454/2005.

In this connection, it would be important to note that Labour law is within federal jurisdiction 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.

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. The first two instruments are bilateral ones while the third one is a unilateral instrument.

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. Letter of appointment accompanied by job description, rather than a contract of employment, is to be issued to the civil servant by the head or any other authorized official of the government institution. Secondly, as the law now stands, unionization is not yet allowed for employees of the civil service, collective agreement will be an unthinkable instrument as a source of law in this area.

Finally, under this part, the scope of application of employment law will be considered. Within this context, how and why an employee is different from an agent or an independent contractor has to be analyzed. Arts.2512, 2179, 2199 & 2610 of the Civil Code may be of some help towards such comparison. We all may agree that all these three are commitments to render service. It must be admitted, however, that they have significant differences and employment law applies only on employee-employer relationship. Client- Contractor and Principal-Agent relationships are outside of the ambit of employment law. Issues of exclusions should also be considered under this topic.

1.6 Human Rights Perspectives of Labour Law

In its modern form, human rights law dates to the immediate aftermath of World War II. A field of international law articulated in response to the atrocities perpetrated during that war, it exists to protect groups and individuals from violations of their internationally guaranteed rights. Many of the major human rights instruments – the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR) – detail rights that implicate the workplace. All three of the
instruments mentioned, for example, identify freedom of association, an essential aspect of workplace collective activity, as a fundamental right. The ICESCR contains a catalog of important rights for workers including the right to work, just and favorable workplace conditions, an adequate standard of living, equal pay, a safe and healthy work environment, and reasonable limits on working hours, and sufficient rest and leisure. For its part, the ICCPR prohibits discrimination, slavery, servitude, and forced labor and also protects the right to form and join trade unions.

The ILO, a specialized agency of the United Nations charged with examining and elaborating international labor standards, has played a major role in facilitating the process of identifying which workers’ rights are to be considered human rights. Accordingly, the ILO has formalized four categories of rights considered to be fundamental, and achieved near universal adoption of its 1998 Declaration on Fundamental Principles and Rights at Work. The Declaration is considered as an essential pledge by ILO members to respect, promote, and realize the following rights and principles:

1. Freedom of association and the effective recognition of the right to collective bargaining;
2. The elimination of all forms of forced or compulsory labor;
3. The effective abolition of child labor; and
4. The elimination of discrimination in respect of employment and occupation.

Almost similar to the international instruments, different provisions of the FDRE Constitution has provided those worker’s rights that are considered as human rights. Reaffirming the preemptory norm i.e. the abolition of slavery or servitude, Article 18 of
the Constitution provides the prohibition of forced or compulsory labour. It means that if any labour has to be performed by any individual, it is and should be only up on the free and full consent of the individual except in those cases provided under Article 18(4) which may not be considered as forced or compulsory labour.

The other important labour right guaranteed by Article 42 of the FDRE Constitution is the right to form association. The workers’ right to form an association is considered as a vital and the pillar in labour relations for it would help them to bargain collectively with their employers on matters affecting their interest and to improve the conditions of their employment and economic well being. Furthermore, the extent workers right includes the right to express their grievances by acting either individually or [in concert] in which case the right to strike is one form of grievance expression by workers together.

At this point, it is important to consider the fact that these rights i.e. the right to form association and the right to strike could not be enjoyed by all government employees. Considered from the point of view of employment relations where the government employer, these rights are meant to be exercised only by those government employees so entitled expressly by special laws. Accordingly, these rights are available for workers whose employment relation is governed by the Labour Proclamation No. 377/2003. However, when it comes to the government workers, who are considered as a civil servant, they can neither form an association nor express their grievance through strike.

Does it mean that civil servants can not form any association while retaining this status?
Regarding the conditions of work, the Constitution under Article 42 entitle the workers for the right to a reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe work environment. In addition, the human rights chapter of the FDRE Constitution gives a special protection to some vulnerable group of the society in their employment relation.

With regard to a child, the constitution prohibits engaging her/him works the type of which is hazardous or harmful to her/his education, health or well-being. Though the law allow a child with the age of 14 to conclude employment contract, employers are prohibited from employing child in works having such effect, even with the consent of the latter.

In connection with special treatment, the FDRE Constitution entitled women workers to the right to maternity leave with full pay the length of which would be determined taking in to account the nature of the work, the health of the mother and the well being of the child and family. Moreover, it is the constitutional right of women workers to equality in employment, promotion, pay and the transfer of pension entitlements.
CHAPTER TWO

SCOPE OF EMPLOYMENT AND 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. Therefore, in any analysis of a legal instrument, it is appropriate to determine its scope from the outset.

To begin with, relevant provisions of the Labour Proclamation has clearly provided that its scope of applicability is limited to employment relations based on contract of employment that exist between a worker and an employer. In other words, the legal basis to apply the labour proclamation is the presence of contract of employment which should be validly concluded by the worker and an employer.

However, it does not always hold true to say that this law would be applied to all employment relations that are based on contract of employment. For different policy and practical reasons, there are cases where the labour law may not be applied to certain employment relations in spite of the contract of employment between the parties. Accordingly, the labour proclamation will not be applied to the employment relations of managers, public prosecutors, judges, employees of state administration. Such exclusions from the coverage of labour proclamation will be discussed in detail in the subsequent sections.

Though the subjects of the proclamation are workers and employers, most problems arise in determining clearly the status of the worker who is entitled to numerous labour rights. Hence, the next discussion will focus on the legal qualifications that are
attached to the status of worker and the parameters that would help to identify it from
other similar, but do not qualify for the status of worker.

2.1 Definition and Meaning of Worker

To begin with a definition provided under Article 2 of the Labour Proclamation, a
worker is a person who has an employment relationship in accordance with Article 4
of the same. For a person to be considered as a worker, she needs to conclude, with an
employer, a contract of employment the formation of which shall be in accordance
with the elements or requirements provided under Article 4 of the labour
proclamation. When the law designate the worker as a person, you have to remember
to construe it to mean a physical person as opposed to juridical person.

Thus, the cumulative reading of Article 2(3) and Article 4 of the labour proclamation
would give us the meaning of a worker as a person who has concluded a contract of
employment with an employer to perform a work for and under the authority of the
latter for definite or piece of work in return for wage. It is when the person show her
status as a worker in such a way that any labour rights guaranteed by different legal
instruments may be legitimately claimed and enforced.

2.2 DISTINCTION BETWEEN EMPLOYEES AND INDEPENDENT
CONTRACTORS

Having in mind the above definition, the discussion proceeds on aspects envisaged to
distinguish workers from that of independent contractors. This is because a variety of
legal and economic consequences flow from the distinction. An employee works under
a contract of service whereas an independent contractor works under a contract for services. The major differences between the two types of contract are as follows.

**EMPLOYMENT PROTECTION RIGHTS**

A worker enjoys a large number of employment protection rights. These include the right not to be unfairly dismissed, maternity leave with pay, sick leave with pay, security of employment after maternity leave, right to claim employment accident benefits, protection of the right to belong or not to belong to a trade union and time-off rights. Independent contractors have no such protection.

**VICARIOUS LIABILITY**

Employers can be made vicariously liable for the extra-contractual liability of their workers committed during the course of their employment. As a general principle there is no such liability for independent contractors.

**TAX**

In case of contract of employment (service), an employer is under a legal obligation to deduct tax at source from the wages of their workers who are so liable. If the worker had been paid gross salary, it leads to a criminal liability on the part of the employer for his failure to deduct tax before paying the gross salary. By contrast, there is no such case in independent contract (contract for service) that the employer does not have an authority and obligation to deduct a tax from the payment he may effect to an independent contractor. The latter would be held responsible personally to an income tax as the case may be.

**TERMS IN THE CONTRACT**
In addition to the terms the parties themselves have negotiated the law implies a host of terms into the employment relationship. The law will rarely interfere in a contract between an employer and an independent contractor.

2.3 TESTS TO DISTINGUISH WORKERS FROM INDEPENDENT CONTRACTORS

It can be seen from the discussion above that it is important for both parties to know at the outset whether the relationship is that of employer/worker based on contract of employment. It should also be noted that it is the nature of the relationship of the parties and the law which shall be used by the courts to determine that status and the name the parties give to the relationship is, normally, irrelevant. Over the years, a series of tests are devised to apply in determining the status of the parties in a given relationship.

CONTROL TEST

The judicially developed ‘control test’ is still dominant in many countries, and has its origins in the vicarious liability context. The test to be generally applied, lies in the nature and degree of detailed control over the person alleged to be a worker. The basis of the test was whether the employer not only controlled when a job was done, but also how it was done. If a large amount of control existed in relation to the method and content of the work, the person was in an employment relationship.

In this connection, when we say ‘control’ you have to take it to mean the right to control and not its actual exercise, and if the employer has the right to control, it is irrelevant whether he actually exercise it or not. As far as the employer-worker
relationship is created, the employee’s failure to exercise his right to control the worker in the course of performing the work will not change the relationship.

The control element is also provided in different provisions of our labour proclamation. For instance, Article 4 states that a worker is a person who agrees “… to perform work for and under the authority of an employer …” Furthermore, one of legally stipulated main obligations of the worker, as provided under Article 13(2) of the labour proclamation, is “to follow instructions given by the employer based on the terms of the contract and work rules”

The control test, as a single test, worked well where there were unskilled workers but fell down when workers became more skilled than the persons employing them. More skilled workers plus increased technology rendered control insufficient in determining the true nature of the relationship and a more realistic test was needed.

ORGANISATION TEST

As it became obvious that the control test, on its own, was inadequate for a modern industrial society, long had been tried to develop a new test which took into account industrial reality. To this end, courts developed what became known as the organization or integration test. According to this test, it has been said that ‘under a contract of service (Contract of Employment) a man is employed as part of the business and his work is done as an integral part of the business but under a contract for services his work, although done for the business, is not integrated into it but only accessory to it.’ Although as a test it overcame the problems with the control test, there was no explanation what is meant by ‘integration’ or ‘organization’ and as such the test was never widely used.
ECONOMIC REALITY TEST

Like the above tests, this test called economic reality test was also found to be vital in distinguishing workers from independent contractors. Factor which may be of importance is whether the person performing the service provides her own equipment. Unlike independent contracts, in employment relations it is the employer who would provide the worker with equipments and materials necessary to perform the work. This is also provided under Article 12(1, b) of the labour Proclamation.

The other more important factor to be taken into account in economic reality test is “whether or not the person who has engaged himself to perform the services is performing them as a person in business on his own account?” If the answer to this question is ‘yes’, then the contract is a contract for services (not employment). If the answer to this question is ‘no’, then the contract is a contract of service (that is, employment). Personal nature of the worker’s obligation to discharge his work is the main legally stipulated duty of the worker. In this connection, Article 13(1) of the labour Proclamation obliges the worker “to perform in person the work specified in the contract of employment”

This test, as with the control test, could not be applied on its own in order to determine the status of the person either as a worker or independent contractor. It is due to the fact that it is possible to incorporate a statement in independent contract to the effect that, materials and equipments would be provided by the employer, and that the independent contractor would be required to discharge his obligations personally. In such cases, the use of economic reality test would make the distinction between worker and independent contractor blurred.
MULTIPLE TESTS

Over the years, the courts have realized that no one factor can be identified to denote an employment relationship. Such a relationship is complex and consists of a variety of factors depending on the nature of the job and the relative skills of the employer and the employee. It is this multiplicity of factors that the judges now look to and as such the predominant test used is known as the multiple tests indicating that one factor alone cannot identify the type of relationship.

According to this test, the distinction between worker and that of independent contractor can be made effectively not by using a single test but by applying as many tests, discussed above, as necessary depending on the nature of the activity, rights and obligations of the parties involved in the relationship. It is this test which is found to be more important than any other single test as it has laid down the bottom line for the controversy that create difficulty in distinguishing employment relations from other different, but confusing, relations.

2.4 CATEGORY OF WORKERS EXCLUDED BY PROCLAMATION 377/2003

As a matter of general rule, it is true that the labour proclamation govern employment relations that are based on a contract of employment. But there are exceptional cases where this law may not be applied to similar employment relations as they are excluded expressly from its purview for different policy reasons. Depending on the nature of exclusion made by Article 3(2) and 3(3) of the Labour Proclamation, we have
two types of exclusions, namely, outright exclusion and conditional exclusion. The next part of this chapter will address the aspects of such exclusions.

2.4.1 Outright Exclusion

Outright exclusion is a complete and categorical exclusion of workers from the coverage of the Labour Proclamation without any condition. If a worker has an employment relation, the type and nature of which is as provided under Article 3(2) of the Labour Proclamation, then that worker’s employment contract would fall on the category of outright exclusion and any rights associated with may not be claimed. The following employment relations are excluded from the purview of the labour proclamation completely and automatically.

**Contract if Employment for the purpose of Upbringing, Treatment, Care or Rehabilitation or Education or Training**

(Article 3(2) (a &b) of the Proclamation)

This provision excludes those contracts of employments that are concluded for the purpose of upbringing, treatment, care or rehabilitation, education or training. Apart from putting such employment contracts on the exclusion part, the provision does not make clear what kind of employment relation they are. But, from the general point of view, it could be understood to refer to persons whose employment is primarily for the purpose of their medical, well being or rehabilitation. It includes persons with physical or mental disabilities being employed mainly for treatment or rehabilitation.

Under normal circumstances, the purpose of employing workers is in order to get their services. However, this is not so in case of contract of employment the main purpose of
which is in order to treat, care or rehabilitate or in order to give education or training to the individual himself.

**Managers and Legal Service Heads**

Individuals who are working in an undertaking with a position of manager and as a legal service head may be excluded from the coverage of the proclamation. In order to determine whether the worker is excluded under this heading, it shall be determined at the outset that whether she/he discharges managerial functions in the course of the employment relation. For the purpose of determining a managerial function, the proclamation considers workers if they are vested with the power to law down and execute management policies by law or by the delegation of the employer.

In addition, depending on the type of activities of the undertaking, the worker may be regarded as a manager if she/he is given a power to hire, transfer, suspend, layoff, assign or take disciplinary measures against workers. Moreover, legal service heads who recommend measures to be taken by the employer regarding managerial issues are also excluded from the coverage of the proclamation provided, however, that they give the recommendations by using their independent judgment and in the interest of the employer.

The underlying justification behind excluding managers and legal service heads is to avoid conflict of interests and benefits in the collective bargaining because members of management are supposed to represent the employer in the course of collective bargaining. When compared to other workers, the managers and legal service heads are presumed to be closer to the interest of the employer and to the management of the
undertaking. As the interest of management personnel is so closely tied with that of the undertaking, considering the managers and legal service heads as a worker, for the purpose of union membership, would compromise the interest of the majority workers in the course of collective bargaining.

**Employees of State Administration**

Employees of state administration are those employees of ministries of the state, or agencies that are under their disposal and of various commissions and other government agencies that are established with a view of maintaining certain administrative or executive activities of the state. In light of the federal structure like our country, this term should be interpreted so as to include all officials or public servants in the central, regional or local government administrations including municipalities. For the purpose of determining the clear limits of the scope of the term employees of state administration (who are called public servant), you have to focus on the activities or functions of the state.

However, as the government may have a dual function, you have to distinguish employment relations with a state in its capacity of state administration and in the capacity of profit making government owned undertakings. One last important aspect in this connection is that the employment relation of these employees of state administration shall be governed by a special law as per Article 3(2,e) of the labour Proclamation. Similarly, the members of police and armed forces, judges, prosecutors and others whose employment relation is governed by a special law are excluded from the coverage of the proclamation.
2.4.2 Conditional Exclusion

The exclusions made under Article 3(3) of the Proclamation are considered to be conditional because the some employment relations may be excluded from the Labour Proclamation up on the act of the Council of Ministers. It is to mean that the ministry is given a mandate to enact a regulation which may have the effect of rendering the labour Proclamation inapplicable in the employment so authorized.

Accordingly, in the absence of a regulation by the council of ministers, or international instrument providing otherwise, the employment relation between the Ethiopian citizen and foreign diplomatic mission or international organizations operating within the territory of Ethiopia will be governed by the labour proclamation. The same rule applies to those employment relations established by the religious or charitable organizations.
Chapter Three

Individual Employment Relation

Introduction

Dear students, under the preceding chapter we have discussed the important introductory remarks as to the historical development of employment law, its sources of law, its human rights aspects and its scope of application. Now under this chapter, the areas to be addressed are the formation of contract of employment together with the constituent elements, the obligations of both the worker and the employer, the sources of their obligations, modification of contract of employment.

3.1 Formation of Individual Employment Relation

To begin with, individual employment relation is a contractual relation between worker and his/her employer in their individual capacity. For the purpose of determining who an worker is and who an employer, it will be important to discuss, at this level, Art.2 (3) and (1) conjointly read with Art.4 (1) of the Labour Proclamation. It is true that the individual employment relation would be created through a contract of employment concluded by the worker and an employer.

3.2 Elements of Contract of Employment

As you may recall from our previous discussion, the scope of applicability of the Labour Proclamation in general is to employment relations formed by a contract of
employment. With this in mind, we will discuss the definition and the elements of contract of employment as provided under Article 4(1) of the Proclamation which is reproduced below:

“A contract of employment shall be deemed formed where a person agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece work in return for wage.”

As the contract of employment is the legal basis for the application of the Labour Proclamation, it appears imperative to discuss the elements that are regarded as important for the valid formation of contract of employment. The whole elements of a contract of employment may not be found in the above definitional Provision. In some situations, we may apply some of the principles of general contract as contract of employment is one of the special types of contract. It is due to the fact that Article 1675 of the Civil Code states that the provisions of this Title shall apply to contracts regardless of the nature thereof and the parties thereto. Therefore, for the purpose of forming a valid contract of employment, next we will discuss the whole elements that exist in the civil code and the labour proclamation.

3.2.1 Agreement

The definitional elements of an employment contract indicate that agreement is the basis for employment relation and this automatically excludes forced labour from the ambit of employment relations. Hence a person cannot be compelled to enter into an employment relation. Thus in this sense it is a voluntary engagement.
Nevertheless, it is important to note that agreement to employment relation may be expressed directly or indirectly. For instance, a person may directly or personally negotiate with his/her employer and conclude a contract of employment thereafter. The other possibility is public/private employment agencies may serve as intermediaries between the employer and the employee with a view to facilitating their relations. Thus the agreement may be expressed personally or indirectly through employment agencies.

3.2.2 Capacity and Consent

The legal meaning of capacity is the ability to perform a juridical act. Since concluding a contract of employment is a juridical act, both an employer and the worker must be capable of concluding such contract. As you may recall from your law of persons course, everyone is presumed to have a legal capacity to perform juridical acts unless she/he is declared incapable by law or court because of her/his age, mental condition or sentence by court (Article 192 and193 of the Civil Code).

Therefore, unless an employer or a worker is a minor or insane, she/he may conclude a valid contract of employment as the law presumes everyone to be capable of performing a juridical act. Under normal circumstance, the general rule regarding the age limit in order to perform a juridical act is 18 years age. Nonetheless, for the purpose of the labour proclamation, the attainment of 14 years age would suffice to conclude a contract of employment. The law, however, considers those workers with the age of 14 -18 years as young worker for the purpose of affording better conditions of work.
In order to create a valid employment contract, the parties to the contract must be not only capable of concluding such a contract, but also give their consent freely and with full knowledge of all the terms of the contract. Consent is declared in the form of an offer and acceptance. That is, a party to a contract of employment offers to the other party asking her/him to conclude a contract of employment and if the other party agrees to the offer, the offer is deemed to be accepted resulting in the employment contract. For instance, if Mr. Argaw applies for a job in Harar Brewery, his application would be considered as an offer. If the manager of the Brewery accepts Mr. Argaw’s offer, this acceptance of the offer results in the conclusion of contract of employment between Argaw and Harar Brewery.

What would be the effect of concluding a contract of employment without one of the parties having the required capacity?

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3.2.3 Object of Contract of Employment

The other element for the purpose of concluding a valid contract of employment is the object of the contract. Object of contract is the respective rights and obligations which the parties agree to assume in the contract. The object of employment contract should be clearly defined and stipulated in the contract as required by Article 4(3) of the Proclamation. The primary obligation, among others, of the worker is to render a
service while the obligation of the employer is to pay wage. In connection to the
obligation of the worker, the contract of employment shall clearly specify the type of
service the worker is required to render, the place where he works and the like. On the
other hand, the obligation of the employer is payment of wage to the worker, to make
clear how she/he calculates the wage and the interval of payment i.e. whether it is
weekly or monthly or on piece of work.

In cases where the parties to the employment contract could not ascertain some
of their respective rights and obligations, they shall make an effort to determine such
obligations based on custom, good faith, equity etc. (Article 1713 of the Civil Code).
But failure to clearly define/specify the respective rights and obligations of the
employer and the worker may render the contract of employment to be of no effect as
per Article 1714(1) of the Civil Code. It means that the contract of employment would
be regarded as if it has never been concluded.

According to Article 4(4) of the Labour Proclamation, the rights and obligations
of the parties should be possible, legal and moral. When we say the obligation of the
two parties should be possible, we mean the service required of the worker should not
be humanly impossible. Hence, consenting to perform what is impossible would
render the contract of employment void.

The obligations of the parties should also not be illegal in all of its aspects. An
obligation is illegal if it is prohibited by the criminal law, other public laws and the
mandatory provisions to the private laws. For instance, if Gembere employs Abebe to
deal for him drugs such as cocaine and heroin around Harar, the obligation of Abebe is
illegal due to the reason that dealing such drug is a criminal act in the criminal law.
In addition, the rights and obligations of employers and workers should not be immoral. An act is immoral if it is against the society’s way of doing things. For example, if a person employs a lady to be a prostitute in his bar or to be a strip dancer, this is against public morality and decency. If the rights and obligations of the parties are immoral, the contract will lose effect in the eye of the law.

As we have indicated above, the respective rights and obligations of the parties are determined by parties themselves. However, an employer can not put a term which is less favorable to the worker than provided in the labour law, in collective agreement or work rule. For example, in Art 61 (1) of the labour law put 8 hours working time as a maximum working hour. An employer, therefore, may not stipulate a term in contract of employment requiring the worker to work for more than 8 hours per day. Even if she/he does and the worker agrees, the term of the agreement can not be enforced and the worker is at liberty not to work for more then 8 hours with in a day.

3.2.4 Form of Contract of Employment

In principle, contract of employment, as any contract, may be concluded in any form the parties prefer (Art.5). The rule is freedom of form of contract Therefore; it may be concluded orally, in writing, or even by conduct. But if the law prescribes certain form for a particular type of employment contract, a contract concluded in a form other than prescribed by the law will be null and void. Contract of apprenticeship, for example, should be made in writing as the law provides so under Art. 41(3)

...
concluded in a form other than written form, the employer should give to the worker a written document showing what is given under Art 6 of the proclamation. The contents of the contract of employment that are provided under Article 6 are;

1) the name and address of the employer;
2) the name, age, address and work card number, if any, of the worker;
3) the agreement of the contracting parties made in accordance with Article 4 Sub-Article (3) of this Proclamation; and
4) the signature of the contracting parties.

This document unless contested by the worker within 15 days from the day of receipt will be considered as the contract between the parties and will serve as evidence should dispute arise between the employer and the worker regarding the terms of the contract.

3.2.5 Duration of Employment Contract

Duration of contract of employment is the length of time during which the contract stays in force between the parties. Under Art 9 of the proclamation, it is provided that any contract of employment shall deemed to have been concluded for an indefinite period save those provided for under Article 10 of the proclamation.

This provision can be interpreted in two different ways. The first line of interpretation is based on the principle of freedom of contract and Art.4 (3) of the proclamation. Those who support this line of interpretation say, in principle, parties to an employment contract can agree on the duration of contract as to whether it is for
definite or indefinite period of time, regardless of the type of work to be performed by the worker.

But if the contract of employment is silent about the duration of the contract, the presumption will be that the contract is concluded for indefinite period. Therefore, they say, if parties to employment contract fail to expressly provide the duration of contract as to whether it is for definite or indefinite period time, then the contract will be, in the eyes of the law, considered to be a contract of employment for indefinite period of time. However, even if the contract is silent about the duration of the contract, if the contract is for the performance of anyone of the works provided under Art 10 of the proclamation, for example for the performance of urgent work as per Art.10(d), the contract is deemed to have been concluded for definite period of time.

This is the first line of interpretation of Art 9. The other interpretation of the provision is that the freedom of contract does not work for determining the duration of the contract. The parties for the employment contract cannot agree to make the duration of the contract for definite time. Regardless of the agreement between the parties, any employment contract is considered as if it was entered into for indefinite period of time.

This is the rule. As an exception to the rule, if the contract is for the performance of the works that are listed down under Art 10 the proclamation, the contract would be considered as a contract definite period of time. In other words, to decide whether the contract is for definite or indefinite period all we have to do is having a look at the contract of employment to see whether or not the type of work to be performed by the worker is one of those listed down under Art 10 of the proclamation. If it is not in the list, the contract is for indefinite period.
The justification for the second line of interpretation is that, historically labour law emerged and developed to rectify the damage that the rigid application of the principle of freedom of contract had caused to the workers. Freedom of contract presupposes two equal parties.

But in contract of employment the two parties are unequal. The employer, as he is economically stronger, has a better bargaining power while the worker is in a weaker bargaining power. Treating the two parties on equal footing and allowing the duration of contract to be determined by the parties will defeat one of the most important purposes of the labour law which is maintaining tenure security to the worker. If an employer is allowed to determine duration of contract of employment by having the worker agreed to contract of definite duration, he will make the worker feel insecure about his job. Therefore, they say, every contract of employment, unless the work is one of those listed under Art 10, should be deemed to have been concluded for indefinite period time.

Question
1. Which interpretation do you support? Why?

The type of works listed under Art 10 of the labour proclamation are by their nature types of works which are performed with definite time except those under Art 10 (b) and 10(h) which are attached to conditions. The nature of the work under Art 10(b) and Art.10 (h) may be continues. But, even if the contract is for the performance
of such works, since the contract is concluded for the reasons provided in the provision i.e. to replace a worker who is either temporarily or permanently absent from work and to fill the gap that is created because of his absence, the contract is deemed to have been concluded for definite period.

This shows us that the continuing or non continuing nature of the work to be performed by the worker determines the duration of the contract. Also, Art.9 of the proclamation closes all doors of doubt by saying “any employment contract is deemed to have been concluded for indefinite period which tells us except those work which are by their nature capable of being completed within definite period, every other employment contract is for indefinite period of time. Therefore, the second lime of interruption seems to be the stronger one.

3.3 Probation Period

Probation period which is also called trial period is period of testing the reciprocal convenience of the parties before coming to a definitive stipulation of the contract. That is, during this testing time, the employer evaluates the qualities and technical capacities of the worker and the worker evaluates the suitability of the work.

Contract of probation must be concluded in written form (Art 11(3)) and the fact that the worker is employed for probation period must be expressly provided in the contract. Otherwise the worker will be considered as employed without a condition of probation period. Probation period may not exceed 45 days.
Within the 45 days, both parties have unqualified right to terminate the contract of employment. If this period lapses the contract will be contract for indefinite period or definite period based on the nature of the work to be performed and the right of the employer to terminate the contract at his will fall under stringiest requirements, which will be discussed later on in the other chapter.

Questions
1. ”Contract of probation is an exception in contract of employment” Comment.

2. Art.5 of the proclamation provides the rule regarding form of contract is freedom of form of contract. On the other hand Art.7 imposes obligation on the employer to reduce the terms of the contract into writing and, it says, this is considered as written contract between the parties. Do you think Art 7 is contrary to the principle freedom of form of contract? Why?
3. What are the reasons for considering young workers as major for the purpose of employment contract?

3.4 Implied Duties of Parties to Employment Contract

Implied Duties

The right and duties of the employer and worker are synchronous. That is, what is given as the duty of the employer is a right which the worker can demand and what is
given as the duty of the worker is the right of the employer. Therefore, what is discussed in the present section as a duty of one of the parties is the right of the other party.

Basically, the parties to an employment contract determine their respective rights and obligation in the contract. If one wants to know the rights and obligations of the parties, he has to look for it in the contract. But as you have seen in the previous section, freedom of contract is not an absolute principle in contract of employment. The law does not leave everything to be determined and agreed upon by the parties. There are certain rights and obligations of the parties which are presumed to exist in every contract of employment even if they are not expressly agreed upon by the parties to the contract. These are given under Arts. 12 and 13 of the proclamation.

3.4.1 Duties of the Employer

An employer, in addition to what is provided in the contract as a duty, is presumed to have assumed the following duties as provided under Art.12 of the proclamation.

Duty to Provide Work and Work Material

Presence of work to be performed by the worker is the very essence and validity requirement of any employment relation created based on a contract of employment. So the assumption here is that the parties have made an agreement regarding the presence of a work to be performed by the worker. After hiring her/him, she/he can not keep idle, even if the employer pays him the wage (Art 12(1)). This is because working is not only means of getting subsistence to the worker, but also means of satisfaction and developing his skills. If a worker is kept idle, she/he will lose the chance to
improve her/his skill. In addition to that, in contract for the piece of work, the wage of the worker is calculated based on the work done by the worker. In such case, if a worker is not given some job, she/he may not be paid anything. So, to avoid such kind of repercussions, the law puts the employer under obligation to give work to the worker.

Similarly the law makes the responsibility of the employer to provide the worker with the necessary tools and other materials. The worker is hired to give service. Hence, in the absence of otherwise agreement, provisions of other materials which are necessary for the performance the job is the responsibility of the employer. Because the worker is by definition poor and can not use his own implements.

**Duty to pay wage**

Receiving wage is one definitional element of a worker. If a person renders his service for free, as was said before, he is not a worker. As to receive wage is the worker’s right, to pay wage is the duty of the employer. Wage is a payment that the worker receives regularly in return to the service he renders (Art.53 (1)). Payments other than the overtime pay and per diem are not wages. These are emoluments. An employer is duty bound to pay wage only if there is work done by the worker. Otherwise, he is free not to pay, unless the reason for the failure of the worker to give service attributable to the employer (Art. 54).

**Duty to Respect Human Dignity of the Worker**
Labour relation is firmly based on the recognition of the equality of the employer and the worker in humanity and the inequality in bargain power. Thus, a worker is neither the property of his employer like in slavery nor worthy of any less respect than his employer as it was in feudalistic system. Therefore, the employer has the obligation to respect the human value of the worker (Art.12 (3)). He cannot dishonor the worker by insulting him, yelling at him or beating him. An act of the employer against the human dignity of the worker entitles the worker to terminate the employment contract without notice (Art.32 (1(a)) and get severance payment (Art39 (1(d).

**Duties Regarding Safety and Health of the Worker**

As you recall from the reading in the previous chapters 1, workers were obliged to work under unfriendly working condition and unsafe environment as there was no legal obligation on the employer to create safe working condition. But now the law rectifies this unfairness by imposing obligation on employers to create a healthy and safe working condition (Art.12 (4)). To that end, any employer has the obligation to provide the workers with safety devices such as gloves, helmets, etc. Not only providing the worker with safety devices, the employer has also the obligation to instruct the workers as to how to use such safety devices. The employer has to fulfill the standards that are set by the relevant authority regarding health measurers. If he fails to comply with these provisions, the employer may be fined as per 184(2(a)).

**Duty to keep information**

The employer has the duty to record and keep a register containing the particulars specified under Art.6 of the proclamation. He is also under duty to record and keep information that are required by other relevant provisions of the proclamations and
other information which are necessary to the Ministry of Labour and Social Affairs (Hereinafter, the ministry).

For example he has to register and submit to the ministry whenever required information regarding leaves, weekly rest day; public holidays utilized by the worker, health condition of the worker or if there is any; employment injury sustained by the worker (Art.12 (6)). In case of dispute between the two parties, the information so kept will serve as evidence. If the employer disregards his obligation to register and keep the information indicated above he will be penalized as per Art 184(2(b)) of the proclamation.

**Duty to Give Certificate of work**

When the employment contract between the employer and the worker terminates for any reason the employer has the duty to give to the worker a certificate showing the type of work the worker was performing, the length of time that he worked for the employer and the wage he was paid (Art. 12(7)) . The certificate does not have to show the reason for the termination of the contract especially if it is going to be against the interest of the worker.

For example, if the reason for the termination of the contract is repeated and unjustified tardiness on the part of the employee, the employer cannot indicate this reason in the certificate. Because if this is shown in the certificate, it will be difficult for the worker to get another job as no one wants to employ a tardy person.
3.4.2 Duties of the Worker

In the previous section, you have seen the duties of employer which are implied in every employment contract. As indicated above, the duty of the employer is the right of the worker. In this section you will have a look at the duty of the worker which is a right an employer can demand form a worker and which is implied in any employment contract.

Duty to Give Personal Service

The worker has the obligation to perform the work as agreed in the contract personally. Unless there is express agreement he can not delegate another person to perform his work. Therefore even if the worker brings a better qualified person to perform the work, the employer may refuse and insist on the personal service of the worker.

A contrario reading of the provision tells us that as the worker is required to perform the work in person, the employer can not require the worker to have the work performed by another person. For example if, because of sickness, the worker could not make it to his work place, the employer cannot say he should have sent someone in his stead. Therefore, personal service by the worker is a right and duty at a time to the worker.

Duty to Follow Instruction of the Employer

Following the instructions and directives of the employer is not only an obligation of the worker; it is also a definitional element of being worker. If an employee is free not
to follow the instruction of his employer, this person is not most probably a worker. Therefore, even if it is not given in the contract of employment expressly, the worker has the obligation to follow instructions of the employer.

. Duty of Care for Work Tools & Instruments

As it was said before, providing with necessary work tools and instruments is the obligation of the employer. The worker, as he is poor, can not afford to come with his own tools and materials. When the law imposed the obligation to provide tools and materials on the employer, on the other hand it has imposed the duty to handle these tools and instrument with care on the worker.

Therefore, the worker has to use the tools in such a way that they can give service for the longest possible time and has to make sure that the work tools are not damaged, broken or lost.

Duty to be in fit Condition

A worker has the obligation to come to work in fit physical and mental condition. He can not come in a condition which will decrease his efficiency in work.. For example he cannot come to work and report in state of intoxication after taking alcohol, drugs or other similar things. He is also forbidden to come with unfit physical condition after spending his rest time in activities which may exhaust him physically. If a worker
comes to work in an unfit state and sustain injury, the employer will not bear any liability to the injured worker (Art. 96 (2(a)).

**Summary**

Employment contract as any contract should contain every elements of the contract. Therefore, the parties should be capable and give their consent. The terms of the contract should be determined or at least determinable and the contract should be concluded in legally prescribed form if any.

Any employment contract is presumed to be concluded for indefinite period. But if the contract is concluded for the performance of the jobs which are indicated under Art 10 of the proclamation, the above presumption can be rebutted and the contract is considered as if entered for definite period.

Basically the sources of rights and obligation of parties to an employment relation is the contract of employment itself. However the law implies certain duties to exist in every contract of employment. The implied duties of the employer are the duty to provide work and work materials, to pay wage, to respect the human dignity of the worker, to create safe and healthy working condition, to keep information and to give certificate to the worker when the contract is terminated.

Implied duties of the worker are the duty to give personal service, to follow instruction of the employer, to hand with care work tools and instruments and to come to work in fit physical and mental condition.

**Questions**

1. Why are the obligations listed under Art.12 and 13 are called implied duties.
2. Abebe is a worker in Sunrise building. When he was employed, he was told that he would clean the 12th floor of the building. Last week the owner of the building has ordered him to clean the 15th floor. Now Abebe is complaining that the order of the owner is contrary to the agreement. Is his complaint right? Why?

3. Urgesa, a worker in certain factory, was suffering influenza for a month. When he was sick the employer sent a letter requiring him either to come personally
and work or to send his son in his stead. Is Urgesa obliged to send his son in his place?

4. A contract of employment between x and y says the employee who is x should come with his own tool. Is this provision of the contract in accordance with the law?

5. Regarding the duty of the employer to give certificate to the employee after the termination of the contract, it is said that if it is against the interest of the employee, the reason for the termination of the contract will not be indicated in
the certificate. How do you reconcile the above assertion with Art 27(2) of the proclamation?
Chapter Four

Suspension and Termination of Contract of Employment

4.1 Chapter Introduction

Dear students, from our discussion under the previous chapter, you are expected to remember the important aspects of contract of employment like formation, rights and obligations of the worker and the employer, the source of their obligation, modification and the fact that the amalgamation, division and transfer of undertaking may not have effect of the terms and conditions stipulated under the contract of employment. Now in this chapter we will discuss the suspension of rights and obligations of the worker and the employer. In relation to this, the grounds of suspension would be addressed together with the effects of the expiry of the suspension period.

Then, the most important aspect which is the termination of contract of employment will be discussed. In this regard, the discussion would go in detail on areas of the grounds and procedures that the law considers as valid for the purpose of lawful termination of contract of employment. Those cases that amount unlawful termination will also be addressed. Last but by no means least is the effects of termination of contract of employment. The termination made by the parties may be found to be lawful or unlawful. Hence, you will appreciate the remedies and liabilities that are envisaged in the event of termination of contract of employment.

4.2. Suspension of Rights and Obligations
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.

A contract of employment may be suspended for a variety of reasons. Some of the grounds as provided under Article 18 of the Labour Proclamation are:

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

4.2.1. Voluntary Arrangement

The employer and the employee may agree to suspend their contractual relation for some time. 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. If the employer accepted the request, this is a typical case of suspension. 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. This is the rule provided under Article 18(1) of the Proclamation.
4.2.2 Suspension for the Benefit of Society

An employee may be elected to hold office at higher level trade union structure which may demand full time engagement. The other possibility is that she/he may hold office at kebele or woreda level or she/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)

In such cases what will be the fate of his contract of employment?
Should it be terminated?

Should he be still considered as an employee and collect wage from the employer even if he is not rendering service to him?
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.

Should the employer then be required to pay him wages while the employee is not rendering service to him?

This is again unfair to the employer because as the service is being rendered to society at large it should be society which should incur such costs and not the employer individually. To strike the balance between these two concerns, the Labour Proclamation has come up with this solution. This solution is suspending the contract of employment until such time the employee accomplishes his societal service after which he will regain his employment.

4.2.3 Suspension Due To Reasons beyond the Control of the Employer

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

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.

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

If the Ministry determines that there is no adequate reason to withhold operation, it will order the resumption of the activities and payment of wage for the days on which the employees were suspended. The employer may appeal within five working days against this decision to the appellate court of the Region where it runs its business.

If the employer fails to inform the Ministry of the occurrence of a ground for suspension, it will not have valid ground to suspend its operation. Furthermore it may be liable to fine for failure to notify.
4.2.4. Disciplinary Suspension

One of the prerogatives of an employer is to take disciplinary action against an employee. The employee on its part is required to render faithful service to the employer. Failure to observe such faithfulness may subject the employee to disciplinary action. But prior to taking action, the employer is expected to undertake the necessary investigation into alleged misconduct of the employee. Until such time the investigation is completed, it may be appropriate to suspend the employee so that investigation could go smoothly.

With this purpose in view, 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.

* Under the Civil Service law, disciplinary suspension is within the sole prerogative of the employer. Its length could also be as long as two months.(compare Art.27(4) Labour Proclamation and Art.70 of Civil Service Proclamation) Why do you think the legislature decided to adopt double standard in this regard? Is it justified? Why? Why not?
More often than not, misbehaviors which may subject an employee to disciplinary investigation could at the same time be reasons for filing a criminal charge against the same. Let us assume that parallel actions (i.e. disciplinary & criminal proceedings) were being commenced against the employee. Let us further assume that the disciplinary proceedings resulted in positive determination that the employee indeed committed that alleged misconduct and summarily dismissed due to it. Let us also assume that the criminal proceedings failed to convict the accused for lack of adequate evidence and hence the accused has been acquitted.

What effect will the acquittal have, if any, on the disciplinary action? I mean, should the employee be reinstated now that his/her innocence has been judicially determined? Why/ why not?
4.2.5. 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. 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.

4.3 Termination of Employment Relationship Objectives

Termination of contract of employment is a situation where the employment relationship of the worker and the employer brought to an end. Whenever contract of employment is terminated, a lot of complicated issues would arise especially when the employer dismiss the worker without following the legal grounds and procedures, and affecting the right of the latter. Therefore, in this part we will discuss the different grounds triggering the termination of employment relationships, the formalities
requirement s to make use of these grounds, the party that can make use of the grounds, lawful and unlawful terminations by both parties, and other related issues.

In the establishment of employment relationship, the conclusion of contract of employment is an initial stage. But it shall be known that this contract by no means reflects lifelong commitments of parties like, that of contracts of marriage. Thus, the relationship can be brought to an end at some point in time for different reasons. Therefore, termination refers the last stage of employment relationship: the stage at which an ongoing relationship is broken-up. The grounds for terminating employment relationship may be either lawful or unlawful. If the grounds invoked by a party are the one provided for by law or the parties agree to terminate the relationship, the termination will be lawful. At times, the law itself puts an end to certain employment relationships. On the contrary, if employment relationship is brought to an end contrary to the grounds or procedures provided for by law, the termination will be unlawful. Both types of termination will be unlawful. Both types of termination will be discussed below.

4.3.1 Lawful Termination

4.3.1.1 Termination by Operation of the Law

Although the most common way the contract of employment will come to an end is by an act of the parties, in some circumstances the law will operate to end the relationship automatically on the happening of an event. Should the contract terminate in this way, there will be no liability on either side. The ways in which the contract will terminate by operation of law are discussed below.
In our previous discussion, we have seen that the duration of contract of employment may be for definite or indefinite period of time or for the performance of a specified task as the case may be based on the nature of the work to be performed by the worker. The termination of Contract of employment for definite period or for the performance of a specified task would be by operation of the law. Accordingly, the expiry of a fixed-term contract, which must have a definite starting and finishing date, or the completion of the work marks the termination of the employment relation.

In relation to Art.23, there is one issue worth entertaining: what would happen if a worker continues to work and the employer keeps quiet upon the expiry of the period of contract for definite period?

Can it be said that the contract is renewed tacitly? Or shall we say there is no relationship between the worker and the employer?
The proclamation does not give us an answer. But the more tenable position is, if a worker continues to work after the expiry of the duration of contract for definite period without any objection from the employer the contract made for definite period is deemed to be renewed for indefinite period. So, to avoid such consequence, the worker needs to stop his work upon the expiry of the period, and the employer shall also object to the continuation of the work.

The death of the worker is also the moment where there will be termination of the employment relation. As the employment relation is based on the personal qualification and skill of the worker, his heirs can not claim to work substituting him. It is equally important to consider the fact that the law does not recognize the death of the employer as a ground of termination of contract of employment.

If the death of the employer does not result in the termination of contract of employment, what would the fate of the employment relation?

Despite the silence of the law, the general consensus in such case is employer’s death shall not affect the employment relation and it shall continue with the heirs of the employer as long as the undertaking continues its operation. This assertion would be supported by the provisions of Article 23/2/ which states that “… transfer of
ownership of the undertaking shall not have the effect of terminating a contract of employment.”

The other ground of termination by operation of the law is when the worker reaches the age of retirement in accordance with the relevant law as per Article 24/3/ of the LP. The point that worth mentioning is the fact that what the law stated as relevant law [Public Servants’ Pension (Amendment) Proclamation No. 190/1999] applies only to the public servants and employees working in a government organization the activity of which may be agricultural, commercial, industrial, transport or insurance.

As we have already discussed, the LP would not applied to the employment relation of the public servants. Hence, the termination of contract of employment up on the retirement of the worker as provided under Article 24/3/ of the LP would be applied provided that the employer is one of the government enterprises or organizations. This, in turn, will lead us to conclude that a private undertaking/employer can not use retirement age of the worker as a ground of termination of contract of employment.

The other ground by which contract of employment would be terminated by the law is when the undertaking ceases operation permanently for due to bankruptcy or for any other cause as provided under Article 24/4/ of the LP. As far as the undertaking has been closed for whatsoever reason, the termination under such ground will entitle the worker for the payment of severance pay as provided in this proclamation.

What would be the effect of temporary cassation in the operation of the undertaking?
The last ground of termination by operation of the law is, pursuant to Article 24/5/ of the LP, when the worker is unable to work due to partial or total permanent incapacity. Here, the worker has become incapable of performing not only the work for which he has been employed initially but also any type of work that may be performed in the undertaking.

The labour proclamation, pursuant to Art.24, provides for grounds that, if they exist would automatically bring any employment relationship to an end. Interestingly, these grounds cannot even be put aside by parties. The grounds include the expiry of the period, if the relationship is established for definite period, the completion of the work if the relationship is established for a piece of work, the death of the worker, retirement of the worker in accordance with the relevant law, the permanent cessation of the undertaking due to reasons like bankruptcy, and the partial or total permanent inability of the worker to work.

The list made under Art.24 is exhaustive. Therefore, the abovementioned factors are the only causes that could cause an automatic termination to employment relationships. If, nonetheless, any of the grounds mentioned in the preceding paragraph happens, the contract of employment will cease to have effect. There is no requirement of notice for the termination of contract of employment in accordance with Art. 24.
4.3.1.2 Termination by Agreement

A contract of employment is nothing but an agreement between a worker and an employer to create certain obligations between themselves. The obligation so created may be extinguished by the parties. Thus, parties to employment relationship can terminate their relationship without any restriction.

The possibility of terminating employment contract by agreement is regulated under Art.25 of the proclamation. This provision provides that parties can put an end to their relationship on condition that their agreement is made in writing. If the agreement is oral, the employment is made in writing. If the agreement is oral, the employment relationship will continue to exist and the status of the parties, in the eyes of the law, remains intact: employee and employer.

Moreover, Art.25 makes one more stipulation which is not as such a validity requirement for the termination of employment relationship by agreement. That is, any waiver of right made by the worker in his agreement for the termination of contract employment will be null and void. For example, there are certain benefits that the worker will be entitled to after the termination of employment relationship. As per Art.25 the worker is prohibited from validly agreeing to the waiver of such rights (benefits). The worker who is interested in waiving his rights can refrain from exercising them when they are due and this has the same effect with waiver. All the same, the waiver of such right by agreement is expressly prohibited.

What do you think is the reason behind making agreements to waive the benefits of termination invalid?
4.3.1.3 Termination by Parties (Unilateral Termination)

Sometimes grounds that would bring about an automatic death to employment relationship may not exist. Likewise, the parties may not come to agreement to terminate their relationship. In this case, the party that wants to get rid of his contractual obligation would be in trouble. To avoid such trouble, the law has given parties the liberty to terminate the relationship unilaterally subject to the fulfillment of certain conditions or in accordance with certain procedures. The conditions that need to be satisfied and/or the procedures to be complied with are discussed below.

A- Termination by the Employer

An employer who does not want to maintain certain worker may terminate the contract of employment. This measure is technically referred to as dismissal. Dismissal of a worker may take two forms: ordinary dismissal and summary dismissal. Under certain circumstances employers are authorized to take immediate action of dismissal, that is, without even notifying the worker in advance about the termination of the contract. It is this type of termination that is termed as summary dismissal or extraordinary dismissal. However, in most cases employers are
required to meet certain conditions their employment relationships. This type of termination is known as ordinary dismissal.

Even though employers have the right to terminate employment relationship the right is a limited right. Traditionally, they could terminate contract of employment at any time for any reason. This position is, nonetheless, reversed in the modern time to assure employment security of workers. Accordingly, no employer can lawfully terminate his employment relationship without good cause.

Good cause simply refers to a ground that can justify the measure taken by the employer. For instance, if the employer dismisses his worker because he hates him, there will be no good cause for the termination. One’s feeling of hatred can in no way justify the breaking up of employment relationship. If, on the other hand, the employee becomes incapable of performing his duty, termination will be justified because the worker’s incapacity is a good cause.

The labour proclamation has adopted this modern perspective with respect to employers’ right to terminate employment relationship. In accordance with Art.26(1), employers may terminate contract of employment where there are grounds related to the conduct of their workers or with the objective circumstances arising out of his ability to do his work or the organizational or operational requirements of the undertaking. If the ground to be used does not relate to any of these conditions, it cannot be a good cause. For instance, ethnicity, religion, sex, political outlook, race, or other similar factors can under no circumstance be good causes to entitle employer to terminate employment relationship. Because none of them related to the above-mentioned conditions. If, on the contrary, the undertaking is computerized and, as the result, the reduction of workers is made
necessary, the termination will be okay because there is an operational change within the undertaking and this is authorized to be a good cause for dismissal. Besides, if some of the posts in an undertaking are abolished for justifiable reasons, the post holders can be dismissed since there is an organizational change which is a good cause. At any rate, the proclamation provides for grounds which are good causes for termination under Arts. 26(1) and 28.

Questions

After thoroughly reading Arts.26(1) and 28, try to answer the following questions.

1. Ato E, the employer, wants to dismiss Ato W, the worker, because of his membership in one of the legally registered political parties. Can he lawfully do that?

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2. Would your position be different if Ato W brings an action for defamation against Ato E?

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https://chilot.me
3. What if Ato E’s undertaking requires degree holders while Ato W is only a certificate holder?

4.3.1.4 Modes of Termination

Termination with Notice

If there are good causes which would justify the termination of contract of employment, the termination may be effected in two ways. As a rule, termination of employment relationship by the employer shall be with notice. The worker needs to be notified in advance and in writing about the intention of his employer to terminate the contract of employment and the specific date on which termination is to take effect. Therefore, the principle is termination shall be ordinary, that is, it shall be with notice. This principle is not expressly stated in the proclamation. But the a contrario reading of Art.27 tells us that termination shall be with notice. For example, under Art.28 and 29 the proclamation provides for different grounds justifying termination with notice:

Reduction of work Force (Arts. 28(2) and 29)
If the undertaking has undergone organizational or operational changes the reduction of workers may be a matter of necessity. In this case the employer can give notice and reduce Art.29. The procedure is, firstly, workers having less skill and productivity rate will be reduced. In case of equal skill and productivity rate, workers with shortest length of service shall be reduced provided that they have no or fewer dependants, they are not disabled and expectants. Then workers with fewer dependants will be reduced. Next are workers with longer length of service and having many dependants. At the fifth stage those workers who are disabled by employment injury shall be reduced. Following disabled workers representative of workers shall be reduced. At the last, expectant mothers are to be reduced.

It shall be known that the above-mentioned order applies where there is reduction of work force within the meaning of the proclamation. And reduction of work force exists within the meaning of the proclamation only if ten percent of an undertaking’s average annual number of workers is to be affected provided that this average is greater than 50. If the average annual number of workers in an undertaking is between 20-50, the reduction of at least five workers over a continuous period of not less than ten days qualifies as a reduction of work force. If the undertaking’s employees are less than 20 on average, the concept reduction of work force will not apply to it.

Anyway, whether due to reduction of work force or other reasons, an employee is to be dismissed notice shall, in principle, be given this is meant to make the worker look for a substitute work. The period of notice for each worker depends on the length of service the worker has at a given undertaking. The duration of this notice is stated under Art. 35 of the proclamation as follows:
A) One month for a person who has competed his probation but has worked for not more than one year;

B) Two months for a worker with service in excess of one year but not exceeding nine years;

C) Three months for a worker with service in excess of nine years; and

D) Two months for a worker who has completed his probation but whose contract of employment is terminated due to reduction of work force.

The calculation of notice period commences from the next working day to the date of delivery of the notice. For example, if notice is delivered to the worker on Friday and Saturday is a holiday the period starts running from Monday provided that Monday is a working day.

Interestingly, Art.35(2) leaves the fixing of notice period for the termination of contract for definite period or a piece of work to the parties in their contact of employment. But the notice, as it can be understood from the provision, shall be given. Parties’ liberty pertains to the determination of the duration, not to whether notice is necessary or not. If agreement is missing, the case may be taken to one of the labour dispute resolving organs.

More amazing is the reason why Art. 35(2) makes giving notice necessary. Because, under Art.24(1) it is stipulated that contract for definite period or a piece of work is terminated by law. And if it is the law that is terminating the employment relationship, why should the employer be required to give notice?
As discussed before, whenever employment relationships are terminated by law neither of the parties are required to give notice to one another. But what Art.35(2) provides for seems an anomaly. If that is the case, how can we avoid the problem posed by Art.35(2)?

Dear student, the absurdity that would follow the application of the near meaning of Art.35(2) may be avoided by interpretation. That is, we can interpret the provision as the one regulating the termination of contract for definite period or a piece of work before the period expires or the piece of work before the work is completed. Otherwise, Art.35(2) would be a purposeless provision in the presence of Art. 24(1).

Anyway, whenever he is obliged, the employer shall give notice in writing, to his employee in person. If giving notice to the worker in person is impracticable the notice can be posted on the undertakings notice board for ten consecutive days. After a notice is given the relationship between the employer and the employee remains intact.
until the notice period expires. Hence, both parties enjoy the rights and duties under the contract of employment (Art.34).

Termination without Notice (Summary Dismissal)

In the previous sections, it was stated that ordinary dismissal, termination of contract of employment by an employer with notice, is a rule. Exceptionally, the contract may be terminated without notice: summary dismissal. The exceptional nature of summary dismissal can easily be discerned from Art.27 of the proclamation. Firstly, the provision stipulates that grounds for termination without notice can be determined by collective agreement.

Secondly, it provides for an exhaustive list of reasons entitling an employer to summary dismissal. Interestingly, all the grounds so mentioned are related to the misconduct of the worker in relation to his work. For example, absence from work without permission, causing quarrels at work place, absence from work place due to sentence of imprisonment passed against him for more than 30 days, reporting for work in a state of intoxication, and refusal to observe safety and accident prevention rules, are among the grounds entitling an employer to put an end to employment relationship without notice.

The rationales behind the permission of summary dismissal are the needs to discourage workers from misbehaving and also protect employers from such misbehavior. It must not be misconceived that the labour law protects workers alone. Workers are only the primary concern of labour law. Thus, employers also get same protection from the law: that is why they are allowed to dismiss some workers immediately and without giving notice. This is, of course, without prejudice to the
other duties of the employer. For instance, the employer shall give a written notice (but not within the meaning of Arts.34 and 35) to the worker specifying the reasons why he has terminated the employment contract without notice and the date as which it will be effective (Art.27(2)).

The right of employers to terminate employment relationship without notice is time limited. Under Art.27(3), the proclamation stipulates that grounds entitling employers to summary dismissal cannot be invoked after 30 working days have elapsed since the date of awareness about their existence. If no measure is taken within this period, the law presumes that the worker is excused.

For instance, a worker who has committed theft cannot be summarily dismissed two months later if his employer was aware of the fact (the act of theft and the thief) as of the date it occurred. But if the employer is not aware of the fact, the period of limitation starts running from the date he comes to know about what happened.

The period of limitation mentioned in the above paragraph will only bar an employer from dismissing his worker without notice. Thus, the employer can use the same ground to terminate his relationship with his worker by giving notice pursuant to Art. 26(1) and Art.27(1), a contrario reading. This means grounds for summary dismissal may be used for ordinary dismissal if summary dismissal is barred by limitation.

At times, immediate measures may not be taken to terminate employment relationship may not be taken. This happens when there is no certainty as to what is claimed to have happened. For example, the employer may claim that his worker has
misappropriated some property while the worker denies it. In this case, since termination of contract of employment may not be proper, the proclamation, by virtue of Art.27 (4), authorizes the suspension of the contract in accordance with collective agreement.

The duration of suspension is to be determined by collective agreement. However, the duration cannot exceed thirty working days. If, within the duration fixed, the claim of the employer is proved, the worker can be dismissed with notice. If the allegation is, nonetheless, found to be false, the worker will resume his work as if nothing had happened.

Question

After reading Art.27(1)(i), do you think that a worker who is missing from his work for more than 30 days due to lawful detention can be subjected to summary dismissal?

B. Termination by the Worker
Alike the employer, an employee can also put an end to employment relationship. Such measure of an employee is technically referred to as “resignation”. The resignation may be ordinary, if it is with notice, or extraordinary, if it is effected without notice. Extraordinary resignation is sometimes called constructive dismissal because it is the employer who, by his conduct, leads the worker to resign. Thus, it is the employer who is indirectly dismissing the worker.

Unlike employers who are required to have good cause, employees can terminate employment relationship at their will. The only burden they are subjected to is to give prior notice. This duty by itself may be put aside upon the fulfillment of certain requirements.

1- Ordinary Resignation

Ordinary resignation is, as stated before, termination of employment contract after giving prior notice to the employer. This type of resignation is regulated by Art.31 of the proclamation. The provision also makes ordinary resignation a rule. Thus, workers are, in principle, required to give advance notice in writing whenever they wish, for whatever cause, to terminate their contacts. The duration of the notice period is 30 days (Arts.34 and 35.) this period is believed to be sufficient to enable the employer to look for a substitute worker.

This, once again, shows that labour law gives some protection to employers as well. But someone may wonder why the notice period is limited to only one month. But the justification is so clear; forcing a worker to serve an employer for more than a month will reduce him to a status of slave.
2- Extraordinary Resignation

This type of termination of employment relationship by the worker is an exception to ordinary resignation. Because workers can resign without giving prior notice only if the grounds expressly stated are available. For example, Under Art.32 of the proclamation, different grounds, the existence of which would relieve employees from their duty to give notice, are stated.

Amazingly, all the grounds mentioned have same thing in common: that is they are related to the misconduct of the employer, such as repeated failure to pay salary, sexual harassment, defamation, and failure to take preventive measures to avert imminent danger threatening the health and safety of workers despite his awareness of the fact. If any of these causes or other similar cause occurs, a worker can resign without giving advance notice in accordance with the notice requirement of Arts 34 and 35.

There are different reasons for the permission of extraordinary resignation. Firstly, since the causes reflect unjustifiable conducts of the employer, the law wants to protect the worker by allowing him to get rid of the problem as soon as possible. Secondly, it wants to discourage employers from misbehaving by withdrawing the protection they are accorded by law through the requirement of prior notice.

If a worker decides to terminate his employment relationship without notice, he shall inform the employer in writing his intention together with the reasons thereof to terminate his contract and the date on which the termination is to take effect. The notice requirement here is different from the ordinary 30
days notice requirement. In this case the duration may be one day or even half day notice. There is no minimum limit to it.

The causes of extraordinary resignation are subject to period of limitation. Art.33 of the proclamation stipulates that unless they are invoked within fifteen working days from the date they happened or they ceased to exist, the worker will be barred from invoking them. If the worker continues to work beyond this period, the law assumes that he has forgiven his employer.

All the same, the period of limitation cannot relieve the employer from his responsibility. For instance, if the act done is rape, he will be responsible, in accordance with the criminal code, for committing the crime of rape. Besides, the period of limitation only bars termination without notice. Hence, the worker can terminate his contract with notice notwithstanding that the fifteen working days limitation has expired.

Question
If the sexual harassment envisaged under Art.3(1) is committed not by the employer but his agent can a worker terminate his contract without notice?

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4.3. Unlawful Termination

Termination of employment relationship will turn out to be unlawful if the grounds justifying termination are missing or the procedural requirements are not followed. This type of termination may be made by either of the parties to the relationship. The specific factors making termination of employment contract unlawful will be discussed below with respect to both parties separately.

4.3.2.1 By the Employer

Under Art.42, the proclamation provides that termination of employment contract will be unlawful if the employer fails to comply with any legal requirement regarding termination. From our previous discussion we can recall that, as a rule, there are two requirements that an employer need to comply with. These are, firstly, he must fulfill the notice requirements. Secondly, he must have good cause to terminate the contract. If any of the two conditions is not satisfied the termination will be illegal. For example, under Art.26(2) different factors which would under no circumstance serve as good causes are listed. If the employer fulfills the notice requirements to terminate his contract based on one of the factors mentioned under this article such as the worker’s membership in legal union, the termination will be unlawful.

Similarly, the existence of good cause by itself is not sufficient, in principle, to make the termination of employment relationship lawful. Advance and written notice for the period provided in the proclamation shall be given to
the worker. If notice is given in advance but only orally the notice is considered as never given since written notice is a mandatory requirement (Art.34(1)). Moreover, the duration of the notice period shall be as provided under Art 35: one to three months or as agreed, as the case may be.

Eventually, you need to recall that there are situations in which employers are relieved of their duty to give notice to terminate employment relationship will not be unlawful even if the notice requirement is not met. Under such circumstance, given advance notice is not a requirement, after all. Thus, the termination will be lawful. But if the contract is not terminated within 30 working days as of the date of the employer’s awareness about the existence of the cause, subsequent termination, to be lawful, needs to be preceded by prior notice. That is to say, after the 30 working days have elapsed, the relevance of notice will come in to picture.

Question
When does termination by an employer become unlawful?

4.3.2.2 By the Employee
As per Art.42 of the proclamation, termination of contract of employment by the worker will be unlawful if it is not effected in accordance with the necessary legal requirements regarding termination. The legal requirement that a worker needs to meet was discussed in the proceeding sections. That is, a worker is required to give advance and written notice for 30 days before the termination is to take effect (Arts.31 and 34). If this requirement is not met, the termination will, in principle, be illegal.

Nevertheless, the proclamation has envisaged, under Art.32, the possibility of terminating employment relationship without meeting the notice requirement of Art.31. In this case, the notice requirement may not serve its purpose since it is the employer who is indirectly leading the worker, by misconduct, to terminate the relationship. That is why this type of termination of employment contract is called constructive dismissal.

With regard to constructive dismissal the employee is expected to do two things so that his termination with notice remains legal. Firstly, he has to take move to end the employment relationship within fifteen working days as of the date the ground for such measure comes to exist or ceases to exist (Art.33). Secondly, he has to notify, in writing, his different from the one month notice stipulated under Artr.31.

Under Art.32(2), it is like giving a letter to the employer indicating the intention and reasons of the worker to terminate his contract. Accordingly, the termination may take effect on the same date the notice is given, the morrow, or some days later depending on the will of the worker. If, nonetheless, any of the
above-mentioned conditions are not satisfied the termination, if made without notice, will be unlawful.

In short, contract of employment may be terminated unlawfully either by the employer or the worker. The reason why termination of this relationship becomes unlawful is due to the parties’ failure to comply with the termination requirements stipulated in legal instruments regarding termination, such as the proclamation, other relevant laws, collective agreements, contract of employment, and work rules.

**Question**

1. When does termination by an employee become unlawful?

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2. Why is extraordinary resignation called constructive dismissal?

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3. Can employer’s testimony against his worker for committing the crime of theft be a cause for extraordinary resignation?

Self Check Questions

1. What is termination of employment contract?

2. List some of the situations where employment relations end by virtue of law.
3. Are dismissal and resignation similar? If not, how do they differ?

4. Define summary dismissal.

5. If in an undertaking four categories of workers exist: Professor, ph. D holders, LL.M holder, and LL.B holders, what should the order of reducing work force by the undertaking look like?
6. What are the basic requirements to make termination of employment contract by employer lawful?

Consequences of The Termination Of Employment Relationship

Dear student, in the preceding part you tried to see issues pertaining to the termination of employment relations. In this part you will discuss different consequences of the termination. In particular, you will see the consequences of lawful and unlawful terminations by any of the parties to employment relationship.
The conclusion of a contract of employment is a juridical act. As such, it will produce certain legal consequences which were discussed in the preceding parts. Likewise, the termination of a contract of employment is a juridical act. Thus, the law attaches certain legal consequences to it. The importance of these consequences, however, varies depending on the nature of termination, lawful or unlawful, and the party who initiates the termination. These consequences will be explained next. But it is worthwhile to keep in mind from the very outset that the law attaches more serious consequence to unlawful termination than it does to lawful termination.

4.3.3.1 Lawful Termination

A. By the Employer

In the preceding chapter, it was discussed that employers can lawfully put an end to employment relations. But the consequences thereof were not discussed even though this type of termination has different legal consequences. One of these consequences is the employer’s duty to give severance pay to his worker.

This payment is a kind compensation plus a reserve fund for the coming period of unemployment and a sort of “bonus of fidelity” of the worker to the undertaking. This means, severance pay is like a gratuitous payment effected by the employer to his employee on the occasion of dismissal. In some countries, severance pay is made to all workers while in others only few workers are entitled to it even if the others employment is also terminated on lawful grounds.

The issue of severance pay is regulated under Art.39 of the proclamation. So, in accordance with this article a worker whose contract of employment is terminated is entitled to severance pay. But, the article makes this benefit available only to certain
category of workers. These are workers whose contacts of employment are terminated because of the permanent cessation of the undertaking for any reason, reduction of work force, or the works partial or total disability which is certified by a medical board. Other workers, though the grounds for terminating their contracts are equally lawful, are not entitled to severance pay.

Under the previous proclamation, Proc. No. 42/1993, all workers whose contracts were terminated were entitled to severance pay. This position is, however, changed and the payment is made available only to few workers by the new proclamation. So, it seems that the new proclamation has the stand that only few workers need to be paid compensation in the form of severance pay. Anyway, at the present employers are duty bound to give severance pay to the above-mentioned workers.

The amount of severance pay, to workers who are entitled thereto, varies depending on the year of service workers have at a given undertaking and the specific grounds for the termination of their contracts. Art. 40 of the proclamation provides for the method of calculating the extent of severance pay. Accordingly, a worker is entitled to severance pay which is:

I) 30 times his average daily wage of the last week of his service for the first year of service. If his service is less than a year the payment will be calculated in proportion to his period of service:

II) In case of service in excess of one year the above sum plus one third of it for every additional year until the total sum equals his 12 months salary; and
III) The amount under I or II, and 60 times his average daily wage of his last week of service in case his contract is terminated due to reduction of work force.

For example, if the last week’s average daily wage of a worker who has one year service is ten birr, he will be entitled to severance pay of 30x10 which is 300 birr. If the worker has less than one year service the amount will be reduced accordingly. If, for instance, his service is three months, the amount of severance pay he will get is 300 birr x \( \frac{1}{4} \) which is 75 birr.

If the worker has service in excess of one year, the total amount of severance pay he will get is 300 birr plus 100 birr plus 100 birr for every year in excess of one. (If say he has four years service, the severance pay will be 300+100 (2\textsuperscript{nd} ear)+100(3\textsuperscript{rd} year)+100(4\textsuperscript{th} year)= 600 birr.) If the contract of the worker is terminated as the result of reduction of work force, his severance pay will be 60x10 plus the amount seen above based on the length of service the worker has.

If a worker who is entitled to severance pay dies before receiving the payment, Art.39(2) provides that the payment shall be paid to his dependants in accordance Art. 110(2). At this juncture, it is important to raise one issue: what would happen if the worker does not have any dependant when he dies? Is the employer still obliged to effect the payment? Two possible positions can be held.

Firstly, since the law expressly says to dependants, the employer shall not make payment in their absence. After all, severance pay is like a bonus to the worker. Hence, the employer shall not be forced to bear the burden of other persons except the employee himself, and in his absence, his dependants.
The other position is upon termination of his contract of employment, the worker gets the rights to claim the payment. If he dies before exercising this right his heirs, in default of dependants, can exercise it. Because the right is not personal; rather it is a property right which is transferable. Therefore, the payment shall be made to his estate so that his heirs can claim it in accordance with the law of successions.

**Question**

Which of the two positions do you think is tenable?

Finally, it is important to note that there are certain categories of workers who are absolutely denied of the right to get severance pay regardless of the cause for the termination of their contracts. These workers are those who have not completed their probation. Art.39(1) starts by excluding these workers from the realm of the benefit. The reason for such stand seems self-evident. They are not yet workers in the actual sense of the term. They will get the full status of worker only upon the expiry of the trial period. Up to that time they are like but not workers.

The second legal consequence of lawful termination of contract of employment is provided for under Art.77(5). Accordingly, if a worker’s employment relationship is terminated, on any lawful ground, before the
worker uses his annual leave, he will be given compensation therefore. This benefit is available to all workers in the same boat. Hence, every employer shall effect the payment to all works entitled thereto in accordance with the length of the leave unused. The mode of calculating this payment is not provided under the proclamation.

But it would be tenable to argue that the daily or hourly wage of each worker shall be used as guideline. Because, it is like payment of job done on dates a worker is not obliged to do. Or, to put it differently, it is like an overtime work payment.

**Question**

Summarize the consequences of lawful termination of employment relation by an employer.

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Termination of employment contract pursuant to Art.31 and 32 is lawful. Such termination would produce certain consequences. But the consequences work more against employers and in favour of employees. First of all, if a worker terminates his contract in accordance with Art.32(1) (a) and (b), the employer shall pay severance pay to the worker (Art.31(1)(d)(e)). Secondly, if the worker terminates his contract in accordance with Art.32(1), the employer shall, by virtue of Art.41, pay severance pay and compensation. So, the consequences of lawful termination of employment contact by the employer are payment of severance pay and compensation to the worker.

From the proceeding paragraph, it can easily be discerned that Art.39(1)(d)(e) and Art.41, somehow talk about the same thing. Of course, all that is covered under Art.39(1)(d)(e) is also covered under Art.41. In addition, Art.41 is a bit broader since it covers the situation envisaged under Art.32(1)©, which is omitted under Art.39. Therefore, in the presence of Art.41, which is more comprehensive, Art.39(1)(d)(e) is a superfluous provision: it stands without serving any purpose.

The mode of calculating severance pay to a worker whose contract is terminated in accordance with Art.32(1) is the same as calculating severance pay with the situation where an employer terminates the contract, that is, it will be effected in light of Art.39. With regard the compensation, Art.41 provides that it shall be 30 times the worker’s average daily wage of his last week of service. If, for example, the worker’s average wage of his last week of service is 20 birr, the compensation will be 30x20=600.
From what has so far been discussed, it is possible to draw one conclusion. If the worker terminates his contract in accordance with Art.31, he will not be given compensation; nor is he entitled to severance pay. It is only termination effected in accordance with Art. 32(1) that entitles him to the abovementioned benefits and obliges the employer to provide the same.

In addition to the abovementioned benefits, any worker is entitled after termination of his contract to the payment of in lieu of his unused annual leave. Thus, the employer shall provide him with the payment (Art.77(5)). The method of calculation will be as discussed previously.

**Question**

1. Summarize the consequences of lawful termination of employment relation by an employee.

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2. If a worker terminates his contract of employment with notice based on the grounds mentioned under Art. 32(1) but after the expiry of the 15 working days requirement, will he be entitled to severance pay and compensation as envisaged under Arts.39 and 41?

4.3.3.2 Unlawful Termination

A. By the Employer

Like that of lawful termination, unlawful termination of employment relationship by the employer does have certain legal consequences. But as compared to the consequences of legal termination, that is, payment of compensation, severance pay, and the conversion of unused annual leave to money, the consequence of unlawful termination are many in number and also serious in degree. Generally, these consequences can be classified into civil and criminal consequences. This means,
certain unlawful termination of employment relationships remain civil wrong while others constitute criminal wrongs. Both types of consequences will be discussed below.

I) Civil Liability

In case termination of employment contract remain civil wrong, the employer will be subjected to civil liabilities; and these civil liabilities include the payment of compensation, severance pay, and money in lieu of unused annual leave (Arts.39, 42, 77(5)). Moreover, the employer may be forced to give back pay to his employee in case reinstatement is ordered. This will be seen later on.

To cast a spark of light on the above on the above mentioned points, firstly, Art. 42 of the proclamation provides that any termination of contract of employment contrary to the legal requirements is unlawful. Termination of employment relationship by the employer entitles the worker to a severance pay. Therefore, the obligation to pay severance pay is one of the legal consequences of unlawful termination of employment contract by the employer.

Secondly, if the employment relationship is terminated contrary to Art.26(2) of the proclamation, the employer shall be obliged to pay compensation provided the worker opts for it (Art.42 (1) ). Similarly, if the contract of employment is terminated contrary to Arts.24,25,27,28 and 29 of the proclamation, the employer may be made, by the labour dispute settlement tribunal, to pay compensation. Hence, payment of compensation is the other legal consequence of unlawful termination of an employment relationship.
Thirdly, if an employment relationship is terminated before an employer uses his annual leave, Art.77(5) grants him the right to get payment therefore. This means, the employer is duty bound to pay compensation to the worker for the unused leave time. The mode of calculation will be the same as explained in theis chapter.

The other legal consequence, of unlawful termination and which is not a liability is the reinstatement of a worker to his position. Art.42 (1) provides that if a contact of employment is terminated on the grounds mentioned under Art.26(2) such as sec, race, color, religion, political outlook, ethnicity, or membership in trade union, the employer shall without prejudice to the employee’s right to refuse and opt for compensation, reinstate his worker. In this case the law treats the termination as null and void.

Likewise, the employer who terminates his employment relation with his worker contrary to Arts. 24,25,27,28, and 29 may be made to reinstate his worker if the labour dispute settlement tribunal deems it necessary. Of course, the worker retains his right to refuse reinstatement and opt for compensation. If the labour dispute settlement tribunal deems it unnecessary, it shall order the payment of compensation even though the worker claims reinstatement.

But it shall be noted that the tribunal is given the power to order reinstatement only when it believes that the continuation of the employment relationship between the employer and the employee will not create serious difficulties (Art.43(3)). That is to say, if the tribunal believes that the reinstatement of a particular worker will affect the industrial peace like causing strike, and conflicts within the undertaking, it can order the dismissal of the worker upon payment of compensation notwithstanding that the worker claims to be reinstated.
At this juncture, it is important to note the difference between reinstatement and reengagement. In the case of reinstatement, the worker goes back to work on the basis of his previous contract. The termination is null. Thus, his relationship with his employer is taken as never broken. Re-engagement, on the other hand, refers to the conclusion of the second contract of employment to employ the previous worker. For example, a worker who leaves his undertaking for educational purpose may be re-employed by this undertaking upon the completion of his education. For the employment, a new contract needs to be concluded obviously because the worker’s qualification has increased. This type of practice is termed as re-engagement. The termination of the initial contract is not null but effective.

If the contract of employment is terminated contrary to Arts.24,25,26,(2) 27,28, and 29, and the worker is not reinstated due to his refusal to accept the reinstatement or the labour tribunal’s refusal to reinstate him, as the case may be, the worker shall be given severance pay and compensation. The amount of severance pay shall be determined, as explained in the preceding chapter, in light of Art.40. The amount of compensation is, however, to be determined in accordance with Art.43(4). Accordingly, if the contract terminated is a contract for indefinite period, the amount of compensation will be: (180xAverage Daily Wage)+wage for notice period.

For instance, if the worker has 12 years of service at the undertaking and his average daily wage is 20 birr while his monthly salary is 600 birr, the amount of compensation will be:

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(180 \times 20) + (60 \times 3) = 3600 + 1800 = 5400 \text{ birr}
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The 1,800 birr is a compensation for his notice period which is three months according to Art.35(c).
If, however, the contract terminated if for a definite period or a piece of work the worker will be entitled to wage for the remaining period or work. Nonetheless, the total compensation cannot exceed 180 times his average daily wage. For example, if his average daily wage is 15 birr the total compensation cannot exceed 180x15 which is 2,700 birr.

Dear student, you shall not forget that both severance pay and compensation are paid only when a contract of employment is terminated. If the contract is not terminated, that is, if a worker is reinstated he will not be given severance pay; nor will he be given compensation. Instead, he will be entitled to what is referred to as back-pay. This is one of the consequences of unlawful termination of employment relationship by the employer.

The employer will be made to pay remuneration for the service he has not received. Because the service could have been rendered had it not been for his fault. Under the previous proclamation, back-pay was not expressly provided. Because of this, the issue whether it had to be ordered or not was very hot. The current proclamation, however, expressly gives workers the right to get back-pay (Art.43(5)).

The extent of back-pay to be paid is to be determined by the court ordering the reinstatement. But the law has provided for a maximum limit of such payment. It is stated, under Art.43(5), that the back-pay shall not exceed the worker’s six months wage if the reinstatement is ordered by the first instance court, and his twelve months wage if such decisions is confirmed by appellate court. The proclamation stipulates for the increment of the back-pay in case the employer appeals against lower court’s decision on reinstatement. This is meant to discourage employers from appealing and there by keeping their workers away from their works.
Sometimes, the dispute between a worker and an employer may last for long period like for two or more years. Seen in light of this, the extent of back-up permitted can be said inadequate. It sounds logical to argue that the worker shall be paid his back-pay for all the time he stayed away from his work. This argument can be supported by three reasons. Firstly, there is no fault that is imputable to the worker. Hence, he shall not be punished for what he did not do. Secondly, the termination is considered null. This means the contract of employment is ongoing. Hence, the worker shall get what this ongoing contract brings him. Thirdly, employers will be deterred more effectively if they are made to pay back-pay for all the period their workers stay away from work without any fault on their sides.

Of course, there is a contrary position which is equally strong. If is claimed that in case the dispute is to last longer, the worker needs to look for another work. He shall not simply sit idle and expect the decision of a court. By so doing, the law is trying to encourage workers to look for substitute work until their cases are decided. Therefore, in light of this rationale the maximum limit put to back-pay by the proclamation may not be inadequate.

Summary

Dear student, employment relationship is not a life long relationship. Like any other relationship, it can be brought to an end. So in this chapter, which is all bout ending employment relationships, fairly sufficient discussions have been made. Firstly, employment relations can be brought to an end in compliance with the law. This happens when the law by it self stipulates for its termination like when a worker dies, or where the parties terminate them either bilaterally or unilaterally by fulfilling
the requirements of the law. Normally, employment contract is terminated with notice. Exceptionally however, it can be terminated without notice.

Secondly employment contact can be terminated unlawfully by either of the parties there to. This happens when the requirements of the law relating termination are not complied with. Normally, termination shall be effected with notice. If any of the parties to employment contract disregards this requirements without have legal ground, the termination will turn out to be unlawful. Similarly, for employers, termination is allowed only if there are good causes justifying termination. In the absence of good cause, any termination, even if the notice requirement is observed, will be unlawful. Such termination will have its own effect which will be seen in the next chapter.
Chapter Five

Special categories of Employees

Under the preceding two chapters, we tried to briefly outline what employment relation is; and how could this relation be put to an end. Within this general framework, the legislature has provided for special treatment to some 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.

5.1 Probationary employees

While concluding a contract of employment, the employer is entitled to set a probationary period (i.e. trial period) regardless of the nature of the type and duration of the work to be performed by the worker. The purpose of probation is, according to Article 11(1) of the LP, 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. In this connection, it is held that “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.”

But in order to have a valid probation period, it shall be made in written form and for a maximum duration of 45 (forty five) days.
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 Labour Proclamation.

Question

Please refer Art. 11 of the Labour Proclamation and identify the basic features of probation under the law and compare it with the dictates of the Federal Civil Service Proclamation (Art.20 & 21) on the same subject matter. What similarities and differences did you observe between probation under the LP and the FCSP?

5.2 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.

Strictly speaking, such an arrangement is not an employment relationship because the main interest of the employer in this relationship is not to obtain service it is rather to provide training to the apprentice. On the other hand, the main interest of the apprentice, in this relationship, is not also to receive wage. It is rather to acquire skill. Incidentally, however, the employer will obtain service from the apprentice and the apprentice will receive stipend. These facts assimilate apprenticeship arrangement with employment relation.

An apprenticeship agreement is an appropriate route in transferring skill in those trades where skill could be acquired through “learning by doing” mechanism. Traditionally, those skills were being transferred through family line and it was members of the family who were exposed to such an opportunity. Through passage of time and the development of industrialization, however, contractual arrangement becomes the main channel for transfer of skills in such areas of trade.

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).

**Question**

What happens if the contract of apprenticeship is not made in writing or even if written was not attested by the Ministry or both?  

Should it be held as though there was no any relation between the parties? or should it be held as though the parties have employment relation rather than contract of apprenticeship?
5.3 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. 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))

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 make up, are treated differently under the labour law. Their differential treatment is manifested in the following terms of employment.

a) 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 underground works (such as mines & quarries)
  - No employment for young workers in sewerage systems and digging tunnels.

Question
Who do you think is the responsible organ which should see to it that these provisions are complied with?

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To begin with, would such prohibition be relevant to the Ethiopian reality where a child needs to produce in order to feed him/her self? I mean wouldn't this be developed as world standard (i.e. Eurocentric standard)?

5.4 Female Employees

It is well known that women have special and irreplaceable reproductive role in society. Because of this, their biological make up requires special care and attention. Moreover, most traditional and cultural attitudes in society tend to discriminate against women in many respects. As an expression of these discriminatory practices, their share in the work force in most countries has been incomparable with their number in society. Hence in order to do away with such inequitable outcome many modern legal systems have already incorporated the principle of “non discrimination on the basis of sex” in their basic laws and practices.
The problem with this “sameness” model is that “it fails to address the reality that women’s lives are different from men’s. It aspires to an assimilationist model that takes male role as a norm and aims to encourage women to be just like men. But in order to achieve genuine equality, it is necessary to break away from the idea that men’s lives are the norm and recognize the women’s lives are different.

Because of this, the principle of non discrimination, though necessary, is not sufficient by itself to bring about equitable outcomes in this respect. Thus 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 & 41 of 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 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”

**Problem for consideration**
Some people tend to hold the view that though such protections are necessary for female employees, they may substantially reduce their employment opportunity owing to the fact that employer may not be ready to cover the whole expenses. For instance, maternity leave under the Civil code of 1960 was one month and it was only half of it that was paid (Art.2566). Under Proc. No.64/75 such leave was upgraded to forty five days and all of it was paid leave (Art.39 (2)). With the coming into force of Proc. No.42/93 maternity leave was further increased to three months in duration (pre & post natal) with full pay (Art.88) and this has been carried forward to the currently in force Proclamation (i.e. Proc. No.377/2003). Similar position has been adopted by the Federal Civil Service Proclamation in this respect (Art.41). The Civil Service even allows for aggregation of maternity leave.

Reproduction is to the benefit of the family and society at large; if so, shouldn’t the family and society (i.e. the state as representative of society) share the cost of maternity leave? Why should the employer be compelled to solely cover such expense? Wouldn’t such obligation discourage employers from employing young females who can potentially be pregnant?
2. In this connection, a Study conducted by EWLA has the following to say: “The fear that is generally expressed is that, even such legitimate special treatment will eventually harm women’s interest if the payment of benefits is primarily borne by the employer. Our sample survey showed that 47% of the employers said that maternity leave is very costly and 36% said that society should bear part of the cost. The prevalence of such view amongst employers and their profit motive makes it likely that they may respond by discriminating women of childbearing age in recruitment”. Is this really well founded fear and concern? If so, what type of alternative(s), which will have least restrictive effect to female employment opportunity, do you propose?
5.5 Employees with disability

Studies have verified that over 600 million people worldwide have a physical, sensory, intellectual or mental impairment in one form or another. This equals approximately 10% of the world’s population. People with disabilities can be found in every country, with over two-thirds of them living in the developing world. Throughout the world there is an undeniable link between disability, poverty and exclusion. The denial of employment opportunities to people with disabilities forms one of the root causes of poverty and exclusion of many members of this group.

There is ample evidence that shows that people with disabilities are more likely than non-disabled persons to experience disadvantage, exclusion and discrimination in the labour market and elsewhere. As a result of these experiences, people with disabilities are disproportionately affected by unemployment. When they work, they can often be
found outside of the formal labour market, performing uninspiring low-paid and low-skilled jobs, offering little or no opportunities for job promotion or other forms of career progression. Employees with disabilities are often under employed.

The issue of disability is something that deserves serious attention in Ethiopia. The level of poverty we are in will make us major producers of persons with disability. Lack of adequate medical facility and vaccination during pregnancy or childhood is one major cause for such an outcome. Moreover, lack of education associated with harmful traditional practices will also have their own share in this respect. Absence of tolerance and respect to each other, which resulted in prolonged civil war; and which has been responsible for tribal and at times religious conflicts, are also relevant in the equation. Due to these all manifestations of poverty, Ethiopia has an appreciable number of persons with disability.

Against this background, recent 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.

As mentioned on discrimination on the basis of sex above, the inherent job requirement exception to the general principle is applicable in this case, too. For example, a taxi company requiring job applicants to have driving license excludes visually impaired people as well as people who, due to a medical condition, no longer have a driving license. Such a license requirement on the part of the taxi company is legitimate and proportionate and therefore constitutes a genuine or justifiable occupational requirement.

(Extract from “Achieving Equal Employment Opportunities for People with Disabilities through Legislation” (ILO, Guideline)

Disability as a human rights issue

For a long time, disability was treated primarily as a social welfare issue. This reflected the widely held belief that people with disabilities needed care and assistance, being unable and incapable of living their own lives. As a corollary, people with disabilities were seen as objects of social welfare and not as subjects in their own right, let alone entitled to the full enjoyment of the right to work. Due to their marginalized position in society and resulting invisibility, as well as widespread prejudice, people with disabilities did not fully enjoy their human rights, including the right to decent work.

The human rights charters and conventions adopted from the mid1940s to the late 1960s – such as the United Nations Universal Declaration on Human Rights, 1946, the
UN Covenant on Economic, Social and Cultural Rights, 1966, and the UN Covenant on Civil and Political Rights, 1966 - do not specifically mention people with disabilities. It is only since the 1970s that the disadvantages faced by disabled persons, their social exclusion and discrimination against them were increasingly perceived to constitute a human rights issue. The shift from a social-welfare approach to one based on human rights is reflected in explicit reference to persons with disabilities in human rights charters, conventions and initiatives adopted since the 1980s and in an increasing number of special – and usually non-binding – instruments adopted by such organizations as the UN and the Council of Europe. These instruments include the Council of Europe Coherent Policy for the Rehabilitation of Persons with Disabilities, 1992, and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993.

On 19 December 2001, the UN General Assembly adopted Resolution 56/168 establishing an “Ad Hoc Committee, open to the participation of all Member States and observers of the United Nations, to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disability, based on the holistic approach in the field of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.” On the recommendation of the Ad Hoc Committee (AHC) at its Second Meeting in June 2003, a decision was taken to proceed with the development of such a convention. Following three years of negotiation involving governments, with active participation of UN agencies, organizations of persons with disabilities, national human rights institutions and other civil society representatives, the draft text of the Convention including an optional protocol, was approved at the Eighth Session of the
AHC in August 2006. The UN General Assembly formally adopted the Convention in a vote by consensus on 13 December 2006.

Similar shifts from a social welfare to a human rights law approach are taking place on a regional and national level, with an increasing number of existing human rights instruments being amended, to include the rights of people with disabilities, and new instruments being adopted, both comprehensive and disability specific.

The concept of disability

When legislation is being formulated to eliminate the disadvantages faced by disabled persons, to dismantle the exclusionary mechanisms they face in society, and to enhance equal employment opportunities for them, the question arises of how to define the beneficiaries of the legislation.

In other words: what constitutes a disability?

In this discussion, two opposing views can be distinguished. On the one hand, there are those who situate the problems of disability in the person concerned, while paying little or no attention to his or her physical or social environment. This is referred to as the individual or medical model of disability. On the other hand, there are those who
perceive disability as a social construct: disabilities result from the failure of the physical and social environment to take into account the needs of particular individuals and groups. According to this social model of disability, society creates disabilities by accepting an idealized norm of the physically and mentally perfect person and by organizing society on the basis of this norm.

Examples:

According to the individual model of disability, a person with mobility impairment is disabled as a result of an individual impairment. He or she can try to overcome the functional limitations which come along with this by undergoing medical or paramedical treatment and/or by using medical or paramedical aids, such as a wheelchair or crutches.

According to the social model of disability, mobility impairment should be seen in the context of the surrounding society and environment. Reducing or overcoming the limitations on activities and restrictions to participation associated with mobility impairment implies taking away societal barriers, and ensuring that the built environment is accessible.
Both the social and individual models of disability have proven to have advantages and constraints, depending on the aim of the legislation. The individual or medical model can be particularly helpful in such fields as rehabilitation medicine and social security law, while the social model can be instrumental in tackling the root causes of exclusion, disadvantage and discrimination. The social model recognizes that the answer to the question of whether a person can be classified as disabled is intrinsically related to such factors as culture, time and environment.

Defining disability in legislation

The definition of disability, which determines who will be recognized as a person with a disability, and hence protected by the relevant legislation, is very much dependent on the goal being pursued by the particular law or policy. Thus, there is no single definition of disability which can be used in all labour and social legislation. The two different approaches to definition are as follows.

- Wording aimed at a narrow, identifiable beneficiary group. This should be used if the aim is to craft laws to provide financial or material support to disabled individuals, or employers of disabled people. A limited, impairment-related definition of disability (individual model) thereby ensures that support is targeted at those who are most in need.
- Broadly inclusive wording aimed at protection from discrimination on the grounds of disability. This broader definition of the protected group (social model) should be used in anti-discrimination laws because many people, including those with
minor disabilities, people associated with people with disabilities and those who are wrongly assumed to have a disability, can be affected by disability-based discrimination.

Reasonable accommodation

Disability can sometimes affect an individual’s ability to carry out a job in the usual or accustomed way. The obligation to make a reasonable or effective accommodation, or the right to be accommodated, is often found in modern disability non-discrimination law. Disability non-discrimination legislation increasingly requires employers and others to take account of an individual’s disability and to make efforts to cater for the needs of a disabled worker or job applicant, and to overcome the barriers erected by the physical and social environment. This obligation is known as the requirement to make a reasonable accommodation. The failure to provide a reasonable accommodation to workers and job applicants, who face obstacles in the labour market, is not merely a bad employment practice but is increasingly perceived as an unacceptable form of employment discrimination.

Examples of a reasonable accommodation:
- an adjusted office chair (for a person with a back impairment), adapted working hours (e.g. for a person with a medical condition requiring frequent rest-breaks),
- a computer keyboard with a Braille reader (for a blind person), and
- the assignment of a job coach (e.g. for a person with an
intellectual or mental health disability).

The law should define closely what is meant by reasonable accommodation, so that misinterpretation is avoided and employers clearly understand what they must do.

**Example:**

In the United States, the obligation to make a reasonable accommodation is to be found in the Americans with Disabilities Act, 1990. Reasonable accommodation is understood to mean any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of “reasonable accommodations”: changes to a job application process, changes to the work environment or the way a job is usually done, and changes that enable an employee with a disability to enjoy equal benefits and privileges of employment, such as access to training.

Other countries, including Australia, New Zealand and South Africa have legal provisions stipulating that the failure to provide a reasonable accommodation constitutes a form of discrimination.

The Ethiopian Act for the Right to employment for Persons with Disability of 2008 defines “a person with disability” as an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.

**Shifting the burden of proof**
Under some legislation, a person who considers his or herself wronged because of discrimination has to produce evidence to prove that this has occurred. In some cases it may be possible to collect this necessary evidence without difficulty – such as in the case of recruitment, where advertisements for job vacancies and recruitment materials are easily available. In other cases, involving an action which is suspected rather than established, it may prove impossible to gather credible evidence.

This is true, for example, when the information and records that might constitute evidence are held by the person against whom the claim is made (for example, by an employer in an equal pay case). This person may be able to win the case by saying nothing and simply challenging the evidence produced. In practice, this requirement has been recognized as one of the greatest obstacles to obtaining a fair and just result.

To deal with this major procedural problem, many countries have shifted the burden of proof away from the person bringing the claim to court. In many jurisdictions it now suffices for such a person to establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination. After this, it is for the person who allegedly discriminated to prove that there has been no discrimination. Such a shift of the burden of proof does justice to the fact that it is usually very difficult, if not impossible, for a person to prove that he or she have been subjected to discrimination. A reversal of the burden of proof makes non-discrimination law effective.

In 2003, all fifteen countries of the European Union (EU) were required to introduce laws or amendments to their laws or other legal instruments to allow for a reversal of the burden of proof in employment discrimination cases involving direct or indirect discrimination. All new Member States will also have to follow suit.
This follows from a European Union law (a directive) adopted by the Council of Ministers in the year 2000. The Directive stipulates that disability discrimination cases are subject to a reversal of the burden of proof in favour of the employee or job applicant with a disability from 2003 onwards.

The Disability Act of Ethiopia (2008) has also incorporated this principle. It reads as follows: 7(1) Any person with disability who alleges that discrimination on ground of disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment may institute a suit to the competent court on the issue without the requirement of the burden of proof. 7(2) The defendant to a suit instituted pursuant to sub-article (1) of this article shall be responsible to prove that there was no act of discrimination thereof.

5.6 Non Ethiopian employees

With the integration of the global economy, goods and services have been crossing borders at ease. With a relatively relaxed freedom of movement of persons across borders, labour in the form of service needs a certain degree of regulation when it avails itself outside of its country of origin.

The international division of labour with respect to trade in goods seems to have its reflection on trade in services, too. With respect to trade in goods, the South (developing countries) exports raw materials at cheap price to the markets of the North (developed countries), while the latter ships finished and expensive goods to the markets of the South. By the same token, unskilled, more often than not, illegally exported and cheap labour is being exported from South to North; the North lawfully
exports professional/skilled and highly expensive labour to the markets of the South. Informally speaking, labour exported from South to North is assigned in the so-called “3d jobs” (i.e. Dangerous, Demanding and Degrading) where the nationals of the host state are unwilling to engage in. Conversely, labour exported from North into the South will be employed in white collar jobs where the nationals of the host state are incapable of engaging in. It appears that such a reality seems to remain intact for some years to come, if not decades.

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 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. Categorize

As a requirement, for a foreigner to be lawfully employed in Ethiopia, he/she needs to possess double permits. (namely; Residence Permit & Work Permit) The Power to issue Residence Permit is vested on the Security, Immigration and Refugee Affairs Authority; while Work Permit is to be issued by the Ministry of Labour 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.
Chapter Six

Minimum Working Conditions objectives

For the existence of smooth and sustainable industrial relationship there are certain minimum working conditions which are recognized both at an international and national levels. These conditions immediately benefit the worker while the benefit to the society is ultimate. The following are some of these conditions as recognized and regulated in our legal system.

Dear student, in this part you will discuss issues pertaining to the minimum working conditions which shall exist in the field of employment relationship and the rights and duties of the parties thereto in the maintenance of these conditions. As the result, at the end of this part you will understand the maximum working hours a worker is legally bound to work per day or per week, the consequences of working in excess of the prescribed hours, the different types rests and leaves a worker is entitled to, the responsibilities of employers and employees to make working conditions healthy and safe and the consequences of failure to do so and the like.

6.1 Working Hours

In the past, the principle of freedom of contract was highly observed. As such, parties were free to provide for the maximum daily or weekly working hours. Owing to this, workers were contractually required to work for 16 or more hours a day. This practically reduced the working group to pure working machine. Because
they did not have the necessary rest and leisure time which was required by their physical and moral necessity (interest).

Presently, however, because of the repulsive consequences of the freedom of contact, parties’ freedom of fixing working-hours is limited by legislations and collective agreement. In our legal system, as well, the labour proclamation stipulates for the maximum hours of work, under Art.62 (1), it is provided that the maximum hours of work per day is eight hours and forty eight ours a week. This means, as a rule, parties cannot agree to the effect that the worker give, for examples, fourteen hours service a day. Nor can they agree to service in excess of forty eight hours a week. But in as long as the maximum limit is observed, they can agree on the extent of hours of work. The employer cannot force his employee in excess of the legal maximum. If he does so, he will be subject to the criminal liability provided under Art. 184 of the proclamation.

With respect to the maximum limit of hours of work, what has to be known is the fact that the job may not necessarily be done. It suffices that the worker makes himself ready for work in accordance with the proclamation, collective agreement, and/or work rules. This period, that is, the period the worker is supposed to make himself available for work, is technically called the “normal hours of work” Therefore, if the employee work for eight hours a day or makes himself available during this period, he is said to have discharged his duty (Art 61 (2)).

The other important point worth raising in relation to the maximum hours of work is the power given to the ministry of social affairs. (the “ministry” hereinafter). By virtue of Art. 62(1) the Ministry is authorized to reduce the
maximum 8 hours time of work in certain economic sectors or industrial occupations where there are special conditions justifying the reduction.

The reduction of the maximum hours of work is, nonetheless, without any effect on the wages of the worker. For instance, if the place of work is too hot and the 8 hours working time is hardly affordable, the ministry can issue directives and reduce the limit. Similarly, if the occupations workers are engaged in are exceptionally tedious the 8 hours time of work can be reduced.

Further, the stipulation that no worker shall be required to work for greater than eight hours a day is just a rule. Hence, there are exceptional situations in which workers may be required to work in excess of the limit. Pursuant to Art. 63 of the proclamation, the possibility of shortening the eight hours work time due to the nature of the work and distributing the difference over the other days of work is allowed. If, for example, the work cannot be performed Saturday afternoon, the remaining four hours can be distributed over the other working days. This means sometimes the worker may be required to work for nine or ten hours a day.

Nevertheless, the same provision provides for two controls or limitations. Firstly, when possible, the maximum 48 hours weekly work time shall be distributed on all working days of the week evenly. If this is not possible, shortening of the hours from some days of work is possible. But the distribution of the balance on the other days of work shall not require a worker to work in excess of ten hours a day.

Another issue is foreseen under Art.64 of the proclamation. The point is, at times, it may not be possible to evenly distribute the weekly hours of work over
each day or of the monthly hours of work on each week. Under such circumstance, it is possible to distribute the work hours over days or weeks provided that the average hours of work is not in excess of 8 hours a day and forty-eight hours a week. This means so long as the average daily hours of work is not in excess of eight hours and that of weekly hours of work is not in excess of forty-eight hours, the limits, both daily and weekly, can be transgressed. For instance, a waiter may work for twelve hours one day and for lesser hours on the other day. Or, she can work for fifty hours in one week and for less than forty-eight hours in the other week.

**Question**

Discuss the exceptional situations in which the maximum 8 hours daily or 48 hours weekly work time stipulation can be legally put aside.

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<td>Discuss the exceptional situations in which the maximum 8 hours daily or 48 hours weekly work time stipulation can be legally put aside.</td>
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<table>
<thead>
<tr>
<th>Overtime</th>
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<tbody>
<tr>
<td>The maximum daily or weekly hours of work is usually a limitation on the employer’s right to require his workers to work in excess of certain hours. Hence, workers are not prohibited to work, with their consent, in excess of the limits. Technically, the proclamation calls works done out of the normal hours of work “overtime” work (Art.66). So, overtime is the time which an employee uses to work in excess of the regular hours of work.</td>
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An employee may perform overtime work under two circumstances: when the employer requires and when the employee requests. Under Arts. 66(3) and 67 (1), the proclamation stipulates that workers may be required or even compelled to do overtime work. For instance, if there is accident or force majeure, or urgent work, for the substitution of absent workers assigned to run continuous work, workers can be compelled to work overtime. But the compulsion shall be the last resort. Similarly, even if the compulsion if justified on the basis of the interest of the undertaking, it cannot exceed two hours a day, twenty hours a month, and hundred hours a year.

The second situation where overtime work can be done is where there is agreement between the parties. Under Art. 67 (1), the proclamation prohibits, as a rule, compelling workers to do overtime work. The unwritten version of this provision is overtime work is possible with their consent. We cannot, however, find under the proclamation, time limit to this type of overtime work.

For example, under Art. 68 (2), it is stated that a worker who works overtime work between 10:00 PM and 6:00 AM is entitled to special payment. This implies that doing overtime work for eight hours is possible. In fact, it can be argued that the time mentioned simply implies the time when overtime work entitles a person to special payment. But this argument can hardly overrule the possibility of engaging in overtime work for the whole of the time indicated.

Overtime is a work that results in additional remuneration. Under the proclamation, any worker who works overtime is entitled to special payment depending on the exact time devoted for the work. If the overtime work is done between 6 am and 10 pm the payment per hour is 5/4 multiplied by ordinary hourly
rate. If it is done between 10 pm and 6 am, the payment shall be \( \frac{3}{2} \) multiplied by the ordinary hourly rate. If the work is done on weekly rest day, the payment will be twice of the ordinary hourly rate, and \( \frac{5}{2} \) multiplied by the ordinary hourly rate if it is done on public holiday. Such payments shall be effected on the same date with the worker’s wage.

Note that overtime work is different from “right work.” This is so, because “night work” is a work that is performed within the normal hours of work like by workers on shift work. Overtime work is, however, a work done out of the normal hours of work.

**Questions**

1. Is A gets 5 birr per hour and his salary is 1200 birr, how much will he be paid if he works overtime work for 12 hours on Sunday, Meskerem 1, between 6pm – 6am? Why?

2. Define overtime work.
6.2 Rest

During the era of absolute freedom of contract, workers were required to work seven days a week. Currently, however, the same justification triggering the regulation of maximum working hours triggered the regulation of days of work. As the result, it is believed that workers shall not work for seven days a week. They must have weekly rest. This position is adopted in our legal system. The proclamation even recognizes criminal measure to be taken in case employers refuse to grant or observe workers rest days (Art.184). The rests recognized under the proclamation can be, for the purpose of convenience, classified into regular and irregular rests.

6.3 Regular Rest

Any worker is entitled to weekly rest consisting of uninterrupted twenty-four hours. Under the labour proclamation, this weekly rest is grouped into general and special rest days. General weekly rest day, as provided under Art.69 is the one that falls on Sunday. This rest day applies for all workers in so long as there is no problem in granting weekly rest on such day.

Special weekly rest is the rest that falls on any day other than Sunday. For example, if a given worker is normally granted his weekly rest on Tuesday the rest is a special rest (Art. 7). Therefore, special rest is a substitute for a general rest. Or it can be said that special rest (Art. 70). Therefore, special rest is a substitute for a general rest.
Or it can be said that special rest is an exception since weekly rest falls on days other than Sunday only if it cannot fall on Sunday.

Special rest is normally granted by employers whose undertakings work on Sunday. If the undertakings do not work on Sunday, then all the employees can be granted general rest, that is, rest on Sunday.

Although the rule is workers are entitled to weekly rest (general or special), there are situations in which they may be denied weekly rest. For instance, the labour proclamation has expressly provided for the possibility of requiring workers to work on any weekly rest day if their work is necessary to avoid serous interferences with the ordinary working of the undertaking, for example, if there is accident, force majeure, and urgent work to be done (Art.71). Workers cannot, therefore, lawfully refuse to discharge their responsibility when requested by their employer under such circumstances.

If a work is done on weekly rest day two alternative consequences will follow. Firstly, the concerned workers will be given another rest day if they demand the rest. Secondly, they will be compensated, if they consent, for the work as an overtime work pursuant to Art.68(3). But if the contract of employment is terminated before the rest is used the employees will be compensated for any job done on weekly rest day.

6.4 Irregular Rest

A worker may be entitled to two or even more rest days in a week. This happens when there are public holiday observed under the relevant law is a non-working day. This means, such a day is like a rest day for a worker. Hence, as a rule,
no worker is required to discharge his duty on public holidays. Besides, the worker will be entitled to payment for these days notwithstanding that service is not rendered. The position was however, different in the past. If it was a holiday for the worker, it was also a holiday for the employer. Thus, employers were not covering their workers cost on holidays. If, however, unfortunately, the holiday falls on a weekly rest day, workers cannot claim another rest day. Nowhere is in the proclamation such right granted to a worker.

Equally important is an employer cannot require his workers to perform their duty on their weekly rest day in lieu of the rest they enjoy on public holiday falling on a day different from their weekly rest days and for the payment he makes therefore (Art.73,74).

It shall be known that the fact that public holidays are non-working days does not mean that workers can never be required to work on such days. Depending on the nature of the occupation they may be required to perform their duties on public holidays which will entitle them to special payment.

For example, workers of private hospitals may be required to be on duty on public holidays, and are entitled, as per Art 75(1) of the proclamation, to their hourly wage multiplied by two for each hour of work. If the duty is, however, performed out of the normal hours of work, the payment will be higher: their ordinary hourly wages will be multiplied by 5/2 for each hours of work.

Moreover, issues may be raised in relation to work done on a day when two holidays coincide. The proclamation has taken, under Art. 75(2), an express stand that
doubles payment shall not be made. For all purposes, the coincidence is taken as non-existent and as if there was only one holiday.

Further, issues in relation to the scope of the concept “public holiday” may arise. But for the purpose of labour law, they can be international (like May Day), national (like Adwa Victory Day), or religious (like Christmas or Ramadan). Or in short, the concept refers to holidays the observance of which is stipulated by law.

Questions

1. Do you think that granting rest, whether it is regular or irregular, is really necessary?

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2. What is the difference between regular rest and special rest?

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3. Can parties put the provision of the law on rest aside by agreement?
6.5 Leave

“Leave” is a temporary absence from employment with the intention to return. In the present employment relationship workers are, in addition to rests, entitled to leaves. In the past, leave could be granted but it used to be unpaid. After all, it was believed that a leave is a period when the worker gives no service to his employer. Hence, an employer should not pay for Zero service. But modern laws oblige employers to grant leaves and payment for some of the leaves.

The same position is adopted under the labour proclamation which provides for the different types of leaves workers can be given and also stipulates for the application of criminal measures to employers in case they refuse to comply with the leave requirement. These leaves, in general, include annual leave, leave for family events, union leave, leave for special purposes, sick leave, and maturity leave. Each of these leaves will be considered below together will their distinguishing features.

6.7 Annual Leave
As a rule, any worker is entitled to uninterrupted annual leave with full pay (Art.7). The right to take such leave cannot be waived by agreement; nor can wage be paid in lieu of such leave unless the labour proclamation, as a rule, expressly allows (Art.76). Therefore, the law is intending to encourage or even force workers to take their annual leaves. Such stipulation is justified on the societal need to have employees unexhausted. If advance waiver or payment in lieu of leave is permitted, employers will without hesitation start bargaining and hopefully win it.

Because, normally, employers opt to retain workers than letting them take leaves, though leave is a temporary absence, and such measure would exhaust the working group after same time. Nevertheless, the law wants to maintain workers potential by protecting them from exploitation. That is why it is encouraging them to use their annual leaves.

Granting of Annual Leave

The manner of granting annual leave is regulated under Art.78 of the proclamation. Accordingly, any worker is entitled to his first annual leave after one year of service. That is to say, a worker has the right to take his annual leave in the next year for the work done in the preceding year. Thus, for example, annual leave of 2005 can be taken in 2006. Of course, if there is agreement between the worker and the employer annual leave can be given and used within the year of service entitling the worker to the leave. This means, annual leave for 2005 may be granted and used in 2005.
In relation to the specific period of granting annual leave, employers are given the mandate to prepare a leave schedule for each calendar year. The preparation of the schedule shall, however, take when possible, the will of the worker and not only the interest of the undertaking. If the employer does not have leave schedule, the proclamation fills the gap by providing that the worker shall be granted his annual leave any time he requests provided, of course, that he is qualified for the leave.

Duration of Annual Leave

Annual leave is a leave granted for specific period. The length of such period is, however, different for workers with different experiences. A worker who has longer service at a given service. In fact, Art. 77 of the labour proclamation provides for the manner of computation of annual leave. It is stated that a worker who has one year service has the right to get an annual leave of uninterrupted fourteen working days.

For each additional service year, the leave will increase by one working day. Hence, if a worker has five years experience at a given undertaking, his total fifth year annual leave will be eighteen uninterrupted working days; fourteen for the initial year and four for the other additional subsequent four years service.

If a worker is engaged in a work which is partially ardors or the condition in which it is done is unhealthy, the extent of annual leave may be fixed in collective agreement. This means, since collective agreement cannot provide for conditions which are less favorable to the worker than the ones
provided for in the proclamation, the fourteen working days leave can be elongated.

For example, workers in chemical industry may be given twenty working days annual leave, if there is collective agreement to that effect, for the first service year. The number of days to be increased for each additional service year may also be provided in the collective agreement. It can, however, never be less than one day.

At times, annual leave may be granted to workers with less than one year service. The extent of such leave shall be proportional to the length of his service. For example, since a worker with one year serviced is entitled to leave of fourteen working days, a worker with six months service shall be granted leave of seven working days. For the purpose of determining the duration of annual leave twenty-six days of service is taken as one math.

Owing to this, a worker who has served for twenty-six days in a given undertaking will be entitled to annual leave which shall not be less than a day. If his service is, however, less than twenty-six days it is hardly possible to talk of annual leave since it cannot be calculated in terms of days but hours.

If a worker who has service in excess of one year wants to take annual leave before it is due he may be granted provided his employer agrees. Usually, annual leave is a leave for the lapsed year, not month. But if the worker requests and the employer agrees, he may be given the leave for the months elapsed and even for the months not elapsed. For example, if a worker has three years
service at a given undertaking, he will be given at least sixteen working days annual leave.

But if this leave is requested in the middle of the third year he may be given eight working days annual leave for the six Nonetheless, it shall be remembered that the employer is not bound to give such fragmented annual leave, nor is he obliged to give annual leave for the service not rendered. If the contract of employment is terminated before annual leave is used, the worker will be compensated as it is impossible to grant him leave after the termination of employment relationship. Granting annual leave presupposes the existence of employment relationship between the worker and the employer.

Division and postponement of Annual Leave

Normally, annual leave is uninterrupted and given whenever it is due. But, at times, interruption and postponement of such leave may be justified. That is why the proclamation under Art.79 provides for the possibility of dividing and postponing annual leave. If a worker requests and the employer agrees annual leave may be granted in two parts. The possibility of granting annual leave in more than two parts, is however, not stipulated by the proclamation. But since the proclamation provides only minimum conditions to benefit workers it is possible to divide annual leave into more parts if the worker requests and the employer agrees.
In addition to the request of a worker, the division of annual leave may be triggered by other factors. For instance, if a worker becomes sick he will be entitled to sick leave. The unused part of his annual leave will be used after he has recovered his health. Hence, sickness has the effect of dividing annual leave.

Interestingly, employers do not have the rights to divide annual leave. Hence the only option available to employers is to request their workers to grant the leave in parts. If the workers reject the request. That will be the end. But if the workers welcome the request, the leave can be divided since such practice is not expressly proscribed by the proclamation. Under Art. 77(1), the proclamation stipulates that a worker shall be entitled to uninterrupted annual leave.

This provision prohibits employers from dividing, as of right, annual leavers. But if employers request the division and the workers accept the offer, there will be no wrong with such negotiation provided that the negotiation is really beneficial to the workers, and even prohibiting such mutual negotiation would not be tenable.

In addition to division, annual leave may also be postponed. As provided for by the proclamation, the postponement is possible under two circumstances. Firstly, if the worker requests and the employer agree, annual leave can be postponed. That means, for example, a worker can use his first year annual leave in third year together with his second year annual leave which would be at least twenty-nine working days.

Secondly, unlike in the case of division an employer can postpone the annual leave of his worker even contrary to the latter’s will. But the employer
can exercise such right only if there are reasons dictated by the work condition of the undertaking. For instance, if the work pressure of his undertaking is exceptionally high at the specific time a given worker is entitled to annual leave in accordance with the undertaking’s leave schedule, the employer can deny the worker his annual leave and postpone it, provided that the leave shall be granted some other time which may be after the end of the grounds for the postponement or in the coming year.

The postponement of annual leave is possible only for few years. Under the labour proclamation, Art. 79(5), it is expressly stated that annual leave cannot be postponed for more than two years after it has become due. If it is not used within this period, it will expire. For example, if a person has five years service at a given undertaking, he cannot, as of right, request annual leave for the first year of his service to use in the fifth year. Annual leave for the first year can be postponed for enjoyment in the fourth year but not for more.

**Interruption of Annual Leave**

A worker on leave is normally expected to go back to his work upon the expiry of his annual leave. But, sometimes, the enjoyment of this leave may be interrupted. This happens when unforeseen circumstances occur and make his presence at work necessary. Whenever such circumstances transpire, any employer is given, pursuant to Art.80, the power to recall the worker on annual leave. To avoid arbitrariness in calling workers on annual leave, the proclamation requires two conditions to be met. Firstly, the transpiring circumstances need to be unforeseen.
Secondly, the circumstances must make the presence of the worker at his post indispensable. If any of the two conditions is unfulfilled, the interruption of annual leave will be unjustified, unlawful. For instance, if something unexpected occurs and there are other workers having the necessary expertise to fill the gap covered by the worker on annual leave, the latter shall not be recalled. Because the circumstance does not make his presence necessary: he is dispensable.

If recalling is justifiable, the employer is obliged to cover the transport expenses incurred by the worker while going back to his job together with his perdiem. For instance, if the worker is in Washington D.C., the employer shall cover the cost of plane ticket from Washington D.C. to Addis Ababa and other transport expenses from Addis to the work place including perdiem.

Payment for Unused Annual Leave

As a rule, the labour proclamation expressly prohibits the payment of money in lieu of annual leave (Art.76(2)). But, exceptionally, money may be paid in lieu of annual leave where the proclamation expressly allows it. And the proclamation provides for two situations where annual leave can be converted to compensation (money).

A- Termination of Contact of Employment

Sometimes employment relationship may be terminated before a worker uses his annual leave. After the termination, evidently, it is impossible to grant him annual leave. Annual leave can only be granted to workers whose employment
relationship is ongoing. Hence, it is as a matter of necessity that compensation is, by virtue Art.78 (5), allowed in lieu of the unused annual leave for a worker whose employment relationship is brought to an end.

B- Recall

As explained before, employers may sometimes recall workers on annual leave before the expiry of their annual leave. In such situations, the labour proclamation has given workers the right to claim payment for the remainder of their leave period excluding the time lost for the trip (Art.80(2)). Workers who spend some days on trip as the result of the recall are not taken as having used their leave period in relation to such days. Thus, the remainder shall, for the purpose of compensation be counted taking into account only days before the beginning of the trip.

Question

Assuming that Ato A, whose contract of employment is terminated in accordance with the labour law, comes to you to seek legal advice as to what to do about his unused to years annual leave, what would be your advice?

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Leave for Family Events

In addition to annual leave, any worker is entitled to leave for family events. Leave for family matters may be either mourning leave or compassionate leave. Mourning leave is a leave a worker is entitled to when one of the members of his family dies. Compassionate leave, on the other hand, is a leave a worker is entitled to for the marriage of family members.

The labour proclamation has recognized leave for family events (Art.81). Accordingly, any worker is given the right to get three days mourning or compassionate leave with pay. But the scopes of the two leaves are narrow under the proclamation. Compassionate leave is granted when the worker himself concludes marriage. If the marriage is granted when the worker himself concludes marriage.

If the marriage is concluded by other family members, payable compassionate leave is not allowed. Similarly, mourning leave with pay is granted only if the workers descendants or ascendants or another relatives, whether by consanguinity or affinity, up to the second degree dies. The death of a third degree relative cannot entitle a worker to mourning leave with pay.

If the family event demanding leave of the worker is different from the marriage of the worker or the death of descendants or ascendants or other relatives up to the second degree, the proclamation gives worker the right to get
leave for five consecutive days without pay provided that there are exceptional and serious cases. For example, the worker can be given leave for five consecutive days but without pay. Similarly, if the worker’s spouse or descendants or ascendants or other close relative are involved, for example, in car accident the worker is entitled to leave for five consecutive days (not working days).

Therefore, the scope of the proclamation on leave for family matters is narrow only with regard to payment. Compassionate leave can be given with pay only when the worker himself concludes marriage. If the marriage is to be concluded by other family members, compassionate leave can be granted but without payment. The same works with mourning leave. For descendants or ascendants or other relatives death up to the second degree the morning leave will be with pay while for others there is no payment.

For the purpose of taking leave for family event the worker shall notify his employer in advance and present supporting evidence when requested (Art.84). If prior notice is not given, the employer may object to the worker’s absence from his work and take the necessary measures, such as reduction of wage against him. But, at times, it may not, be possible to give prior notice; for example, if one of the descendants of the worker dies early in morning, it will not be feasible to require the worker to give notice to his employer before he absents himself from work at least on the date of the death. But under Art. 84, which requires notification, this possibility is not envisaged although it should have been foreseen.

**Question**
If the relationship between a worker and the deceased is consanguinal in direct line and it is fifth degree, can the work claim mourning leave with pay?

6.8 Union leave

Unlike the preceding leaves, leave for union purpose is available only to certain category of workers. These workers are those who are the leaders of trade unions. Therefore, union leave is a leave granted to the leaders of trade unions for the purpose of protecting employees’ interests. To deny such leave is to make trade unions ineffective, a dog without teeth. So, the emergence of union leave pertains to the recognition of the right to form unions.

The issue of union leave is regulated under Art.82 of the proclamation. It is stipulated that leaders of trade unions are entitled to leave with pay for the purpose of presenting cases in labour disputes, negotiating collective agreement, attending union meetings, seminars or trainings courses. But they
need to notify their employers in advance and produce the necessary supporting evidence where required (Art.84).

The labour proclamation does not provide for the duration of union leave. Of course, it would be wise to leave it unregulated since the duration required by the different purposes of unions cannot be determined in advance. Hence, if need arises the maximum duration such leave may be regulated by collective agreement.

**Question**

How does union leave differ from leave for the purpose of concluding marriage, a legal union to live with another for the rest of one’s life?

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**Leave for Special Purposes**

Art.83 of the labour proclamation provides for another leave, leave for special purposes, which is horizontally applicable to all works. This leave is
granted when a worker has special purpose to serve. In fact, the special purposes entitling a worker to leave are those that are provided under Art.83. These are the need to:

A) Appear before competent body to hear labour dispute or to enforce labour law;
B) Exercise one’s civil rights and duties; and
C) Leave for education or training.

For causes other than those mentioned above, leave for special purpose may not be granted unless the employer is willing to grant same. For the above-mentioned purposes, however, it is the right of employees to request and get it. For example, a worker who wants to testify in court of law shall be given leave since the purpose amounts to exercising his civil right or duty.

The duration of leave for special purposes depends on the time to be taken to serve the purpose. In relation to the first two purposes the law entitled workers to get leave only for the time required to achieve their objectives. In relation to the third purpose, however, it does not expressly provide for the duration of the leave. But, obviously, it cannot be less than the time required for the education or training to be taken. Which leave is granted. Fascinatingly, Art.83 of the proclamation does not categorically say leave for educational or training purpose shall be paid leave.

It simply provides that the manner in which such leave will be granted and the form and extent of payment shall be determined by collective agreement or work rule. But the close scrutiny of such stipulation reveals that payment shall be made but the form in which it has to be made (in lump sum or by installment) and the extent (full
wage of the time required or half, etc) are to be decided by collective agreement or work rule. All the same, there is still one problem that lingers. What would happen if there is no collective agreement or work rule to that effect? If seems that the worker shall be paid his full salary. Because labour law is meant primarily to protect workers, not employers. Thus, any shadow of doubt must benefit the worker.

At any rate, leave for the purposes mention in the proclamation can be granted. If any worker wants to take such leave, he must notify his worker in advance. Besides, he shall produce evidence, if requested, in support of his claim for the leave (Art.84).

**Question**

Can a worker be given leave for special purpose is he is sentenced to two months imprisonment following court proceeding? Should the leave be a paid leave?

6.8 Sick Leave
It is generally accepted that where an employee is prevented from working by reason of sickness he is entitled to sick leave. To require a sick person to work his job would be prejudicial to both the worker and the employer. If a worker performs his work when he is sick, he will have less time to take care of himself. This would worsen his problem.

Owing to this, he needs time to take the necessary health measures to recover from his problem. Similarly, since the productivity of the worker reduces during his sickness, it would be better if the employer grants the worker sick leave and employ another in his place.

Pursuant to Art.85 of the proclamation, sick leave is made available to all workers except for those workers on probation. Workers on probation are not entitled to sick leave because permanent employment relationship is not yet established. These individuals are, strictly speaking, not workers but on trial to be so. But if there is express agreement between workers on probation and their employer sick leave may be granted.

Employees who have completed their probation have, however, the right to get sick leave whenever they are rendered incapable of working due to sickness. But the sickness shall not be the one resulting from employment injury. If the sickness is attributable to employment injury, the worker will be entitled to other benefits, not sick leave.

A worker who is missing form a work because of sickness is required to notify his employer on the morrow unless the employer is a position to know about the situation of the worker or it is impracticable for the worker to give the notice
(Art.85(3)). For instance, if the employer is living in the same compound with the worker and he is his close friend, he will be in a position to know that the absence of the worker is due to sickness.

In this case, the duty to give notice will not exist. Similarly, if the worker becomes unconscious on the day he is supposed to give notice or if there is communication problem, the duty will be postponed until the obstacles disappear. However, as soon as the worker becomes capable of notifying, his duty becomes exigible.

The notice requirement is made to enable the employer to look for a substitute worker until the sick worker recovers and is ready to resume his job.

The other point worth considering is the fact that a worker is entitled to sick leave if, even though he is still capable, he produces a valid medical certificate from medical institutions recognized by the government in support of his allegation. Likewise, if there is collective agreement, the requirement of valid medical evidence can be put aside and a mere allegation of sickness may be made sufficient to grant sick leave.

Of the leaves so far discussed, or even recognized by the proclamation, sick leave is maybe the longest. Because Art.85(2) of the proclamation provides that sick leave may stay for about six months in a year whether it is counted consecutively or separately. So a worker is entitled to a sick leave of six months. But if the sickness has lasted for more than six months in any twelve monthly the worker concerned will not be entitled to more leave. His contract of employment will be terminated.
Like in the case of other leaves an employer is supposed to cover the cost of sick leave. But the wage the worker gets reduces and finally disappears depending on the duration of the leave. As per Art.86 of the proclamation, the worker will get his full wage for the first month, half of it for the next two months. The only benefit a worker on sick leave in the fourth, fifth and sixth gets is the maintenance of his contract of employment.

Question
Discuss the difference and similarity between sick leave and leave for family matters.

6.9 Maternity Leave

This is a leave which is available to pregnant female workers alone. It is granted when the continuation of work could be prejudicial to their pregnancies. Under the labour proclamation, Art.88, maternity leave is made available to all pregnant workers upon recommendation from a medical doctor (he/she can be the medical doctor of government or a recognized private health institution); and the leave is to stay for three months: one month prenatal and two months post natal. All the three months leave is a paid leave. This topic will be discussed in detail later on.
6.10 Safety and Health conditions

Traditionally, employers did not take measures to make the work environment safe and healthy. Employees ran the risk of employment and employers were not encouraged to take measures to avoid or even minimize employment risks. Because the remuneration paid to workers was taken to include compensation for employment risks. In addition, it was believed that taking measures would increase production cost thereby reducing employers’ profit.

Further, because of the principle of freedom of contract, employees were made to assume employment risk at the time of concluding contracts of employment. As the result, employers were not interested in making move towards maintaining occupational safety and the heath of working environment. Such reluctance made employment injury very common.

Currently, however, the position is quite different. It is believed that any work provided by the employer shall not make an employee useless (that is, it shall not abolish or reduce the working capacity of a worker). Therefore, it is a primary duty of the employer to take measures which are necessary to safeguard the life, physical integrity, health and moral standing of the employee at work. This duty involves taking preventive measures and post injury measures. Preventive measures are steps that need to be taken to avoid or reduce the occurrence of occupational injury while post injury measures refer to steps taken to cure the effect of the injury or to make the worker get some relief from the effect of the injury.

It shall be taken into consideration that the duty to take preventive measures exist only if the measures can be economical. That is to say, if what is to be spent to
avoid certain risk is more than what is to be gained, employers are not bound to take measures. This is so, because the society would be better off if the risk materializes since it costs less. The other consideration that needs to be taken into account is the bilateral nature of the obligation to take preventive measures since it is not only the employer but also the employee that should strive to prevent risks from materializing. If an employee is unwilling to co-operate then the purpose of making employers take preventive measures will not be served. That is why the law imposes bilateral duty on the parties to employment relationship.

Under the labour proclamation, employers are under obligation to take preventive measures. Likewise, they are obliged to take certain measures to ameliorate the consequences of occupational risks in case they transpire. Occupational injury, as it is envisaged under the proclamation, may arise either from occupational accident or occupational diseases. So, the measures to be taken by employers pertain to both types of employment injuries. We will consider the incisures below depending on the time they need to be taken.

6.10.1 Preventive Measures

Under Art.92, the proclamation imposes a number of duties upon employers with regard to taking preventive measures to avert or reduce occupational injuries. Among others, they are required to provide workers with protective equipment clothing and other materials including appropriate instructions on how to use, and ensure that the work place and premises do not cause danger to health and safety workers, provided, however, that they are capable of taking such measures.
Since the prevention of injuries requires the efforts of not only employers but also employees, the proclamation expressly binds workers to act in a certain manner. Hence, different obligations of the workers are provided for under Arts.95 and 94 of the proclamation. For example, they must use preventive devices, clothing’s and others, refrain from any conduct endangering occupational health and safety, and obey all health and safety instructions. At any rate, employees are supposed to cooperate with their employers to make the measures taken effective.

6.10.2 Post Injury Measures

These measures are, as mentioned before, meant to give some relief to the worker who has sustained employment injury since, despite the different obligations to be discharged to prevent them, injuries may happen. Of course, there are two possible reasons for the occurrence of employment injuries. Firstly, the employer might have not taken the necessary preventive measures (or the employee failed to do what is expected of him/her to avert possible danger) as the result of which the risk which should and could have been avoided occurs. Secondly, even if preventive measures are taken still there is a possibility for occupational injuries to happen. This means, taking preventive steps does not hundred percent assure us that no injury will occur.

Anyway, putting the cause for its occurrence aside, whenever occupational injuries occur, the current stand is that the harm shall be distributed. Traditionally, injuries rested where they fell. Nowadays, however, both parties are the victims. The employee undergoes the pain and the employer pays money that is, giving different benefits to the worker. Interestingly, there is, at this juncture, one question that comes to our mind.
Why is an employer who has effectively taken all the necessary preventive measures required to take ameliorative or post injury measures?

What are the rationales behind this obligation?

Ameliorative measures which refer to giving different benefits to injured workers are justified on the following policy considerations.

a) Employers will be encourage take more preventive cares. If employers are aware that their obligation is not limited to taking preventive measures they will exert much more effort on averting dangers. This means, the cares they will take at the initial stage will be greater than the care they will take in the absence of obligations subsequent to the occurrence of harm.
b) The employer’s pocket is undoubtedly deeper than his employee’s. That is to say, the cost of employment injury shall be covered by employers since they are better off. At times, employees may have none to incur cost for their health care. But if an employer is to incur the cost, the amount of the cost may be negligible for him.

c) Employers can shift their cost. The cost of employers is only apparent. Because they can shift any cost together with the price of their products or services. Hence, it is in reality the consumer that bears the cost of post injury measures, not employers as such. Employers are only like intermediaries.

The types of post injury benefits accruing to the worker may be different in kinds depending on the type of injury sustained. Normally, employment injuries consist of occupational accident and occupational disease. If any of the two occurs, the benefits attached thereto will become due. But the benefits to be given may vary depending on the type of occupational injury that happens.

Dear student, there is one important paint that you need to keep in mind at this juncture. That is, the duty of an employer to take ameliorative measures is not a blanket duty. It has got an exception. If the employment injury that has occurred is caused by the intentional act of a worker, the risk will remain with him without distribution. Hence, post injury obligation exists only if the injury is not imputable to the calculated conduct of the For example, as per Art.96 (2) of the proclamation, a worker who sustains injury as the result of disobedience of express safety instructions or nonobservance of the provisions of accident prevention rule specifically issued by the employer, or reporting to work in a state of intoxication that prevents him from
property regulating his body or understanding, is said to have caused the injury intentionally.

Accordingly none of the post injury benefit will accrue to him. If the injury is, however, not intentionally caused by the worker, he will be entitled to all the benefit recognized by the proclamation which will be discussed later on.

Question
Summarize the reasons for subjecting employer to different duties to take post injury measures.

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I. Occupational Accident

The concept occupational accident is defined and exemplified under Art.97 of the proclamation. Accordingly, any organic injury or functional disorder sustained by a worker as the result of any cause extraneous to him or any effort he makes during or in connection with the performance of his work is an ‘Occupational accident’. For instance, if despite the greater care he takes a worker’s hand is cut by the machine he operates, the injury qualifies as an occupational injury.

Similarly, if the service car provided by an employer overturns on a way to/from the place of work and injury is sustained by some workers, the injury is an occupational injury because the injury is sustained in relation to the performance of the
worker’s work. Further, if the worker is injured by third party or the employer himself during the performance of his work, the injury will qualify as an occupational accident. In short, any organic disorder sustained in connection with the employer’s work is an occupational accident unless it is attributable to the worker’s intentional fault.

Questions
1. After reading Art.97 determine whether the following injury amounts to occupational accident or not.

“An employer gave his employee transport allowance with which the employee hired a private car which overturned and caused injury to his leg.”

2. If the work place is Harar but the worker is sent to Addis by his employer to purchase certain industrial material, will the injury be an occupational accident if he is involved in car accident at 8:00 pm and sustains harm?
3. Ato Lifatu was performing his work when his enemy Ato Telatu came and cut one of his arms. Is the injury sustained by Lifatu an occupational accident?

II. Occupational Disease

For various reasons the work environment may not be healthy despite all the preventive measures taken by the employer. If the work environment eventuates a disease, the disease is referred to as occupational disease. Occupational disease is recognized and explained under Art.98 of the proclamation. The concept is defined as any pathological condition whether caused by physical, chemical or biological agents which arise as the consequence of the type of work performed by the worker or the surroundings in which the worker is obliged to work during a certain period prior to the date in which the disease becomes evident. To put it differently, sometimes the nature of the work may give rise to certain disease and any worker catching the disease is said to have caught occupational disease.
Similarly, if the disease arises from the surroundings where the work is performed, it amounts to occupational disease provided that it has occurred after a given worker has started working in the said surrounding. If, however, the disease is known at the time of commencing work, it cannot be an occupational disease for new the workers.

The labour proclamation has expressly excluded certain diseases from the scope of occupational disease. These diseases include endemic or epidemic diseases which are prevalent in the area of work except for workers who exclusively engage in combating the diseases. That is to say, generally available diseases to the general public are not occupational diseases because it cannot be established that the nature of work has given rise to such diseases. For instance, around Dire Dawa, malaria is prevalently contracted by the people there. So, if a worker, working in Dire Dawa contracts malaria, he cannot claim that he has contracted occupational disease since the occurrence of the malaria has nothing to do with nature of his work. The worker knows the existence of this disease around Dire Dawa before he starts his work and assumes the risk when he commences his work.

All the same, there are exceptions where generally available risk or prevalently contracted diseases may be taken as occupational disease. This happens where such deceases’ are contracted by workers who exclusively engage in the eradication of the disease. This means, malaria is an occupational disease for workers combating it around Dire Dawa. This exception is justified on two grounds. Firstly, unless such disease is considered to be occupational, no one will engage in combating it. Thus, the law considers the disease as occupational just not because the work will create it, but because it wants to encourage people to engage in fighting it. Moreover, these workers have assumed an increased risk than the rest of the public as the result of their frequent
contact with the disease. Hence, it would not be fair to treat them alike with the other members of the public. Therefore, for these workers the concept occupational disease is a bit wider than it is for other workers.

**Question**

What is the relevance of considering a given disease as occupational diseases?

6.10.3 Determination of occupational disease

The determination of disease which qualifies as occupational diseases may not be an easy task as it sounds based on the definition of the concept. In practice, much confusion is created. To avoid or minimize the problems in determining occupational disease, the labour proclamation has authorized the Ministry to prepare a revocable, every five years, schedule consisting of lists of occupational deemed to be the possible sources of the diseases. For the preparation of the schedule the ministry shall consult the concerned bodies, such as the Ministry of Health, Employers Associations, and Trade Unions.
If any of the diseases listed in the schedule occurs in relation to the corresponding occupation in the schedule, the disease will be conclusively taken as an occupational disease. If the disease that has occurred is, however, not mentioned in the schedule, it is up to the worker to prove that it is an occupational disease. What this, in effect, means is the schedule does not contain an exhaustive list of occupational diseases. For example, under Art.98, the proclamation provides that a disease that is not listed in the schedule but which often occurs only to certain people working in a given undertaking is an occupational disease if it frequently occurs to them any time they work in a given undertaking. This is, however, without prejudice to the possibility of rebutting this presumption by the employer.

Questions

1. Ato R was HIV/AIDS negative when he was hired by company X. A year later, he found himself to be HIV/AIDS positive. Can he claim that he has contracted an occupational diseases? Why/Why not?

2. Ato K contracted an occupational disease in 1996. Some months later, he got rid of it through the efforts of his employers. In 1997, he contracted the same disease. Is the disease will an occupationally disease?
6.10.4 Degree of Disablement

Any employment injury, whether it emanates from employment accident or occupational disease, may have its own effect. The effect is, obviously, incapacitating the worker: to reduce or avoid the worker’s capacity to work. This effect is technically called disablement. And issues relating to disablement are covered under Art.99ff of the proclamation. Under the proclamation disablement may take three forms:

1. Temporary: Total or partial;
2. Permanent: Total or partial: and
3. Death.

Disablement is said to be temporary if the injury sustained prohibits the work from performing his work only for a limited period. If the prohibition is only in part, the temporary disablement is said to be partial. If, however, the worker has lost his capacity to do any work for some time, the temporary disablement will be whole or total. For example, if as the result of occupational injury, a worker becomes unconscious for a limited time the type of injury will be total. But if one of fingers of a worker’s hand is dislocated the injury will be partial and temporary since his capacity to work not totally annihilated.
Permanent disablement, on the other hand, refers to an incurable employment injury reducing the capacity of the worker. If the incurable employment injury has the effect of decreasing the worker’s capacity to work, the disablement is called permanent partial. If, however, the disablement has the effect of abolishing the worker’s capacity from doing any work, it is regarded as permanent total.

The labour proclamation regulates the above mentioned disablements under Art. 101. The scope of the proclamation is even wider than what has been seen in the preceding paragraphs. Because it assimilated, of course, for the purpose disablement benefits, employment injury that has not caused any reduction in the worker’s capacity to work to permanent partial disablement if the injury has caused serious mutilation or disfigurement. For instance, if an accountant loses one of his legs, his capacity to work remains intact. But since the mutilation is obviously serious, the law considers his case as permanent partial disablement so that certain benefit will accrue to him.

Whenever a given worker sustains injury, the degree of his disablement shall be assessed. Then, it would be proper to question how this is going to be assessed. But the proclamation clearly stipulates, pursuant to Art.102, that the degree of permanent partial or total disablement shall be fixed by the directives to be issued by the Ministry. For this purpose, the ministry shall obtain assistance or information from the competent medical board. For instance, in accordance with the information obtained from the competent medical board, the ministry may provide that a typist who loses one of his/her fingers will lose 10% of her capacity to work while the one who loses five figures will lose 50% capacity to work. Of course, such stipulation of the Ministry is susceptible to review depending on the improvement or deterioration of the worker’s capacity.
If another injury is sustained the worker’s degree of disablement will be reassessed in light of his new circumstance. This means the previous injury will not be taken into account. The new circumstance will be taken into consideration independently of the preceding ones. This is so because a worker shall not get double benefit for one injury. If the previous injury is to be considered, however, he will be entitled to double benefit for the same thing while the employer will be subjected double jeopardy.

Questions

1. What would be the type of disablement if a driver loses one of his legs?

2. Would the loss of both eyes be permanent total for a musician?
3. How does the labour proclamation, Art.101, treat the loss of all the upper front teeth by a worker?

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6.105 Benefits of Employment Injuries

As repeatedly mentioned before, a worker who has sustained employment injury is entitled to certain benefits. These benefits can be broadly classified into medical and cash benefits. If, however, the injury brings about the death of the worker, there is only one benefit, that is, cash benefit which will accrue to his dependants as per Arts. 107 and 110.

A. Medical benefits

By virtue of arts. 104. And 105 of the proclamation, an employer is obliged to provide to worker who has sustained employment injury different medical assistances beginning from first aid. Among others, the law has expressly provided for employer’s obligation to cover the expenses of general and specialized medical and surgical care; hospital and pharmaceutical care; or any necessary prosthetic or orthopedic appliances. For example, if as the result of employment injury the worker requires
artificial hand or leg the cost thereof shall be covered by his employer. If the cost pertains to other temporary cares such as hospital and pharmaceutical cares, the benefit stays until the concerned medical board decides that the cares are no more necessary. Hence, it can be withdrawn upon recommendation of the competent medical board.

The labour proclamation is silent as to the territorial limitation of employer’s duty to give medical benefits. For instance, if the medical benefit required by the health condition of the worker cannot be given within Ethiopia, is the employer obliged to send the worker abroad, like to UK? Two possible but contrary answers can be given to this question. Firstly, since the law says the employer shall cover costs of medication, his duty shall extend to costs that are incurred anywhere. After all, in as long as the labour law is made to protect, primarily, the interests of workers, any balance shall be struck in favour of the worker.

On the contrary, there is a position that says employer’s obligation is territorial. That means, he is not obliged to cover costs incurred abroad. Because, at times, interpreting the law in a way that makes employer’s obligation extraterritorial will be self-defeating. Stated differently, since sometimes the cost of medication may go beyond the capacity of the employer it would not be tenable to say that the employer shall sell his undertaking or close it to cover his employee’s medical expense. This position is supported by practice. Some financially potent institutions in the country are not covering medical costs incurred abroad. For example Ethiopian Airlines covers only transportation cost and not medical cost.

**Question**

1. Which of the abovementioned positions do you support?
Cash benefits

In addition to the different medical benefits, a worker who is disabled by employment injury will be entitled to cash benefits depending on the degree of disablement sustained. But there are certain difficulties in relation to the calculation of cash benefits. Firstly, the determination of the degree of disablement calls for medical expert role. Hence, it is not something a judge can determine alone and expert’s opinion has the capacity of leading the judge to arrive at certain conclusion. Besides, such opinion does not take into consideration factors which are extraneous to health conditions but which are likely to seriously jeopardize the worker’s future. So, it is up to the judge to give any legal conclusion using expert’s opinion as a premise.

Secondly, the fact that human organs are invaluable poses another difficulty of determining the extent of cash benefit. Human organs are priceless, extra-commercial. Hence, no one can say the price of an eye is 1,000 birr while that of one tooth is 100 birr.

Thirdly, different medical boards give different opinions on the degree of worker’s disablement. So, the lack of uniformity among boards’ decisions is another obstacle. At any rate, the judge has to choose the one that seems more acceptable.
Regardless of the preceding difficulties, the labour proclamation provides for the extent and mode of calculation of cash benefits. Accordingly, a worker who has suffered temporary disablement is entitled, as per Arts.107 (1) (a) and 108, to periodical payment for a year in accordance with the mode of calculation provided there under. This benefit may, however, be suspended if the worker retards his recovery by refusing to take the necessary medications. If he starts conducting, himself honestly, the benefit will resume. Moreover, periodical payment may cease if the victim is medically certified that he is no more disabled or if he is entitled to disablement pension or gratuity. The expiry of twelve months period after he has stopped work will also bring the benefit to an end.

The cash benefit to be provided to a worker who has suffered permanent disablement is regulated under Art.107(1)(b). accordingly, the victim will be given either disablement pension or gratuity or compensation. The payment may be effected either in lump sum or by installment (Art.109).

Question

After reading Arts.107 and 108, determine the total amount of the cash benefit a worker who has suffered temporary disablement gets in a year if his monthly salary is 1,000 birr.
Finally, it would be worth noting that disablement benefits are available to any kind of worker: for definite period, indefinite period, or even apprentice, regardless of the duration of service they rendered to an employer. Because, since disablement benefits are meant to compensate what is lost and not awards from the employer, any worker shall be compensated for the loss incurred in connection with the employer’s work.

**Summary**

Dear student, in this chapter some of the important points pertaining to the minimum working conditions have been raised and discussed. Firstly, the maximum working hours per day has been discussed. Firstly, the maximum working hours per day has been discussed as a result, every worker is required to work only for eight hours a day. If he/she works in excess of eight hours per day, he/she is considered to have performed an overtime work which entitles him/her to extra payment. Secondly, the fact that a worker is not required to work seven days a week has been thoroughly discussed. Every worker is entitled to weekly rest of one day which may fall on Sunday or any other day. Thirdly, the fact that a worker, in addition to weekly rest, is entitled to leave of different kinds has been addressed. Accordingly, a worker may be given annual leave, sick
Leave, union leave, maternity leave, etc depending on the existence of factors necessitating these leaves. Lastly, in this chapter, the bilateral nature of the obligation to keep the safety and health of work environment has been discussed. Both employers and workers have the duty to avoid any danger threatening the safety and health of employment environment. If despite their efforts the risks feared materialize, the workers will be entitled to certain benefits (medical and cash) unless the materialization of the risks is attributable to their intentional conduct.

**Self check Questions**

1. List some of the minimum working condition.

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2. What are the obligations of employers to make working environment safe and healthy?

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3. Is a person who has 6 months service entitled to annual leave? For how long?

4. Are leave and rest different?

5. “Conversion of annual leave to compensation is never possible” comment.
6. For how long does sick leave last? Is it fully paid?

7. A worker who intentionally sustains employment injury is not entitled to injury benefits. What is the reason behind such denial?

8. “Preventive measures are less important to workers than post injury benefits”. Do you agree?
9. State the differences between employment accident and employment disease.

10. Can TB be an occupational disease?
Reference Materials
2. Guadagni, Marco, Ethiopian Labour Law Handbook (1968)
13. Tecle Hagos, labour dispute settlement process, Mekelle University, faculty of law (unpublished)

Laws


Court Decisions (Federal Supreme Court Cassation Bench)

1. KK Trade Union –Vs- KK enterprise, File No.18180

2. Hamere Worque St. Mary church-vs-Deacon Mihret Birhan 7 et al, File No.18419

3. Tele Corporation-vs- Tigist Worque, File No.11924

4. Arsi Agricultural Development-vs- Solomon Abebe, File No.15815
PROCLAMATION NO. 568/2008

A PROCLAMATION TO PROVIDE FOR THE RIGHT TO EMPLOYMENT OF PERSONS WITH DISABILITY

WHEREAS, the negative perception of persons' disablement in society is deep rooted that, it has adversely affected the right of persons with disability to employment;

WHEREAS, the existing legislation on the right of disabled persons to employment created, by providing for reservation of vacancies for disabled persons, an image whereby people with disabilities to be considered as incapable of performing jobs based on merit and failed to guarantee their right to reasonable accommodation and to provide for proper protection;

WHEREAS, it has become necessary to enact a new law that complies with the countries policy of equal employment opportunity, provides reasonable accommodation for people with disabilities to employment and lays down simple procedural rule that enable them to prove before any judicial organ discriminations encountered in employment;

NOW, THEREFORE, in accordance with Article 55 (1) and (3) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:
1. Short Title

This Proclamation may be cited as the "Right to Employment of Persons With Disability Proclamation No. 568/2008".

2. Definitions

In this Proclamation, unless the context requires otherwise:

1/ "Person with disability" means an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination;

2/ "Employment" means a relationship that exists between any person with disability and an employer, which includes recruitment, promotion, training, transfer and other conditions of work;

3/ "Employer" means any federal or regional government office or an undertaking governed by the Labor Proclamation;

4/ "Discrimination" means to accord different treatment in employment opportunity as a result of disability; provided, however, that any inherent requirement of the job or measures of affirmative actions may not be considered as discrimination;

5/ "Reasonable accommodation" means an adjustment or accommodation with respect to equipment at the work place, requirement of the job, working hours, structure of the business and working environment with a view to accommodate persons with disabilities to employment;

6/ "Undue burden" means an action that entails considerable difficulty or expense on the employer in accommodating persons with disabilities when considered in light of the nature and cost of the adjustments, the size and structure of the business, the cost of its operations and the number and composition of its employees:
3. Scope of Application

This Proclamation shall be applicable to the Employment relationship between a qualified worker or job-seeker with disability and an employer.

4. Protection of the Right of Persons with Disability to Employment

1/ Unless the nature of the work dictates otherwise, a person with disability having the necessary qualification and scored more to that of other candidates shall have the right without any discrimination:

a) to occupy a vacant post in any office or undertaking through recruitment, promotion, placement or transfer procedures; or

b) to participate in a training programme to be conducted either locally or abroad.

2/ Subject to the provision of Sub-Article (1) of this Article, where a person with disability acquires the necessary qualification and having equal or close score to that of other candidates, preference shall be given to the conditions provided for in Sub-Article 1 (a) and (b) of this Article.

3/ No selection criteria shall refer to disabilities of a candidate unless the nature of the work dictates otherwise.
4. Any person with disability shall have the right to get the wage and other benefits of the position he occupies.

5. **Prohibition of Discrimination**

1. Any law, practice, custom, attitude or other discriminatory situations that impair the equal opportunities of employment of a disabled person are illegal.

2. Without prejudice to Sub-Article (1) of this Article, selection criteria which can impair the equal opportunity of disabled persons in recruitment, promotion, placement, transfer or other employment conditions shall be regarded as discriminatory acts.

3. When a disabled person is not in a position to exercise his equal right of employment opportunity, as a result of absence of a reasonable accommodation, such an act shall be regarded as discrimination.

4. Affirmative actions taken to create equal employment opportunity to persons with disabilities or exclusions dictated by the nature of the work may not be regarded as discrimination.

6. **Responsibilities of Employers**

1. Any employer shall have the responsibility to:

   a) take measures to provide appropriate working and training conditions and working and training materials for persons with disability;

   b) take all reasonable accommodation and measures of affirmative action to women with disability taking into account their multiple burden that arise from their sex and disability;

   c) shall assign an assistant to enable a person with disability to perform his work or follow his training;
d) protect women with disabilities from sexual violence that occur in work places and, without prejudice to other sanctions to be taken against the offender under the relevant laws, take administrative measures against the perpetrator of acts of violence.

2/ An employer shall be relieved from taking any measure as provided in Sub-Article (1) (a) and (b) of this Article where it creates an undue burden to him; provided, however, that the assignment of an assistant for a person with disability shall, under no circumstance, constitute undue burden to an employer.

7. **Burden of Proof**

1/ Any person with disability who alleges that discrimination on the ground of his disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment may institute a suit to the competent court on the issue with out the requirement of the burden of proof.

2/ The defendant to a suit instituted pursuant to Sub-Article (1) of this Article shall be responsible to prove that there was no act of discrimination.

8. **Responsibility of Employee with Disability**

1/ Any employee with disability shall perform his duty with full responsibility.

2/ Where an employee with disability does not perform his duty appropriately or commits a fault, his disability shall not relive him from responsibility.

9. **Implementation of the Proclamation**

1/ The Council of Ministers may issue regulations necessary for the proper implementation of this Proclamation.

2/ Without prejudice to the provisions of Sub-Article (1) of this Article, the Ministry of Labor and Social Affairs, the Federal Civil Service Agency and the appropriate regional organs may, in their respective jurisdiction, issue directives necessary for the proper implementation of this Proclamation.
1/ The Ministry of Labor and Social Affairs, the Federal Civil Service Agency and the appropriate regional organs shall have the power to follow up and ensure the proper implementation of the provisions of this Proclamation and regulation and directive issued pursuant to this Proclamation.

10. Right to Institute an Action

1/ Any person with disability whose rights are infringed due to non-observance of the provisions of this Proclamation, regulations or directives issued for the proper implementation of this proclamation or the association of persons with disabilities of which he is a member, or the trade union of which he is a member, or the concerned organ entrusted to implement this Proclamation may institute a suit before the competent court.

2/ The court shall render its decision within 60 days from the date on which the suit is instituted.

11. Penalty

1/ Unless the provisions of the Criminal Code provide more severe penalties, an employer who contravenes the provisions of this Proclamation or regulations or directives issued pursuant to this Proclamation shall be penalized by a fine not less than Birr 2,000 or not exceeding Birr 5,000.

2/ Where the employer fails to rectify the contravention, within one month, in accordance with the decision of the court, the penalty shall be increased by twofold.

3/ The employer may, in accordance with the appropriate law, hold responsible its officer or employee where the contravention is attributable to the fault of such officer or employee.

12. Repealed and Inapplicable Laws

1/ The Right of Disabled Persons to Employment Proclamation No. 101/1994 is hereby repealed.
2. No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamations, have force and effect in respect of matters provided for in this Proclamation.


Labor disputes pending before any competent body prior to the coming into force of this Proclamation, shall be settled in accordance with the law which was in force before this Proclamation come into force.

14. Effective Date

This Proclamation shall enter into force up on Publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 25th day of March, 2008

GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
12. No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamations, have force and effect in respect of matters provided for in this Proclamation.


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GIRMA WOLDEGIORGIS

PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA
Annex II  Federal Supreme Court Cassasion Decision on the Duration of Contract of Employment
https://chilot.me
https://chilot.me
https://chilot.me

1. የታመት ሙሮ የለም ያለት /the performance of specified piece work/
2. በክፍለ መሪያው ያህ የምም ያህ ያለት /the replacement a worker who is temporarily absent/:
3. የሚኖራ የሆነ ውምفاعل/ in the event of abnormal pressure of work/:
4. የጠንሸ መር የህ ይሏ ጥም ከጠንሸ ይግባኝ ከሚ ከሚ ያለት ከተራ ሇሚ ጥም ያለት ዋ ጥም ያለት የሆነ የሆነ የሆነ ያለት ከሚ ጥም /urgent work, to prevent damage or disaster to life or property, to repair defects of breakdowns in works, materials, buildings or plants of the works of the undertaking/:
5. ከተርጓለ የላጋት ዯም ውስጥ ላን ከሚ ከሚ /an irregular but permanent part of the employer/:
6. የፋ በዘ ያለው ዯም ውስጥ ላን ከሚ ከሚ /seasonal but permanent part of the works of the employer/:
7. ዯም ዋህብ ከ ከሚ ጥም የላጋት መሬት ዯም ላን ከሚ /an occasional and not part of the permanent activity of the employer/ የታመት ላን የሚ ያለት ዯም ያለት ላን ከሚ ጥም ከሚ ከሚ ያለት ከሚ ጥም ያለት ከሚ ከሚ /
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ANNEX – 3

C158 Termination of Employment Convention, 1982

Convention concerning Termination of Employment at the Initiative of the Employer
Convention:C158

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour
Office, and having met in its Sixty-eighth Session on 2 June 1982, and
Noting the existing international standards contained in the Termination of
Employment Recommendation, 1963, and
Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member
States on the questions covered by that Recommendation, and
Considering that these developments have made it appropriate to adopt new
international standards on the subject, particularly having regard to the serious
problems in this field resulting from the economic difficulties and technological
changes experienced in recent years in many countries,
Having decided upon the adoption of certain proposals with regard to termination of
employment at the initiative of the employer, which is the fifth item on the agenda of
the session, and
Having determined that these proposals shall take the form of an international
Convention;
adopts this twenty-second day of June of the year one thousand nine hundred and
eighty-two the following Convention, which may be cited as the Termination of
Employment Convention, 1982:
PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
   (a) workers engaged under a contract of employment for a specified period of time or a specified task;
   (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
   (c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.
5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3
For the purpose of this Convention the terms termination and termination of employment mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION
DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4
The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5
The following, inter alia, shall not constitute valid reasons for termination:
(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
(e) absence from work during maternity leave.

Article 6
1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.
2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF TERMINATION

Article 7
The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8
1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.
2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

   (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

   (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance
with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to-

   (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

   (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

   (c) a combination of such allowance and benefits.

2. A worker who does not fulfill the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in
paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term the workers' representatives concerned means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14
1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16
1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act
communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this
Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.