

Wollo University
School of Law
Program: LLB-Degree
Employment laws Course Lecture

PART I- INTRODUCTION

1.1. Definition and Nature Labor Law

1.1.1. Definition and Subject Matter of Labor Law

(a) Definition of “Employment and Labor Law”

To arrive at a working definition of Employment and Labor Law, it is appropriate to ask few questions about Employment & Labor Law; such as (i) what does the Law govern?, (ii) what does the Law determine?, (iii) who are the parties or the subjects to be governed by the Law?, (iv) how does the Law govern or determine the relationship?, (v) to which categories of employees does the Law apply?, and (vi) at what stage of the relationship does the Law come in to picture? Addressing these questions help us to come-up with some comprehensive working definition.

There is no any universally accepted definition of “Employment or Labor Law”, and thus various writers or scholars define them in different ways depending on their particular perspective, or depending on their different social, economic, and political backgrounds. Because of this, there are a lot of definitions of Employment or Labor Law ranging from very narrow one to a relatively wider definition. Some definitions can be too general that they might not specifically address the specific subject matters of Employment & Labor Law, and some can be too narrow restricting the scope of the Law only to matters of employees, i.e. protecting only employees and forgetting that Labor Law is also about employers’ rights, duties, and protections. Some definitions restrict the scope of the Law only to the Individual Labor Relations matters (i.e. to individual employment relations between an employer and employee), and some others restrict it only to the Collective Labor Relations matters (i.e. to collective bargaining and collective agreement issues). Some writers from some legal systems (e.g. from U.S.A) define Employment or Labor Law to also include even pre& post employment scenarios. The Philippine Labor Code does also, for example, address pre-employment situations. Only few definitions give very comprehensive definitions that address all the subject matters of the Law.

This does not mean all other definitions are not correct, because they can be appropriate depending on their particular social, political, or economic context. Just for analysis and evaluation purpose, some selected definitions about Employment and Labor Law have been listed down here below.

“Employment Law”

1 “Employment law is a broad area of that controls how employers must treat employees, former employees, and applicants for employment that includes all areas of the relationship, except negotiation and the collective agreement process which are covered by Labor Law. Employment law encompasses a wide variety of issues like Pension Plans, Retirement, Occupational Safety & Health Regulations, Affirmative Action, Discrimination in the Workplace and Sexual Harassment. (<http://www.statelawyers.com/>)

1 Employment Law is a broad area including all areas of the employer/employee relationship except the negotiation process covered by labor law and collective bargaining. Many employment laws (e.g., minimum wage regulations, employment discrimination, workers’ compensation, workplace safety, Whistleblower & Qui Tam Law,) were enacted as protective labor legislation. Other employment laws take the form of public insurance, such as unemployment compensation. (<http://www.hg.org/employ.html>)

2 The body of law that governs the employer-employee relationship, including individual employment contracts, the application of TORT and contract doctrines, and a large group of statutory regulation on issues such as the right to organize and negotiate collective bargaining agreements, protection from discrimination, wages and hours, and health and safety. (<http://legal-dictionary.thefreedictionary.com/>)

“Labor Law”:-

3 is “ a statute regulating relations between employees and employers.” (Black’s Law Dictionary).

4 “is an area of law that regulates the relationship between an employer and his employees in individual or collective form.”

5 “determines the rights and obligations which arise out of an employment contract.”

6 “regulates the entire relationship between employer and employee, i.e. the hiring process, job duties, wages, promotions, benefits, employment reviews, and termination of employment relationship.”

7 “covers the relationship between groups of employees, organized as unions, and employers.”

8 “defines the rights of employees and protect them from employer retaliation for exercising those legal rights.”

9 “is a set of rules of law dealing with a relation of dependent work between private subjects.”

10 “is that body of statutes, rules, and doctrines that define state policies on labor and employment, and governs the rights and duties of workers and employers respecting terms and conditions of employment by prescribing certain standards there-for, or by establishing a legal frame-work within which better terms and conditions of work could be obtained through collective bargaining or other concerted activity.”

(http://www.livinginthephilippines.com/philippine_labor_law.html)

11 Labor laws were designed to equalize the bargaining power between employers and employees-prohibiting employers and unions from engaging in specified "unfair labor practices" and establishing an obligation of both parties to engage in good faith collective bargaining. Labor laws mainly deal with relationships between employers and unions. Labor laws grant employees the right to unionize and allow employers and employees to engage in certain activities (e.g., strikes, picketing, seeking injunctions, lockouts) for the purpose of getting their demands fulfilled. (<http://www.statelawyers.com/>)

Interchangeable Usage

1 Labor law (or employment law) is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. (http://en.wikipedia.org/wiki/Employment_Law)

For the purpose of subsequent convenient academic discussion, and within Ethiopian legal context, we can take the following definition as a comprehensive working definition for “Employment or Labor Law”:-

“Employment Law is a branch of law that sets rules of law governing an individual employment relationship between employee(s) and employer and determining the rights and obligations of the parties thereto by prescribing minimum standard working conditions, and/or also governing collective labor/employment relations by establishing conducive legal frame-work for collective bargaining or for other concerted activity so as to enable the parties to obtain better terms and conditions than the minimum set by the law.”

(b) Subject-matter of Employment & Labor Law

From the above discussion on the definition of Employment and Labor Law, we can identify the following important areas to be the subject matters of Employment & Labor Law:-

i. Individual employment Relations:- employment relationship between workers and employers (i.e. contract of

employment);

ii. Collective Labor Relations:- the area of collective bargaining between unions and employers, and the legal effect of collective agreement on individual employment contract;

iii. Minimum Standard Conditions:- statutory control of certain conditions of employment by law;

iv. Industrial Conflicts:- establishing rules concerning strike, lock-out, and other concerted activities;

v. Unions ship and Associations:- setting rules for status and membership of unions and associations and also for their activity; and

vi. Role of Government:- providing for the legal frame-work for the role of the government (in all its capacities) in the above relationships.

1.1.2. Nature of Labor Law

(a) Tripartism:- Tripartite Nature of the Relationship at all Levels/Dimensions

“Tripartism” is said to be the participation and cooperation among government, labor, and management in the evolution and formulation of labor policies and standards. However, we can also see that the relationship has a tripartite nature at its both lower level (industry level) or at its higher levels (government level). At industry level, the relationship involves the interaction of the employees, the employer, and the Union of the employees. At government levels, the involvement of the government is inevitable in three different dimensions, i.e. between the relationship of the employee and the employer, between the relationship of the employer and the Unions/Association, and between the relationship of employees and their Unions. Even apart from this, at a legislative level, the government will enact labor laws by involving Workers’ Unions (at Federation or Confederation level) and the Employers’ Associations (at Federation or Confederation level). This shows us that the subject matter of Labor Law is not a simple bilateral relation between employer and employees, but a sophisticated tripartite interaction at different levels between employees, employers, associations, and Government (in all its three capacities, i.e. legislative, judiciary, and executive). The tripartite nature of employment/labor law is also manifested at ILO level because even at that level, ILO involves Governments, Employers, and Workers Associations in its formulations of employment standards, conventions, recommendations, etc...

(b) Inherent Conflicts

These four different parties have their own various interests building the core element of the relationship supposed to be governed by Labor Law. These conflicting interests in this relationship are as follows:-

- i. Employer desires to attain maximum control, optimum productivity, cooperation from the relationship, etc...
- ii. Employees want compensation, protection, satisfaction, career development, etc...
- iii. Unions want participation and representation in management decisions.
- iv. Government wants industrial peace and stability in the country.

(c) Dynamic Nature

Compared to many other various types of laws governing the conduct of human affairs in all its complex aspects, the branch of Labor Law embracing the relationship between capital and labor is said to be the most dynamic and responsive to changing social and economic nature. It can be evident that in Ethiopia, our Labor Law has been changed and amended very frequently compared to other relatively static law, like Contracts Law, Family Law, Commercial Code, etc...

(d) Derivative Law vs Autonomous Law

It can be arguable as to whether Labor Law is an Autonomous Law (relatively independent law and comprehensive and having its own peculiar natures) or a Derivative Law (dependent on other

autonomous laws and having its bases on the basic principles of other existing laws). However, the commonly accepted position is that Labor Law is largely a Derivative law, i.e. it is a mixture of various other established fields of laws such as contract, tort, equity, constitution, agency, administrative, criminal law, etc.... In most countries, like in U.S.A., even before the development of separate rules of laws for governing the employment relationships, they were mainly using these basic principles and concepts from these various fields of laws so as to regulate the relationship.

(e) Social Laws vs. Labor Law?

Social law can be defined that body of rules of law aimed at promoting the general welfare of all the people at large, while Labor law is restricted only to a certain segment of the general public. Both Labor Law and Social Law share the same objective, i.e. promotion of social justice. Social law is the broadest concept to ensure the welfare and economic security of all the people while Labor Law seeks to improve the well-being of the lower-classes of the society, i.e. labor. In this context, we can say that Labor Law is part of Social Law, and it is by nature social law. The basic differences between the two types of laws are said to be:-

- i. Labor Law seeks to improve the well-being of the labor in particular, but Social law aims to promote the welfare of society in general;
- ii. Labor Law deals with subjects of proximate and direct interest to workers (like wages, hours of work, etc...), while Social Law deals with matters of remote or indirect interest to workers (e.g. employee compensation, social security, etc...); and
- iii. Labor Law provides benefits to active employees, while Social law for those whose employment is interrupted by sickness, disability, death, retirement, etc...).

(f) Private Law vs. Public Law Dichotomy?

A law is defined as Public or Private Law according to whether the state interest in the matter has or has not prevalence on the interests of the private subjects. Such predominance is due to social and political situations or differences, and the solutions given to it vary from state to state or from time to time. For example, we can see the following different approaches in different legal systems at different time:-

- i. After the French Revolution, Labor relation was considered as merely a private matter based on the concept of presumed equality of the parties. As a result, the relationship was not governed by law.
- ii. In a Socialist Jurisprudence, Labor relation is mainly a public matter regulated by autonomous branch of the legal system, independent of what is traditionally considered as Private law or Public Law.
- iii. In modern western jurisprudence, Labor Law has still both Private and Public law characters, and thus it contains rules of public and private laws, and also rules of public order (what is commonly known as 'lois d'ordre public' in French) in its system of norms. Because of this unique nature in it, we can not categorize Labor Law to either of the two or we can neither create a third nature for it- it is just its own unique nature having both qualities simultaneously.

1.2. Concepts of Employment/Labor Law

There might be different types of concepts revolving around the subject matter of Employment/Labor Law, but for this course purpose let us limit ourselves to some basic conflicting/opposite concepts that can be useful for us to clearly understand and identify the main issues to be raised in further discussions. We can find different concepts on Employment/Labor Law at both Individual Labor Relation level as well as at Collective Labor Relations level.

(a) At Individual Labor Relation Level

i. Contractual Labor Theory (“Objective Criteria”)

This theory is based on the Presumed Equality of employer and employee, and according to this theory the relationship between employer and employee is purely contractual, like any other contracts, and thus can be and should be terminated at any time by either of them. Because of this theory, different legal systems hold very liberal position/stand regarding the employer-employee relationship. For example, in the United States of America, there is this doctrine of Employment-at Will, which states that the employer can freely terminate the employment relationship at any time with or without reason. This theory is also based on the principle of Freedom of Contract between the parties, and with this base as an objective parameter and with a belief that the parties have equal freedom of contract and ability to determine their contractual relationship, the theory asserts that this should be the only Objective Criteria for determining the status and nature of the relationship.

ii. Public Policy/ Interest Theory (“Subjective Criteria”)

On the other hand, however, there is this theory which declares that the relationship between capital and labor is not merely a contractual matter. And according to this theory public interest and public policy matters should be also considered in this relationship so that labor contracts must yield to the common good of the society. Thus, the advocates of this theory affirm that the parties are not at equal negotiating status, and because of this inequality between the parties, the weakest party (i.e. “the working class”) shall be protected by the government due to public policy and public interest reasons so as to subject employment contracts to special rules on labor unions, collective bargaining, strikes, lock-outs, wages, working conditions, etc.... Besides, these theorists do also argue that the principle of Breach of Contract shall also apply to stop the employer from terminating the employment relation at will.

(b) Different Theories at Collective Labor Relations Level

- i. System Theory: According to this theory there is a certain system of rules that assure order, stability, and regularity in labor relations.
- ii. Pluralism Theory: Recognizes the existence and legitimacy of divergent conflicting interests and focuses on the establishment of structures and procedures to reach at a “negotiated order”.
- iii. Unitarism Theory: Views the organization as a team unified by a common purpose, i.e. the success of the organization. Here, conflict is not inevitable but pathological, the outcome of misunderstanding or mischief.
- iv. Marxism Perspective/Socialist Jurisprudence: Views labor relations as politicized and as inevitable polarized class struggle in capitalist society. The socialist jurisprudence regarding Labor Law is based on the principle of public ownership. According to this jurisprudence, the public at large is the owner of all factories and enterprises, and thus since there will be no private ownership in the socialist system, the public at large, particularly the working class, will be the owner of the factories and enterprises. Thus, as the owner thereof, there should not be any conflicting interests between the parties. The working class should fully participate in all management decisions and activities. The basic characteristic of this jurisprudence is that it disregards the contrast of interests in the labor relationship.

v.

The idea of cooperation & partnership: the current well accepted approach to collective Labor Relations between Unions and Management is the idea of cooperation and partnership rather than conflict and confrontation between capital and labor. It is believed that based on this idea of cooperation and partnership, both parties can achieve mutual benefit from their relations.

1.3. Sources of Labor Law in Ethiopia

Sources of Law are basically divided in to two types; namely, Primary sources of law and Secondary sources of laws. Primary source of law is further divided in to two, i.e. Source of Authority and Material Sources. Primary source refers to those sources of law to which courts are bound to refer to base their decisions. That means Primary sources are those legal sources that are binding and governing. However, Secondary sources are neither binding nor governing, but courts can refer to them for the purpose of interpreting the provisions of the law as necessary without being bound to do so.

a. Primary Sources of Employment/Labor Law

i. Sources of Authority

- The FDRE Constitution Article 55(1) and (3).
- The FDRE Constitution Article 9(4), endorsing International Laws as part and parcel of Ethiopian Laws.
- Proclamation No. 377/03 (e.g. Article 3(3))
- Proclamation No. 454/97, giving power to the Federal Cassation Supreme Court to issue binding rulings on points of legal issues.

ii. Material Sources

- The FDRE Constitution (e.g. Article 42.)
- Private Employment Agency Proclamation no. 104/1998.
- Proclamation No. 377/03 (& its Amendment Proc. No. 494/06), and other relevant Proclamations or Regulations governing Employment Relations.
- ILO Conventions ratified by Ethiopia (list of ILO Conventions ratified by Ethiopia is attached herewith for reference).
- Federal Civil Servants Proc. No. 515/2007
- Cassation Supreme Court Decisions on Points of Legal Issues will have binding effect as a law on all other subsequent court cases as per Proclamation No. 454/97.
- Administrative Laws or Directives, enacted per powers given by a Proclamation or Regulation.

b. Secondary Sources of Law

- Custom, equity, good faith.....Article 1713 of the Civil Code.
- Legislative reports, minutes, hearings, and debates.
- Other court decisions.
- Arbitral or board decisions.

1.4. Scope of Application of Employment law

It is important to note here that Definition part of a law and Scope of Application part of a law are not one and the same. Though there might be some types of definitions like Exclusive definitions (like the definition of 'Civil Servants' under the Federal Civil Servants Proclamation) and Inclusive types of definitions, when the Definition part and Scope of Application part are separated (like the case of the Labor Proclamation no 377/2003) we need to be careful not to confuse definitions with scope of application.

Regarding scope of application, the lawmaker might determine the scope of application of a certain law either by way of Inclusion or Exclusion. The Inclusion approach may be used when there is a fear that the definition part of the law does not cover some categories (eg. Article 3(3)(a) & (b)). On the other hand, the Exclusion approach might be used when the definition part covers the categories but when the lawmaker wants to exclude them (eg. Art. 3(2)).

There are basically three types of Exclusions; namely,

- (1) Direct/Explicit Exclusion (example: Art. 3(2)),
- (2) Conditional Exclusion (example: Art. 3(3)(a) & (b), Art. 46(4)), and
- (3) Partial Exclusions (example: Articles 11(4), 51(5), 65, 72, etc.)

The rationales behind Exclusions of some categories of employees from Employment/labor law might be one of the following four factors:-

1. Social Objective: irrespective of profit-orientation. Example: Art. 3(2)(a);
2. Special Purpose of the relationship: example- Art. 3(2)(b);
3. Non Profit Orientation: example- Art. 3(2)(d) & (e);
4. Status of the Employee: example- Articles 3(2)(c) & (e).

It is important to note that the definition of civil Servants under the Federal Civil Servants Proc. No. 515/2007 excludes the following categories:-

- 1 Government officials like state minister, deputy director general & equivalent;
- 2 Members of House of Peoples' Representatives, House of the Federation;
- 3 Judges and prosecutors;
- 4 The Armed forces, the Police force;
- 5 Daily laborers;
- 6 Internships and trainees;
- 7 Independent contractors;
- 8 Part-time employees with special skills and ability; and
- 9 Those excluded from the proclamation by other appropriate laws.

1.5. Development of Employment Law in Ethiopia

1.5.1. Labor Law Development Worldwide

The Industrial Revolution that took place in Great Britain during the period from late 18th c. to mid 19th c. can be taken as a basis for the development of labor law and labor movement worldwide. The following extracts from different materials and sources will give you a general introduction as to what is Industrial Revolution? As to what were the causes for Industrial Revolution? As to what were the effects there from? And as to how labor movement got worldwide recognition?

(a) What is Industrial Revolution?

(http://en.wikipedia.org/wiki/Industrial_Revolution)

The period of Industrial Revolution is from late 18th century until mid of the 19th century, the exact dates varying from historians to historians. During this period major changes in agriculture, manufacturing, and transportation had occurred and these changes

had a profound effect on the social, economic, political and cultural lives of the Great Britain people, and subsequently on that of the world. a process that continues as industrialisation. The onset of the Industrial Revolution marked a major turning point in human social history, almost every aspect of daily life and human society was eventually influenced in some way. In the later part of the 1700s the manual labour-based economy began to be replaced by industry and by machinery. Trade expansion was enabled by the introduction of canals, improved roads and railways. The introduction of steam power (fuelled primarily by coal) and powered machinery

(mainly in textile manufacturing) underpinned the dramatic increases in production capacity. The development of all-metal machine tools in the first two decades of the 19th century facilitated the manufacture of more production machines for manufacturing in other industries. The effects spread throughout Western Europe and North America during the 19th century, eventually affecting most of the world. The impact of this change on society was enormous.

GDP per capita was broadly stable before the Industrial Revolution and the emergence of the modern capitalist economy. The Industrial Revolution began an era of per-capita economic growth in capitalist economies.

(b) Causes for Industrial Revolution
(http://en.wikipedia.org/wiki/Industrial_Revolution)

The causes of the Industrial Revolution were complicated and remain a topic for debate, with some historians feeling the Revolution as an outgrowth of social and institutional changes brought by the end of feudalism in Britain after the English Civil War in the 17th century. As national border controls became more effective, the spread of disease was lessened, therefore preventing the epidemics common in previous times. The percentage of children who lived past infancy rose significantly, leading to a larger workforce. The Enclosure movement and the British Agricultural Revolution made food production more efficient and less labour-intensive, forcing the surplus population who could no longer find employment in agriculture into cottage industry, for example weaving, and in the longer term into the cities and the newly developed factories. The colonial expansion of the 17th century with the accompanying development of international trade, creation of financial markets and accumulation of capital are also cited as factors, as is the scientific revolution of the 17th century.

Technological innovation was the heart of the Industrial Revolution and the key enabling technology was the invention and improvement of the steam engine.

Historian Lewis Mumford has proposed that the Industrial Revolution had its origins in the early Middle Ages, much earlier than most estimates. He explains that the model for standardised mass production was the printing press and that "the archetypal model for the industrial era was the clock". He also cites the monastic emphasis on order and time-keeping, as well as the fact that mediaeval cities had at their centre a church with bell ringing at regular intervals as being necessary precursors to a greater synchronisation necessary for later, more physical, manifestations such as the steam engine.

The presence of a large domestic market should also be considered an important driver of the Industrial Revolution, particularly explaining why it occurred in Britain. In other nations, such as France, markets were split up by local regions, which often imposed tolls and tariffs on goods traded amongst them.

Governments' grant of limited monopolies to inventors under a developing patent system (the Statute of Monopolies 1623) is considered an influential factor. The effects of patents, both good and ill, on the development of industrialisation are clearly illustrated in the history of the steam engine, the key enabling technology. In return for publicly revealing the workings of an invention the patent system rewards inventors by allowing, e.g. James Watt to monopolise the production of the first steam engines, thereby enabling inventors and increasing the pace of technological development. However, monopolies bring with them their own inefficiencies which may counterbalance, or even overbalance, the beneficial effects of publicising ingenuity and rewarding inventors. Watt's monopoly may have prevented other inventors, such as Richard Trevithick, William Murdoch or Jonathan Hornblower, from introducing improved steam engines thereby retarding the industrial revolution by up to 20 years.

"What caused the Industrial Revolution?" remains one of the most important unanswered questions in social science.

(c) Effects of Industrial Revolutions
(http://en.wikipedia.org/wiki/Industrial_Revolution)

In terms of social structure, the Industrial Revolution witnessed the triumph of a middle class of industrialists and businessmen over a landed class of nobility and gentry.

Ordinary working people found increased opportunities for employment in the new mills and factories, but these were often under strict working conditions with long hours of labour dominated by a pace set by machines. However, harsh working conditions were prevalent long before the Industrial Revolution took place as well. Pre-industrial society was very static and often cruel—child labour, dirty living conditions and long working hours were just as prevalent before the Industrial Revolution.

FACTORIES & URBANIZATION:- Industrialisation led to the creation of the factory. Arguably the first was John Lombe's water-powered silk mill at Derby, operational by 1721. However, the rise of the factory came somewhat later when cotton spinning was mechanised.

The factory system was largely responsible for the rise of the modern city, as large numbers of workers migrated into the cities in search of employment in the factories. Nowhere was this better illustrated than the mills and associated industries of Manchester, nicknamed "Cottonopolis", and arguably the world's first industrial city. For much of the 19th century, production was done in small mills, which were typically water-powered and built to serve local needs. Later each factory would have its own steam engine and a chimney to give an efficient draft through its boiler.

The transition to industrialisation was not without difficulty. For example, a group of English workers known as Luddites formed to protest against industrialisation and sometimes sabotaged factories.

In other industries the transition to factory production was not so divisive. Some industrialists themselves tried to improve factory and living conditions for their workers. One of the earliest such reformers was Robert Owen, known for his pioneering efforts in improving conditions for workers at the New Lanark mills, and often regarded as one of the key thinkers of the early socialist movement.

By 1746, an integrated brass mill was working at Warmley near Bristol. Raw material went in at one end, was smelted into brass and was turned into pans, pins, wire, and other goods. Housing was provided for workers on site. Josiah Wedgwood and Matthew Boulton were other prominent early industrialists, who employed the factory system.

The Industrial Revolution led to a population increase, but the chance of surviving childhood did not improve throughout the industrial revolution (although infant mortality rates were improved markedly). There was still limited opportunity for education, and children were expected to work. Employers could pay a child less than an adult even though their productivity was comparable; there was no need for strength to operate an industrial machine, and since the industrial system was completely new there were no experienced adult labourers. This made child labour the labour of choice for manufacturing in the early phases of the Industrial Revolution between the 18th and 19th centuries.

Child labour had existed before the Industrial Revolution, but with the increase in population and education it became more visible. Before the passing of laws protecting children, many were forced to work in terrible conditions for much lower pay than their elders.

Reports were written detailing some of the abuses, particularly in the coal mines and textile factories and these helped to popularise the children's plight. The public outcry, especially among the upper and middle classes, helped stir change in the young workers' welfare.

Politicians and the government tried to limit child labour by law, but factory owners resisted; some felt that they were aiding the poor by giving their children money to buy food to avoid starvation, and others simply welcomed the cheap labour. In 1833 and 1844, the first general laws against child labour, the Factory Acts, were passed in England: Children younger than nine were not allowed to work, children were not permitted to work at night, and the work day of youth under the age of 18 was limited to twelve hours. Factory inspectors supervised the execution of the law. About ten years later, the employment of children and women in mining was forbidden. These laws decreased the number of child labourers; however, child labour remained in Europe up to the 20th century

Luddites

The rapid industrialisation of the English economy cost many craft workers their jobs. The textile industry in particular industrialised early, and many weavers found themselves suddenly unemployed since they could no longer compete with machines which only required relatively limited (and unskilled) labour to produce more cloth than a single weaver. Many such unemployed workers, weavers and others, turned their animosity towards the machines that had taken their jobs and began destroying factories and machinery. These attackers became known as Luddites, supposedly followers of Ned Ludd, a folklore figure. The first attacks of the Luddite movement began in 1811. The Luddites rapidly gained popularity, and the British government had to take drastic measures to protect industry.

Organization of labour (http://en.wikipedia.org/wiki/Industrial_Revolution)

The Industrial Revolution concentrated labour into mills, factories and mines, thus facilitating the organisation of combinations or trade unions to help advance the interests of working people. The power of a union could demand better terms by withdrawing all labour and causing a consequent cessation of production. Employers had to decide between giving in to the union demands at a cost to themselves or suffer the cost of the lost production. Skilled workers were hard to replace, and these were the first groups to successfully advance their conditions through this kind of bargaining.

The main method the unions used to effect change was strike action. Many strikes were painful events for both sides, the unions and the management. In England, the Combination Act forbade workers to form any kind of trade union from 1799 until its repeal in 1824. Even after this, unions were still severely restricted.

In the 1830s and 1840s the Chartist movement was the first large scale organised working class political movement which campaigned for political equality and social justice. Its Charter of reforms received over three million signatures but was rejected by Parliament without consideration.

Working people also formed friendly societies and co-operative societies as mutual support groups against times of economic hardship. Enlightened industrialists, such as Robert Owen also supported these organisations to improve the conditions of the working class.

Unions slowly overcame the legal restrictions on the right to strike. In 1842, a General Strike involving cotton workers and colliers was organized through the Chartist movement which stopped production across Great Britain.

Eventually effective political organisation for working people was achieved through the trades unions who, after the extensions of the franchise in 1867 and 1885, began to support socialist political parties that later merged to become the British Labour Party.

Other effects

The application of steam power to the industrial processes of printing supported a massive expansion of newspaper and popular book publishing, which reinforced rising literacy and demands for mass political participation.

During the Industrial Revolution, the life expectancy of children increased dramatically. The percentage of the children born in London who died before the age of five decreased from 74.5% in 1730 - 1749 to 31.8% in 1810 - 1829. Also, there was a significant increase in worker wages during the period 1813-1913.

Effects on Labor

http://encarta.msn.com/encyclopedia_761577952_2/Industrial_Revolution.html

The movement of people away from agriculture and into industrial cities brought great stresses to many people in the labor force. Women in households who had earned income from spinning found the new factories taking away their source of income. Traditional handloom weavers could no longer compete with the mechanized production of cloth.

Skilled laborers sometimes lost their jobs as new machines replaced them.

In the factories, people had to work long hours under harsh conditions, often with few rewards. Factory owners and managers paid the minimum amount necessary for a work force, often recruiting women and children to tend the machines because they could be hired for very low wages. Soon critics attacked this exploitation, particularly the use of child labor.

The nature of work changed as a result of division of labor, an idea important to the Industrial Revolution that called for dividing the production process into basic, individual tasks. Each worker would then perform one task, rather than a single worker doing the entire job. Such division of labor greatly improved productivity, but many of the simplified factory jobs were repetitive and boring. Workers also had to labor for many hours, often more than 12 hours a day, sometimes more than 14, and people worked six days a week. Factory workers faced strict rules and close supervision by managers and overseers. The clock ruled life in the mills.

By about the 1820s, income levels for most workers began to improve, and people adjusted to the different circumstances and conditions. By that time, Britain had changed forever. The economy was expanding at a rate that was more than twice the pace at which it had grown before the Industrial Revolution. Although vast differences existed between the rich and the poor, most of the population enjoyed some of the fruits of economic growth. The widespread poverty and constant threat of mass starvation that had haunted the pre-industrial age lessened in industrial Britain. Although the overall health and material

conditions of the populace clearly improved, critics continued to point to urban crowding and the harsh working conditions for many in the mills.

(d) The Eight Hour Day Movement & the Labor Day in Labor Law Development

Eight-hour day (http://en.wikipedia.org/wiki/Eight_hour_day)

The 8-hour day movement or 40-hour week movement (a.k.a. the Short-time movement) had its origins in the Industrial Revolution in Britain, where industrial production in large factories transformed working life and imposed long hours and poor working conditions. With working conditions unregulated, the health, welfare and morale of working people suffered. The exploitation of child labour was common. The working day could range from 10 hours up to 16 hours for six days a week.

Robert Owen had raised the demand for a ten-hour day as early as 1810, and instituted it in his socialist enterprise at New Lanark. As early as 1817 he had formulated the goal of the eight-hour day and coined the slogan Eight hours labour, Eight hours recreation, Eight hours rest. Women and children in England were granted the ten-hour day in 1847. French workers won the twelve-hour day after the February revolution of 1848. A shorter working day and improved working conditions was part of the general protests and agitation for Chartist reforms, and the early organization of trade unions.

The International Workingmen's Association took up the demand for an eight-hour day at its convention in Geneva in August 1866 declaring The legal limitation of the working day is a preliminary condition without which all further attempts at improvements and emancipation of the working class must prove abortive and The Congress proposes eight hours as the legal limit of the working day.

Although there were initial successes in achieving an eight-hour day in New Zealand and by the Australian labour movement for skilled workers in the 1840s and 1850s, most employed people had to wait to the early and mid twentieth century for the condition to be widely achieved through the industrialized world through legislative action.

The Eight hour day movement forms part of the early history for the celebration of Labour Day, and May Day in many nations and cultures.

Labour Day (http://en.wikipedia.org/wiki/Labour_Day)

Labour Day is an annual holiday celebrated all over the world that resulted from efforts of the labour union movement, to celebrate the economic and social achievements of workers.

The celebration of Labour Day has its origins in the eight hour day movement, which advocated eight hours for work, eight hours for recreation, and eight hours for rest. On 21 April 1856 Stonemasons and building workers on building sites around Melbourne, Australia, stopped work and marched from the University of Melbourne to Parliament House to achieve an eight hour day. Their direct action protest was a success, and they are noted as the first organized workers in the world to achieve an eight hour day with no loss of pay, which subsequently inspired the celebration of Labour Day and by May Day.

In New Zealand, groups of workers had achieved the 8 hour working day since the beginning of organised British settlement in 1840.

(e) History of ILO (http://nobelprize.org/nobel_prizes/peace/laureates/1969/labour-history.html)

The International Labour Organization was created in 1919 by Part XIII of the Versailles Peace Treaty ending World War I. It grew out of nineteenth-century labor and social movements which culminated in widespread demands for social justice and higher living standards for the world's working people. In 1946, after the demise of the League of Nations, the ILO became the first specialized agency associated with the United Nations. The original membership of forty-five countries in 1919 has grown to 121 in 1971.

The International Labour Organization (ILO) is a specialised agency of the United Nations family. It was founded in 1919 to bring together governments, employers and trade unions for united action in the cause of social justice and better living conditions everywhere. It is unique among the United Nations family in that governments, employers and trade unions have equal status in the ILO. The ILO promotes the development of independent employers and

workers organizations.

ILO Mandate (<http://www.ilocarib.org.tt/oldwww/misc/history.html>)

The mandate of the ILO is to:

- Set international labor standards in the form of Conventions and Recommendations;
- Provide technical assistance to ILO Constituents;
- Undertake research and dissemination of information.

The ILO was created in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.

The Constitution was drafted between January and April, 1919, by the Labor Commission set up by the Peace Conference, which first met in Paris and then in Versailles. The Commission, chaired by Samuel Gompers, head of the American Federation of Labor (AFL) in the United States, was composed of representatives from nine countries: Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, the United Kingdom and the United States. It resulted in a tripartite organization, the only one of its kind bringing together representatives of governments, employers and workers in its executive bodies.

The Constitution contained ideas tested within the International Association for Labor Legislation, founded in Basel in 1901. Advocacy for an international organization dealing with labor issues began in the nineteenth century, led by two industrialists, Robert Owen (1771-1853) of Wales and Daniel Legrand (1783-1859) of France.

The driving forces for ILO's creation arose from security, humanitarian, political and economic considerations. Summarizing them, the ILO Constitution's Preamble says the High Contracting Parties were 'moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world...'

There was keen appreciation of the importance of social justice in securing peace, against a background of exploitation of workers in the industrializing nations of that time. There was also increasing understanding of the world's economic interdependence and the need for cooperation to obtain similarity of working conditions in countries competing for markets. Reflecting these ideas, the Preamble states:

- Whereas universal and lasting peace can be established only if it is based upon social justice;
- And whereas conditions of labor exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required;
- Whereas also the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The areas of improvement listed in the Preamble remain relevant today, for example:

- Regulation of the hours of work including the establishment of a maximum working day and week;
- Regulation of labor supply, prevention of unemployment and provision of an adequate living wage;
- Protection of the worker against sickness, disease and injury arising out of his employment;
- Protection of children, young persons and women;
- Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
- Recognition of the principle of equal remuneration for work of equal value;
- Recognition of the principle of freedom of association;
- Organization of vocational and technical education, and other measures.

Early days

The ILO has made signal contributions to the world of work from its early days. The first International Labor Conference held in Washington in October 1919 adopted six International Labor Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night

work for young persons in industry.

The ILO was located in Geneva in the summer of 1920 with France's Albert Thomas as the first Director of the International Labor Office, which is the Organization's permanent Secretariat. Under his strong impetus, 16 International Labor Conventions and 18 Recommendations were adopted in less than two years.

1.5.2. Development of Labor Law in Ethiopia

For this part, please refer to our class discussion, as well as the additional note attached herewith entitled “The Dev’t of Labor Relations in Ethiopia”.

(a) Various Legislations on Employment/Labor Law in Ethiopia

- Slavery Abolition Proc. No.22/1942
- The Ministries Order No. 1/1943
- The Factories Proclamation No. 58/1944
- The 1960 Civil Code (Title XVI, Articles 2512 ff)
- Public Service Order no. 23/1961
- Public Service (Amendment) Order no. 28/1962
- Public Servants Regulation no. 1/1962
- Public Employment Administration Order No. 26/62
- Public Employment Administration Regulations Legal Notice 267/62
- Public Employment Administration Regulations Legal Notice 320/62
- Foreign Nationals Employment Regulations Legal Notice 295/64
- Labor Relations Proclamation No. 210/1963
- Minimum Labor Conditions Regulations Legal Notice 302/64
- Labor Inspection Service Order 37/64
- Labor Standards Proclamation No. 232/66
- Labor Proclamation No. 64/1975
- Labor Proclamation No. 42/93 (with its amendment Proclamation No. 88/1994)
- Private Employment Agency Proclamation No. 104/1998.
- Federal Civil Servants Proclamation no. 262/2002
- Labor Proclamation No. 377/03 (with its amendment Proclamation No. 494/2006).
- Federal Civil Servants Proc. No. 515/2007

(b) Historical Periods of Employment/Labor Relations in Ethiopia

For this part, please refer to our class discussion, as well as the additional note attached herewith entitled “The Dev’t of Labor Relations in Ethiopia”.

(c) Basic Characteristics of the Various Periods

For this part, please refer to our class discussion, as well as the additional note attached herewith entitled “The Dev’t of Labor Relations in Ethiopia”.

Additional Extract by way of Supplement for this Section.

(http://www.photius.com/countries/ethiopia/economy/ethiopia_economy_labor_unions.html)

The 1955 constitution guaranteed the right to form workers' associations. However, it was not until 1962 that the Ethiopian government issued the Labor Relations Decree, which authorized trade unions. In April 1963, the imperial authorities recognized the Confederation of Ethiopian Labor Unions (CELU), which represented twenty-two industrial labor groups. By 1973 CELU had 167 affiliates with approximately 80,000 members, which represented only about 30 percent of all eligible workers.

CELU never evolved into a national federation of unions. Instead, it remained an association of labor groups organized at the local level. The absence of a national constituency, coupled with other problems

such as corruption, embezzlement, election fraud, ethnic and regional discrimination, and inadequate finances, prevented CELU from challenging the status quo in the industrial sector. Nevertheless, CELU sponsored several labor protests and strikes during the first decade of its existence. After 1972 CELU became more militant as drought and famine caused the death of up to 200,000 people. The government responded by using force to crush labor protests, strikes, and demonstrations.

Although many of its members supported the overthrow of Haile Selassie, CELU was the first labor organization to reject the military junta and to demand the creation of a people's government. On May 19, 1975, the Derg temporarily closed CELU headquarters on the grounds that the union needed to be reorganized. Furthermore, the military authorities asserted that workers should elect their future leaders according to the aims and objectives of Ethiopian socialism. This order did not rescind traditional workers' rights, such as the right to organize freely, to strike, and to bargain collectively over wages and working conditions. Rather, it sought to control the political activities of the CELU leadership. As expected, CELU rejected these actions and continued to demand democratic changes and civilian rights. In January 1977, the Derg replaced CELU (abolished December 1975) with the All-Ethiopia Trade Union (AETU). The AETU had 1,341 local chapters, known as workers' associations, with a total membership of 287,000. The new union thus was twice as large as CELU had ever been. The government maintained that the AETU's purpose was to educate workers about the need to contribute their share to national development by increasing productivity and building socialism.

In 1978 the government replaced the AETU executive committee after charging it with political sabotage, abuse of authority, and failure to abide by the rules of democratic centralism. In 1982 a further restructuring of the AETU occurred when Addis Ababa issued the Trade Unions' Organization Proclamation. An uncompromising Marxist-Leninist document, this proclamation emphasized the need "to enable workers to discharge their historical responsibility in building the national economy by handling with care the instruments of production as their produce, and by enhancing the production and proper distribution of goods and services." A series of meetings and elections culminated in a national congress in June 1982, at which the government replaced the leadership of the AETU. In 1986 the government relabeled the AETU to Ethiopia Trade Union (ETU).

In 1983/84 the AETU claimed a membership of 313,434. The organization included nine industrial groups, the largest of which was manufacturing, which had accounted for 29.2 percent of the membership in 1982/83, followed by agriculture, forestry, and fishing with 26.6 percent, services with 15.1 percent, transportation with 8.1 percent, construction with 8.0 percent, trade with 6.2 percent, utilities with 3.7 percent, finance with 2.4 percent, and mining with 0.7 percent. A total of 35.6 percent of the members lived in Addis Ababa and another 18.0 percent in Shewa. Eritrea and Tigray accounted for no more than 7.5 percent of the total membership. By the late 1980s, the AETU had failed to regain the activist reputation its predecessors had won in the 1970s. According to one observer, this political quiescence probably indicated that the government had successfully co-opted the trade unions. Chapter-

Two

Individual Employment Relations

By Samuel

Asfaw

2.1. Formation of Employment Relations/Contract

A. General Background

To see general overview of contract formation for comparative analysis purpose, it will be advisable to review the relevant provisions of our Civil Code on this area. Article 1678 (Elements of Contract) provides that no valid contract shall exist unless (a) the parties are capable of contracting and give their consent sustainable at law; (b) the object of the contract is sufficiently defined and is possible and lawful; and (c) the contract is made in the form prescribed by law, if any.

Regarding capacity, according to Article 199(3) of the Code a minor may not perform juridical acts except in the cases provided by law. Article 198 defines "minor" as a person not attained the full age of 18 years. As to object, as per Articles 1714 - 1716 a contract shall be of no effect where object of the contract is not well defined with sufficient precision, impossible, unlawful, or immoral. With regard to Form Articles 1719(2) &(3) provide that

special forms can be required either by law or by the parties, and Article 1720(1) provides for effect of non-compliance of special form requirement as “where a special form is prescribed by law and not observed, then there shall be no contract but a mere draft of contract.”

Not only these general basic principles related to formation of contract, but there are also other relevant contract principles such as privity of contract, limitation of forced performance, agency principles, etc... which might be relevant to look in to while discussion issues in employment relations.

So, we will now see employment contract in line with the above general principles and thereby we can see the exceptions and deviations made by our Labor Law, and if so the rationales behind such exceptions and deviations.

B. Formation of Contract of Employment in our Labor Proclamation No. 377/03

Capacity: Article 89(2) of the Proclamation allows a person who attained 14 years old to engage in contract of employment. This is exception to the rule in the civil code, and the rationale behind is the prevailing socio-economic situation, i.e. there might be situations where minors under 18 years old will be employed and it is necessary to protect them. This exception is also in line with ILO Minimum Age Convention no. 138 (1973), which Ethiopia ratified, and it allows for employment of a minor up to 15 years old. However, this Convention exceptionally allows for developing countries to come up with their own laws to reduce the minimum age limit up to 14 years based on their own factual situations and after consultation with the concerned organs of employers and the workers.

Object: Regarding object of employment contract, Article 4(2) of the Proclamation provides that contract of employment shall be stipulated clearly and in such manner as that the parties are left with no uncertainty as to their rights and obligations. Besides, Article 4(4) prohibits the conclusion of an employment contract for the performance of unlawful and immoral activities. These two rules are in line with the general contract principles. However, two important issues might be raised: (1) since the Labor law does not provide for the effect of non-compliance of these rules, what will be the effect of not complying with these rules? Can we refer to the general contract principle of the Civil Code to see their effects? Can we apply the rule of Article 8 by analogy to protect the rights of the worker even in the case of such non-compliance? and (2) Article 4(4) does not apparently prohibit impossible activities unlike civil code Art.1715. Does such omission mean that an employment contract can be concluded for an impossible object?

Form:-Article 5 provides that unless otherwise provided by law, a contract of employment shall not be subject to any special form. “Unless otherwise provided by law” here refers to cases like apprenticeship contracts (Art. 48(3), agreement for probation (Art. 11(3)), etc... The rationale of the law for not requiring special form seems to be for the protection of the weaker party (i.e. the worker) because the effect of non-compliance to form requirement under Article 1720(1) is severe, i.e. non-existence of a valid contract.

However, the Proclamation under Article-6 provides some binding rules for contract to be made in writing. What does “subject to the provisions of the relevant law” mean in this article? Does that mean requirements like witnesses (Art. 1727(2) of the Civil Code), signature authentication before notary public (Art. 1728(3) of the Civil Code), etc...should be fulfilled? Article 6(4) on the other hand refers to only signature by contracting parties. How do you inter-relate these provisions? See also these provisions in line with Article-8 of the Labor Proclamation. What do you think is the rationale behind this latter provision of the law?

Even for contracts not-made in writing, Article-7(1) imposes an obligation on the employer to confirm the details of the employment in writing within 15 days period. See this rule in line with Article 8. On the other hand, sub-article (2) of Article-7 provides an exception to the principle of general contracts which states that “silence shall not amount to acceptance”, and imposes obligation on the worker to react within 15 days.

Contents of Employment Contract: The contents of employment should be as listed down under Arts. 4(3) and 6(1)-(4). The legal effect of non-compliance as to content of employment contract is provided under Article 8, i.e. non-compliance thereof shall not affect the worker. In this connection, Article 4(5) provides for the minimum working condition requirement and the rule is that contract of employment shall not lay down less favorable conditions for the employee than those provided for by law, collective agreement or work rules. Apparently, the law on this point does not clearly provide for a rule as to what will be the legal effect of deviating from this principle. However, it can

be logically argued that since the wording of Article 4(5) is mandatory it seems that an agreement deviating from the minimum conditions set by law or collective agreement or work rules will not have legal effect and thus the worker can challenge same at any point in time.

C. Formation of Contract of Employment in the Federal Civil Service Proc. No. 515/2007 (FCSP)

The Federal Civil Service Proclamation no. 515/2007 does not have any provision dealing with contract of employment. It seems from the overall legal framework of the Proclamation that employment terms and conditions of civil servants are standardized and uniform in all government institutions. So, since such terms and conditions of civil service will be as will be determined by government regulations and directives there is no need to make individual employment contract. But, a letter of probation appointment (Article 18(1) and confirmation of permanent appointment (Article 21) will be given to the civil servant, and thus we can consider these letters as reflecting the terms of the parties agreement.

Requirements for eligibility for civil servants is clearly provided under Article 14 of the Proclamation and these requirement are (1) age, 18 years old; (2) non-conviction crime on offenses of breach of trust, theft, or fraud; and (3) willingness to take oath of fidelity.

D. Duration of Employment Contract in the Two Legal Regimes

Types: there are four relevant types of durations in employment contract in our Labor Law:-

- 1 Indefinite period (Art.9).
- 2 Definite Period (Art. 10).
- 3 Piece Work (Art.10).
- 4 Probation Period (Art. 11(1)).

Indefinite Employment Contract: Contract of employment for indefinite period is by legal presumption (Art. 9). In this connection, the legal issue that might arise is with regard to burden of proof, i.e. who is responsible to prove his/her/its respective allegation? For example, let us take a worker who alleges that his/her employment contract is for indefinite period while he/she has already signed an employment contract for definite period. Do you think he/she should prove their allegation? Why? According to the general principle of evidence law, a person who alleges a fact will have a burden of proof to prove his/her allegation. In view of this general principle, we can say that the worker should prove that he/she has been employed for indefinite period or that the job for which he/she is employed has a continuity nature. However, the drafting of the rules in our Labor Law seem to dictate otherwise, i.e. Article 9 of the Proclamation provides a legal presumption stating that “any contract of employment shall be deemed to have been concluded for an indefinite period except for those provided for under Article 10 hereunder.” So, according to this legal presumption any contract of employment is presumed to be made for an indefinite period and thus the person who alleges this fact will not be expected to prove it as it is already presumed to be so by law. On the contrary, the person who alleges that the contract of employment is for definite period or for piece work is expected to prove this fact (see the case of Ethiopian Telecommunication vs. W/rt. Tigist Worku, Cassation Supreme Court, File no. 11924).

Definite Employment Contract: The law before Labor Proc. No. 42/93, i.e. Labor Proc. No. 64/75, did not provide list of grounds for which employment for definite period is allowed. Art. 8 (2) of the proclamation simply provides that if the work is of a continuous nature, the contract made for a definite period shall be deemed (assumed) to have been made for an indefinite period. Since there was no guideline/parameter to determine as to whether a work has a continuous nature or not, employers are said to have abused this provision to engage workers on definite period basis for a work of continuous nature. That is why Proc. No. 42/93 came with listed and exhaustive grounds for definite/piece work employment contracts so as restrict employers from hiring on definite period basis for a job having a continuous nature.

There are arguments for and against definite period employment contract. Those who argue in favor of definite period employment contract raise the issues of flexibility for the employer to plan according to seasonal work fluctuations & market situations, employees will have job security for definite period, employers will have guaranteed services for the definite period, employees will have various career developments, etc.... On the other

hand, those who argue against definite period employment contract raise these issues like abuse by employers to engage workers continuously for definite period, employees on definite period tend to be less likely to join labor unions (see attached article on Definite Contracts for detail reference).

When we compare Labor Proc. No. 377/03 with 42/93 in terms of the list of grounds, there are two additional grounds for definite employment contract, i.e. Article 10(1)(h) & (i) with legal limitations for maximum of 45 days and without any repetition/re-employment (Art. 10(2)). These two additional grounds are incorporated due to the demands of employers, but it seems that the 45 days period is not still satisfactory for the intended purposes.

Piece Work: this is not strictly speaking a period because there is no as such a specified or definite period to be set for piece works. This type of contract of employment is acknowledged in the law under Article 10(1) (a), where it is provided that contract of employment can be concluded for piecework in the case of the performance of specified piece work. The important term in this provision is that the piece work to be done by the worker should be specified and it is not relevant for a period to be fixed here. So, as long as there is a specified piece work, then the contract of employment will exist until the time the piece work is completed (see Article 24(1)).

Probation Period: the purpose is for testing the worker's suitability for the post (Art. 11(1)). The form should be in writing (Art. 11(3)). If the agreement is not made in writing as required by relevant law, then it can not be considered as a valid agreement and thus the matter will be interpreted in the worker's favor as if there is no probation period agreement. This is for the protection of the worker. So, it is always necessary to make sure that probation period has been agreed formally in writing, with minimum of 2 witnesses. There are two legal limitations; namely, (1) for maximum period of 45 days (Art. 11(3)) and (2) prohibition of re-employment on probation basis for the same job. Here a legal issue might arise as to what the law means by "same job"? Is it referring to the job description of the job or to the title? Is it referring to absolutely the same job or to generally similar job? Example: an attorney who had been employed for debt recovery section of a Bank, can he/she be re-employed on probation basis as an attorney for general civil litigation section, which deals with cases wherein the Bank is a defendant?

Article 11(4) provides that unless otherwise provided by law or collective agreement or work rules, a worker on probation will have same rights and obligations. So, the law or work rules or collective agreement can provide that the worker has no same rights and obligations like other workers. Example, Article 39 provides that for a worker to be entitled for severance pay he/she shall complete probation period; Art. 85(1) provides that a worker will have sick leave right only after completing his/her probation period; etc.... Similarly, collective agreement or work rules may put similar restrictions.

Termination without notice and without severance pay and compensation by the employer seems to be restricted with a proof of unfitness for the job (Art. 11(5)) whereas termination by the worker without notice and without any condition (Art. 11(6)). A contrario reading of Article 11(5) seems to imply that the employer can however terminate the probation period contract with notice without the need to prove the unfitness of the worker for the job. However, when we read Article 35(1) (a), which provides that notice is to be given for a worker who has completed his probation period, it also seems that the lawmaker is intentionally prohibiting the employer from terminating a worker on probation period with notice. Do you agree with this line of argument? Why? Why not?

Art. 11(7) provides for the effect of expiry of probation period as establishing employment contract effective retroactively from the beginning of the probation period.

Duration of employment under Civil Service Regime:-As per the Federal Civil Service Proclamation, there are the following three types of durations of appointment:-

- (1) Probation appointment (Articles 18(1) and 20):- as per these provisions probation in the civil service will be for six months period with possible extension of same for additional three months period.
- (2) Permanent appointment (Article 21):- After the expiry of the probation period and upon satisfactory performance result, the civil servant will be given a letter of permanent appointment. If there is a failure to carry out his/her performance evaluation, then same shall be conducted within one month period. But, the law is silent about the effect of a failure to finish the performance of evaluation within this one month period. Can we apply rule of analogy by

borrowing the rule of Labor Law under Article 11(7)?

- (3) Temporary employment (Article 22):- The rule provided in the FCSP is that a general principle which says that a government institution may appoint a temporary civil servant only for a job which is not of permanent nature. The same provision provides an exception to this general principle and allows a government institution to appoint a temporary civil servant whenever circumstances require. However, there is no any guideline as to what situations can fulfill this criterion of “whenever circumstances require”. Because of this, we can say that compared to similar rule provided in the Labor Law regime, the rule in this FCSP regime seems to be more flexible to government institutions to hire temporary employees as flexibly as they wish. Don’t you think that for stronger reasons the business sector does also need such flexibility?

2.2. Rights and Obligations of the Parties of Employment Relations

A. General

Proclamation No. 377/2003 sets out certain rights and obligations for both employers and employees in relation to their contract of employment. So before exploring on this area, it is important to have the meanings of the words 'rights' and 'obligations'. Taking its literal or dictionary meaning the word "Right" means "a just, proper or legal claim; a thing that one is entitled to do or have by law." On the other hand, the word "Obligation" is also defined as "a law, a promise, an influence, etc... that forces one to do something; a duty." The technical or legal meanings of these words is not that much different from the definitions set out hereinabove, and thus we can confine ourselves on these meanings. However, you are encouraged to further refer to Black's Law Dictionary for the detailed meanings of these legal terms.

B. Corresponding and Reciprocal Nature of Rights and Obligations

The issues whether rights and obligations are always corresponding and reciprocal in nature have been philosophical debates for years. Some philosophers take them to be two sides of the same coin, but some other take a different stand. In relation to employment matters, we need to critically think about the relationship between rights and obligations of employees on the one hand and that of the employer on the other hand in the following two perspectives.

- i) Corresponding Nature:- Do rights and obligations always correspond, i.e. go hand in hand, or are there times when we have one but not the other? If an employee has a right, does that always mean that his/her employer has an obligation towards the employee? If an employee has an obligation, then does the employer necessarily have a corresponding right? Just for academic illustration purpose, we can identify the following corresponding rights and obligations:-

- 1 Right for wage vs. Obligation to Pay
- 2 Obligation to work vs. Right to demand work
- 3 Obligation to provide safety equipments vs. Right to demand them
- 4 Right to get certificate of service vs. Obligation to give it
- 5 Obligation to defray medical costs vs. Right to claim it.

Is this always true? Or are there cases when one of the parties might have an obligation to the other party without that other party having rights to what is owed? Can you come up with any such kind of scenario under Ethiopian Labor Law context? Go through the provisions of the current Labor Proclamation and try to find out any right or obligation that stand alone, i.e. without placing corresponding obligation or right to the other?

- ii) Reciprocal Nature:-When one of the parties has a right for some thing does that always mean that the other party has also something to claim from that party in its place? Conversely, if one of the parties has some obligation to do, does this always mean that the other party has also an obligation to perform in its place? This is what is called reciprocal nature of rights and obligations? Just for academic illustration purpose, we can identify the following reciprocal rights and obligations:-

- 6 Right for wage vs. Obligation to work
- 7 Obligation to work vs. Obligation to pay
- 8 Obligation to provide safety equipments vs. Obligation to use them
- 9 Right to get certificate of service vs. Obligation to work
- 10 To defray medical costs (Art. 12(5) vs. Obligation under Art. 14(2) (d), etc...

Is this always true? Or are there cases when one of the parties might have an obligation to the other party without that other party to be obliged to do something in its place? Can you come up with any such kind of scenario under Ethiopian Labor Law context? Go through the provisions of the Labor Proclamations and try to find out any right or obligation that stands alone, i.e. without placing reciprocal obligation or right to the other? For example, the employer's obligation to keep register and records under Articles 12(6) and 12(9), do you see any reciprocal obligation from the worker's side?

C. Sources of Employment Rights and Obligations

The sources of rights and obligations of employment relations can be either the law itself or collective agreements or work rules. Refer to Articles 2(5) & (6), 4(2), 12 (“...in addition to special stipulations in the contract of employment...”), etc...The only limitation on the validity of contract of employment as a source of rights and obligations is as stipulated under Article 4(5) of the Labor Proclamation, i.e. it shall not lay down less favorable conditions for the employee than those provided for by law, collective agreement, or work rules. Similar limitation is also made on collective agreements under Article 133(1).

D. Rights and Obligations in the Two Legal Regimes

There is no a separate or dedicated Part/Section in the Labor proclamation that deals on Rights of Employees and Employers. The rights of employees and employers are found through out the proclamation here and there. On the other hand, however, there is a dedicated Section in Part-Two of the Labor Proclamation which deals about the rights and obligations of both the Employer and Workers (see Article 12 on the Obligations of the Employer and Article 13 on the Obligations of Workers). However, we should keep in mind that these are not the only obligations of the parties in the law, because just like the rights of the parties we also find other obligations of the parties here and there through out the proclamation. For example, you can see the obligations of the parties under Articles 92-94 regarding safety matters. The fact that the law identifies these obligations and puts them in a separate Section shows either the generality or specific nature of the obligations or the emphasis the law gives to these obligations. Besides, the law has also given special emphasis under Article 14 on some Unlawful Activities which both the employer and the workers shall not commit. These are categories of obligations provided in the negative form, i.e. in the “not to do” form.

In the FCSP: - the treatment of rights and obligations in the civil service law regime is not that much different from the Labor law regime. The rights and obligations of the civil servant and the government institution can be found scattered here and there in the Proclamation, but some selected obligations of the parties have been provided under dedicated section or provision. For example, Articles 61-65 of the Proclamation deal about the various types of obligations and responsibilities imposed on a civil servant. The nature of these obligations might be different from those obligations imposed on employees under Labor law regime (e.g. obligation to be loyal to the public and to the constitution, etc...). This is due to the nature of the appointment of the employee for serving the public at large. Obligations related to safety matters (under Article 48(2)) are similar in nature with those obligations of employees under the labor law regime. Unlike the labor law regime, there are no general obligations or prohibitions imposed on government institutions, except such specific obligations related with safety measures (Art. 48(1)).

Assignment:-Read all the provisions under Articles 12-14 and Articles 92-94 of the Labor Proclamation no. 377/2003; and also Articles 61-65 & 48 of the FCSP no. 515/2007.

E. Sanctions for Not Respecting Rights and Obligations

Sanctions for not respecting the rights and obligations provided in the law might be either administrative or civil action or criminal action depending on nature of the rights and obligations violated.

Examples:-

- i. Administrative action:-dismissal or termination per Article 27(1) (i) for violations of obligations under Article 14(2).
- ii. Civil action:-court action to claim wage or certificate of service, etc...
- iii. Penal action: - as per Articles 184(2) (a) &(c) for violations of obligations under Articles 12(4) and 14(1) of the Proclamations.

From the types of actions and from the degree of penalties imposed on violations, we can see that different obligations will have different consequences and that the law gives more significance to some of the obligations. For example, see the different penalties imposed under Articles 184(1) (c) and 184(2) (a) of the Proclamation for the violation of different types of obligations.

2.3. Modification of Contract of Employment

As to what can be amended or modified in employment contract is clearly specified under Article-15, i.e. “conditions of a contract of employment that are not determined under this Proclamation”. So, those conditions that are already determined by the law can not be modified or amended. Example, the obligations of the employer regarding safety matters can not be contractually transferred to the worker.

How can a contract of employment be modified or amended? What are the modalities of modifications? According to Article 15 of the Proclamation, there are three modalities; namely,

- (a) by collective agreement;
- (b) by work rules issued in accordance with the Proclamation (see definition of ‘work rules’ under Art. 2(5)), and procedures for issuance of Work Rules under Art. 129 (4); and
- (c) by written agreement of the parties. This last modality seems to be applicable for individual employment relations.

From the above list, it seems that the modalities for modification of employment contract are exhaustive and even a new law can not automatically modify or amend an employment contract if the new law is unfavorable to the worker(s). For example, let us say a new law is promulgated establishing 9 hours as maximum working hours per day, and let us say that a collective agreement has been already in place for 8 hours per day as per previous law. So, since the new law is unfavorable to workers, it will not modify the agreement because since the agreement is favorable it will prevail (see Article 134(2)). On the other hand, however, if the new law provides 7 hours a maximum working hours, then in this case the collective agreement will be unfavorable and the new law will be favorable to the workers and thus the law shall prevail by modifying the agreement. So, even though Article 15 does not include “law” as a modality for modification of employment contract, we can see from the above discussion that there are scenarios where a new law modifies employment contract.

Article 16 provides one important exception to the principle of privity in law of contracts and states that amalgamation, division, or transfer will not modify a contract of employment. The rationale behind this exception rule is for protection of the worker. But how do you see this rule vis-à-vis the principle of privity of contract, which states that a contract shall bind only contracting parties? Do you agree with the lawmaker to make such a big deviation from the basic principle of contract laws? Do you think it is fair to bind Employer-B for apparently uneconomical or unreasonable contract of employment made by Employer-A? What changes do you suggest on this area of our law?

The other important issue that can be raised will be with relation to transformation of undertakings from one legal frame work to another, for example from Public Enterprise to Civil Service Agency. What will be the fate of contract of employment already made with the public enterprise? As you well know the work conditions of employees in the business sector and those in the civil service regime are not the same. Do you think Article-16 also covers such scenarios? What do you suggest?

In the FCSP regime, there is no similar rule or arrangement for the modification of employment contract.

2.4. Suspension of Employment Contract

Definition: “Suspension” refers to temporary suspension of rights and obligations (Art. 17(1)). Suspension normally results in full legal interruption of rights and obligations, i.e. (1) the worker’s obligation to work, and (2) the employer’s obligation to pay wage, other benefits and allowances (Art. 17(2)). However, the law under Article 17(2) allows also for partial interruption of rights to be set by law or by collective agreement. So, a collective agreement can be made, for example as per Article 27(4), for a suspension of a worker from work but with pay and other benefits. This is partial interruption because only the worker’s obligation to work is suspended.

Grounds of Suspension:-

- 1 Legal Suspension: here there are exhaustive legal grounds under Art 18;
- 2 Contractual Suspension: (a) suspension for the purpose of investigation of offense as per Art. 27(4) and the details of the conditions of the suspension shall be agreed by collective agreement; and (b) suspension as penalty for offenses as agreed in collective agreement.

Regarding suspension as penalty for offenses, we can raise an issue as to whether it is possible or not to agree on suspension for penalty purpose? Can you see any legal restrictions for such agreement? See this issue in line with Articles 17(1), 18(1), 59(1), 128, and 129(3). One may argue by saying that the law allows a collective agreement to determine discipline matters and also the law allows deduction from wage as per collective agreement, and so for a stronger reason the collective agreement can stipulate suspension by way of penalty which has lesser on the employee. To the contrary, one may also counter argue by saying that suspension from has a greater impact on the worker than deduction of wage (“fine”) and since the law is clear on grounds of suspension, we can not impose suspension by way of penalty. Read the relevant provisions and try to establish your own position on this matter.

Duty to Report: Article 19 imposes a reporting duty on the MoLSA only for two suspension cases as provided under Articles 17(5) and (6). Non-compliance to this obligation has a criminal consequence as provided under Art. 184(1) (c). The roles of MoLSA are provided under Articles 20 and 21 as follows:-

- 1 Determination of grounds for suspension within 3 days (Art. 20(1)).

Issuance of order for resumption of the work and for back-payment of wage (Art. 20(2)).

- 3 Fixing duration of suspension up to maximum of 90 days. (Art. 21(1)).

- 4 Deciding (?) on the fact that the employer can not resume its activities within 90 days period (Art. 21(2)).

Under Article 21(2), it is not clear as to what the Ministry can do after its conviction of the employer's incapacity to resume its operation within 90 days. So, some issues might arise like whether the Ministry also decides on the payment of severance pay and compensation to the worker? But, since the provision only says that "the worker shall be entitled to the benefits specified under Article 39 and 44", it would be safe to conclude that the Ministry's role will be to decide on its conviction of the employer's incapacity, and in such event the worker will be automatically entitled for the specified benefits.

Another important issue to be raised on Articles 21 (1) and (2) is whether the Ministry's decisions as per these provisions are final or appeal able? When one sees Article 20(3) which gives the aggrieved party the right to appeal against the decision of the Ministry and when one misses such similar remedial provision under Article 21, then one might be tempted to conclude that in cases of the Ministry's decisions as per Articles 21(1) and (2), the Ministry's decisions are final and non-appeal able. Such argument can be more strengthened by the provision of Article 139(1) (d), which gives the power to regional appellate courts to hear appeals submitted against the decision of the Ministry in accordance with sub-article 20(3). We can not find any similar power given to courts to hear appeal against the Ministry's decision/order under articles 21 (1) & (2)

However, this needs a close look in to the inherent powers of the executive body as well as that of the judiciary organ, in which case one can to the contrary argue by saying that there can not be a limitation against an aggrieved party from going to a court of law. Of course, this latter assertion will make Articles 20(3) and 139(1) (d) superfluous and just problem-makers. Do you agree with this position? What do you recommend to clarify the issue?

In the FSCP, the ground for suspension is provided only in relation to offense and for the purpose of investigation process. Article 70 of the FCSP clearly provides four grounds for which suspension measure can be taken. The three basic departures of the FCSP from the labor law regime with regard to suspension are: (1) no similar grounds of suspension as provided under Article 18 of the labor law; (2) suspension for investigation purpose is a legal right for a government institution, not contractual right; (3) the suspension period under FCSP is for 2 months.

2.5. Termination of Employment Under the Two Legal Regimes

Types of Termination under Labor Proc. 377/03: According to Article 23(1) there are four types of terminations; namely, (a) termination by the employer, (b) termination by the employee, (c) termination by law, and (d) termination by agreement.

Termination by Law: Article 24 exhaustively lists down the following five legal grounds the occurrence of which will by operation of law terminate contract of employment:-

- 1 Expiry of Definite period/completion of piece of work
- 2 Death of worker
- 3 Retirement of the worker per law
- 4 Ceasing of operation permanently for any cause

5 Worker's partial or total permanent incapacity and inability to work

Here, it is again important to note that Article 23(2) clearly spells out that amalgamation, division, or transfer of ownership of an undertaking shall not have the effect of terminating a contract of employment. The issue of privity of contract can also be raised here and you can question the fairness of the law to oblige the new owner to continue with workers employed by previous owner. Do you agree with the rationale of the law? Why? Why not?

Termination by Agreement: Article 25 of the Proclamation provides two conditions for the validity of Termination Agreement:-

- 1 Requirement in writing (Art. 25(2)):- It is important to note here that this legal requirement is only for the agreement to bind the worker; otherwise, it is clear from the wordings of the provision that the employer can be bound even by oral agreements. As a legal requirement in writing it shall fulfill all the necessary elements of written form in the civil code general contract provisions.

No legal effect for waiver by worker of his/her legal rights (Art.25(1)):-This rule deviates from the general contract principle of freedom of contract of the parties and it seems that unqualifiedly the provision makes any minor waiver invalid even if made for a better and favorable exchange made to the employee. Example: if a worker entitled for Birr 10,000.00 by way of severance pay agrees for termination of his/her employment contract provided that the employer pays him/her Birr 100,000.00 by way of separation package and also agrees that he/she will not claim any other right what so ever, then it seems that the latter part of the agreement is invalid. And so, according to Article 25(1) the worker seems to be entitled to further claim his severance pay of Birr 10,000.00. Do you think this is fair? What do you suggest to make the provision equally protective to both parties?

It is important to note the difference between the legal effects of the two provisions above, i.e. Art. 25(1) makes invalid only the waiver provision of the termination agreement whereas Article 25(2) makes the whole agreement invalid so long as the agreement is not made in writing.

Termination by Employer: The provisions governing termination by the employer are from Article 26 up to Article 29. The major legitimate grounds for termination are categorized in to three main categories and are provided under Article 26(1) as follows:-

- The worker's conduct.
- Capacity to do the work.
- Organizational or operational requirements of the undertaking.

Depending on the type of category of termination, the termination can be either with notice for the latter two categories above whereas or without notice for the former category above.

- 1 Illegitimate grounds (26(2)): This provision deals with the list of illegitimate grounds of termination, and from the list one can easily see that the listed items are related with the violation of basic rights of the worker. As a result it seems that the legal consequences of violating this provision are different from the other types of unlawful terminations, i.e. terminations which are not made contrary to Art. 26(2) but are unlawful because they are made to the contrary of Articles 27, 28 or 29. The consequences of these unlawful terminations are reinstatement, compensation, severance pay, etc..., which are purely civil remedies. However, violating Article 26(2) has also criminal consequence as provided under Article 184(2) (d) of the Proclamation.

However, one may query as to whether Article 184(2)(c), which refers to the violation of the provisions of Article 14(1) of the Proclamation, does also impliedly include other unlawful terminations because Article 14(1)(c) also deals with termination of employment contract contrary to the provisions of the Proclamation? This might be a logical query, but the answer for this would be that since Article 184(2) (d) is a specific provision related to termination whereas Article 184(2) (c) is a general one, then based on the interpretation rule of the specific prevails over the general we can safely argue that the intention of the lawmaker by doing so is to exclude all other unlawful terminations from the ambit of criminal liability. It is also important to evaluate this in terms of the state of mind of the employer- in case of unlawful

terminations the employer is either taking disciplinary measure or taking termination measure for loss of capacity or taking the measure of reduction of force with the belief that the legal requirements for such actions are fulfilled-no intention of commission of an offense! But in case of illegitimate terminations against Article 26(2) (though difficult for proof) the employer is violating the rights of the worker intentionally! If all unlawful terminations are to be considered as a criminal offense, then given the volume of unlawful termination being decided by labor courts you can imagine how employers will be in problem.

- 2 Termination with out notice: Art. 27(1) provides the grounds for summary dismissal as it entitles the employer to terminate without notice. The important phrase in this provision is the one which says “unless otherwise determined by a collective agreement” and this phrase as well as sub-article 27(1) (k) give the employer and the Labor Union the right to come up with similar grounds of terminations but favorable ones (absence for 7 consecutive working days) or other new grounds of terminations (example: for a pilot missing four scheduled flights).

This provision is an advanced one compared to Article 14(1) of Proclamation no. 64/1975 which limits the termination rights of the employer only to the exhaustive grounds provided by the law-no option to agree other grounds of termination by collective agreement!

How do you reconcile the phrase ‘without notice’ in Article 27(1) with the phrase ‘written notice’ in Article 27(2)? The Amharic version of the provision correctly denotes the intention of the lawmaker and thus the phrase ‘written notice’ in the latter provision should be understood just as a written communication or notification, rather than as advance notice requirement.

Article 27(3) provides for 30 working days prescription period, which is a new addition to Proclamation no. 377/03 and the rationale behind seems to prevent any abuse of power or biased actions against the worker. The important phrase in this provision is “from the date the employer knows the ground for termination”. So, what is important is not the date of the commission of the offense, but the date when the employer knows the ground for termination. Here, it also important to note that it is not the mere information or report that matters, but the investigated result clearly letting the employer to know that there is a ground for termination.

Another new provision for Proclamation no. 377/03 is Article 27(4), which permits the parties to incorporate a provision in the collective agreement for the “conditions” (not “grounds”) of suspension before terminating a worker. This is a mere permissive provision that unless the parties agree otherwise the employer will not have a legal right to suspend a worker on the pretext of an investigation. The rationale behind this provision seems that according to Article 17 suspension will have automatically the effect of suspending wage and thus the lawmaker does not want to let the employer have legal right for suspension and this is in effect to force the employer submit for some conditions like payment of wage, restricted conditions, continuity of benefits, etc... Previously under Proclamation no. 42/93 employers tend to suspend workers for investigation purpose with allegation that if they have a right to terminate a worker for an offense, they will have for a stronger reason the right to suspend him/her for investigation purpose- they further argue that such measure is even for the protection of the worker and thus can not be to the contrary of the law. However, courts did not accept such justifications.

How about under Proclamation no. 377/03, Art. 27(4), can we say that so long as the employer pays wage, benefits, allowances, and limits the period to 30 working days, the law is not against suspension for investigation purpose?

- 3 Termination with notice (Art.28):- Basically there are 2 categories of grounds for termination with notice by the employer; namely, capacity and reduction of work force (redundancy).
 - i. Capacity and Situations affecting the worker (Art. 28(1)):- provides two categories of cases about loss of capacity and situations affecting the worker:-
 - ❖ Loss of Capacity
 - Manifest Loss of capacity or lack of skill of the worker (para.(a));

- Health or disability and inability to carry out obligation permanently (para.(b));

❖ Situations affecting the worker

- 1 Unwillingness to move/transfer to a place where the undertaking moves (para.(c)); and
- 2 Cancellation of worker's post for good cause & no possibility of transfer (para.(a));

Here, we can raise the following legal issues: How can we show that the person really loses capacity or skill under article 28(1) (a) to distinguish same from article 27(1) (e), where the worker has the potential? Is it possible to show this? What is the difference between article 28(1) (b) and article 24(5)? Should the health problem under article 28(1) (b) approved by board? Is it fair for the undertaking to give notice in the case of article 28(1) (c)? Why? What constitutes good cause under article 28(1) (d)?

ii. Reduction of work force:

- 4 There are basically four scenarios/cases enabling an employer to undertake reduction of workforce (Art. 28(2) & 28(3)):-

- 1 Any event entailing direct and permanent cessation of worker's activities (partial or whole);
- 2 Fall in demand resulting in the reduction of volume of work and profit;
- 3 Altering work methods or introducing new technology to raise productivity; and
- 4 Cancellation of post affecting at least 10% of the workers.

- 5 Definition of reduction of work force (Art. 29(1)):- The important legal issue that may arise from the provisions of Articles 29(1) & (2) is as to whether the term "workers" therein does also include managerial employees for the purpose of applying reduction of work force. Example: an employer had 100 workers, out of which 10 are managerial employees, and due to any of the reasons under Article 28(2) and (3), the employer decided to reduce 10 workers, but out of them one is to be a managerial employee. The Labor Union argues that the legal requirement of 10% is not fulfilled as the employer is reducing 9 non-managerial employees. On the other hand, the employer argues that the term "workers" under Article 29(1) and (2) includes managerial employees. What will be your judgment if the case is submitted to you? Try to analyze this issue in line with the definition of "worker" in the proclamation and other relevant provisions.

- 6 Legal procedural requirements (Art. 29(3)):-

- Consultation with union/representative
- Rules of priority

In view of the clarity and exhaustive list of priority provided by the law, what do you think will be the necessity of consultation with the Union? Do you think this provision allows the employer and the Union to negotiate on this matter? Try to see this issue in line with Article 129(3) of the Proclamation. What do you think is the exact intention of the legislator on this matter?

- 7 Exception for construction work (Art. 30):- normal decrease in volume of construction work due to successive completion.

Termination by Worker (Art. 31 & 32):

- 8 With 30 days notice (art. 31).
- 9 Sanction for not complying with notice requirement (art. 45):- maximum of 30 days wages of the worker.
- 10 With out notice (art. 32(1)):- In some jurisdictions, they call such kind of termination as Constructive dismissal because the worker is forced to terminate his/her employment relation due to the employer's commission or inaction affecting the worker's basic rights. There are basically 3 scenarios/cases acknowledged by our Labor Proclamation as entitling the worker for termination without notice:-

- 1 Commission of an act against the worker contrary to his dignity, moral, or any other act punishable under the penal code;
- 2 Employer's failure to act to avert imminent danger threatening worker's safety or health after being informed;
- 3 Repeated failure of the employer to fulfill its basic obligations.

11 Obligation to inform (art. 32(2)).

12 Period of limitation (Art. 33):- after 15 working days from the date on which the act occurred or ceased to exist.

Notice of Termination (Arts. 34-35):

- 1 In writing (art. 34(1)).
- 2 Specification of reason and effective date of termination (art. 34(1)).
- 3 The rule is to give notice to the worker in person (art. 34(2)).
- 4 Exception to the rule-affixing the notice on notice board in the work place of the worker for 10 consecutive days (Art. 34(2)).
- 5 To employer/Representative/office (art. 34(3)).
- 6 Restriction of giving termination notice during suspension period (art. 34(4)):-The language of the English version of 34(4) seems to be erroneous and that of the Amharic version is the correct one. What do you think is the rationale behind this restriction? It is important to note that this restriction does not seem to apply for termination without notice cases. So, if an employer has learnt that a worker has committed an offense which entails termination, then it can terminate him/her even if they are under suspension period as per art. 17. But what is the logic behind the law to prohibit an employer from terminating a worker with notice while it does not have similar prohibition for cases of termination without notice?
- 7 Notice period (art. 35):-
 - According to service (art. 35(1)).
 - For definite period (art. 35(2)):- to be agreed in the contract, but it seems that in the absence of such agreement, the rule under art. 35(1) shall also apply for definite period contract.
 - Commencement of notice period (art. 35(3)):- starting from next working day.
- 8 Obligations during notice period (art. 35(4)):- shall continue. This provisions though referring only to obligations, however, due to the very reciprocal or corresponding nature rights and obligations the provision also applies to rights also.

Effects & Consequences of Termination:-Basically, there are five major legal effects and consequences of termination.

- 1 Payment of Wages & Other Payments (Arts 36 -38)
 - The Rule (art. 36, 1st sentence before the proviso)
 - Exceptions (art. 36, the proviso and art. 37): The Right to Lien and amount in dispute.
 - Effect of Delay (art. 38):- Up to max of 3 months wage.
- 2 Severance Pay (39)
 - 1 What is severance pay? = it is a sort of disturbance payment to protect the worker from financial instability. Labor Proclamation no. 64/75 seems to have applied the correct concept by distinguishing

same from Compensation for service, which is totally a different concept derived from socialist ideology.

2 Arguments in favor and against severance pay:-

<u>For</u>	<u>Vs</u>
- Protection from financial instability	- Not Employer's responsibility
- Profit sharing	- Contrary to business justification
- Contribution of worker	- Why for termination due to force majeure?
- Incentive/motivations	- Why for a resigning worker?

3 The grounds for severance pay can be either lawful or unlawful terminations

❖ Lawful terminations

- Ceasing of operation due to bankruptcy
- For reduction of force
- Termination due to disability
- Sickness.
- Death.
- Resignations after 5 yrs of service or due to HIV/AIDS.
- Retirement age, provided no
 - Pension
 - Provident fund

❖ Unlawful terminations

- 39(1) (b)
- Constructive dismissals 39(1) (d) & (e):-Query: what about 32(1) (c)?Why?

❖ Amount calculation (Art. 40).

3 Compensation Payment:- mainly applicable for unlawful terminations:-

- 4 Arts. 40(3) & 41 & 44:- sort of compensation in lieu of notice
- 5 Art. 43(1) & (2) & (3), Alternative Remedy: maximum for six months wage.
- 6 Art. 43(3): two legal issues: (i) what is the extent of the court's discretion? Is it appeal able? (ii) can the execution court decide compensation or shall the employee go back to the initial court for judgment review?
- 7 Applicable also for pensioners. Does that mean those who are covered by provident fund scheme are excluded? The answer is no, but it needs judiciary interpretation.

4 Reinstatement (43(1) & (2))

- 4 Issues raised on reinstatement:-specific/forced performance vis-à-vis art. 1776 of the Civil Code (which provides two conditions for its exception: (i) special interest to creditor and (ii) without affecting personal liberty of the debtor). It seems that our Labor Law provides an exception to the exception rule in the civil code. What do you think is the rationale behind this exception rule?

5 Two types of reinstatement rules :-(i) Mandatory reinstatement (art. 43(1) &

(ii)Discretionary reinstatement (art. 43(2) & (3).

- 6 No reinstatement for constructive dismissal in our labor law. In some jurisdictions, reinstatement can be also ordered for constructive dismissal.

5 Back Payment

- 1 What is it and what is its legal basis? And the legal issues related to back pay will be: is it damage? What about the rule of no work-no wage? Is there fault on the employer's side? How?
- 2 The previous Labor Proclamation no. 42/1993 was silent on this aspect: - the silence and the consequence followed there from called for amendment of the law with specific provision to that effect (Art. 40(5)).
- 3 Issues to be raised on the new provision Art. 40(5):- (i) is the one year back pay by appellate court in addition to the 6 month back pay by lower court or is the total sum? (ii) Can the appellate court also award this additional back pay even if the appellant is the worker? (iii) shall/can the courts, both the lower court and the appellate court, award such back-payment remedy even if same is not demanded by the worker?

Grounds, Procedures, and Effects of Termination under the FCSP:

Termination rules of civil servants is provided under PART-7 of the FCSP from Articles 78-86, and basically most of the termination grounds are almost similar with that of the labor law regime with some differences here and there. Among the modalities of terminations acknowledged by the labor law regime, termination by agreement of the parties is not incorporated in the FCSP.

Grounds: the following are the main termination grounds in the FCSP:-

- ❖ Resignation (Art. 78):- resignation with one month notice is possible but the head of the government institution may delay the release of the civil servant for a maximum period of three months.
- ❖ Termination due to Illness (Art. 79):- the rule in the FCSP is more clear on this regard compared to the situation in the labor law regime, where it is not clear whether the employer can terminate the employment contract of a worker who exhausted his/her sick leave.
- ❖ Termination for Inefficiency (Art. 80):- a civil servant whose performance is below satisfactory for two successive evaluation periods will be dismissed. Again here, the rule is clearer than similar rule in the labor law regime, where the law uses (under Art. 27(1) (e)) very general and abstract phrases that make the implementation of the rule difficult to apply.
- ❖ Termination for absenteeism (Art. 81):- this provision uses the standard of Force Majeure for tolerating the absence of a civil servant while a similar rule under the labor law regime (Art. 27(1) (b)) uses a very lenient standard of good cause (its meaning is not even defined by law). Besides, this same provision clearly provides that the maximum period for tolerance of absenteeism even for Force Majeure is six months while such rule is not clear from the provisions of the labor law, the lack of which becomes a cause for a lot of court cases.
- ❖ Nullification of appointment (Art. 82):- such nullification of appointment will be made for false representation of educational records or work experience.
- ❖ Retrenchment (Art. 83):- a civil servant will be retrenched where his position is abolished, the government is closed, or redundancy of man power is created. There are no such requirements like good cause or minimum of 10% workforce, etc...as in the case of reduction of workforce in the labor law regime.
- ❖ Termination for Disciplinary cases (Art. 84):- Those offenses that entail dismissal from civil service are those listed down under Article 68 of FCSP. The basic differences of these

offenses from those offenses under the labor law regime are: clarity of the offenses, different degree of standards used, non-exhaustively listed offenses, etc...

- ❖ Retirement (Art. 85):- the rule here is cleared compared to similar rule in the labor law regime because it is not clear as to how to apply the applicable pension law for the private sector, which is beyond the scope of the pension law coverage.
- ❖ Termination due to death (Art. 86):- the rule is the same in both regimes on this regard.

Procedures:-

Two basic differences of the FCSP regime compared to the labor law regime are the following:-

- 1) No notice requirement:-except for the case of retirement which requires 3 months advance notification, there is no any notice requirement for the other termination cases. Even the case of retirement is a matter of notification, not as such advance notice requirement which will have legal consequence. In fact, the Amharic version of Art. 85(1) clearly states that the termination of the civil servant upon attainment of the legal retirement age shall be effected without any additional procedure.
- 2) Disciplinary committee:-According to Art. 69 a government institution shall establish a disciplinary committee which shall investigate disciplinary charges brought against civil servants and thereby submit recommendations to the concerned officials. According to Articles 7-20 of the Council of Ministers Regulation no. 77/2002 the disciplinary charges against a civil servant shall be investigated by the Disciplinary Committee by formal investigation processes and finally the Committee shall give its recommendations to the head of the government for final decision. So, for a termination of a civil servant on account of discipline case to be legal it should be made in line with this clear procedure. There is no such similar procedure requirement in the labor law regime, but similar procedure can be adopted in a collective agreement.

Effects:-

The effects of terminations and unlawful terminations in the FCSP are different from those provided in the labor law regime. The following can be some for demonstration purpose:-

- 1 One major difference of the rule of resignation under FCSP is that the civil servant may be subjected to criminal liability in case of failure to resign without notice (Art. 78(2)).
- 2 Severance pay is only for retrenchment case. It seems that when it comes to civil service regime, the concept of severance pay is properly applied.
- 3 Though there is no clear provision for reinstatement ruling in case of unlawful termination, it can be deducted from Article 76(1) of the FCSP that the Administrative Tribunal may reverse the administrative decision of dismissal against civil servant (and may decide for reinstatement). However, the provision is not clear and moreover it is provided in a permissive style with the word “may”, and so it seems that the Tribunal may also decide otherwise. From this we can conclude that reinstatement is not a legal right in the civil service regime and ruling for reinstatement is purely discretionary which depends on the mercy of the Tribunal.
- 4 No legal right of compensation for unlawful dismissal.
- 5 No legal right of back payment for unlawful dismissal.

Therefore, from legal effect point of view, it can be said dismissal/termination of a civil servant is easier than dismissing a worker under labor law regime.

Grounds, Procedures, and Effects of Termination under the ILO Convention no. 158 (1982)

This ILO Convention is with regarding to termination of employment at the initiative of the employer (Art. 3). Ethiopia has already ratified this Convention in 1991 and it seems that in most of our Labor Law provisions the rules related to termination by the employer are similar to this ILO Convention. However, it would be pertinent to look in to some general similarities and differences of our Labor law with this Convention as follows:-

- 1 According to Art. 4 of the Convention, 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. This rule is similar to the rule provided under Article 26(1) of the Labor proclamation.
- 2 Art. 5 of the Convention lists down some grounds similar to the illegitimate grounds under Art. 26(2) of the Labor proclamation, which it considers to be invalid grounds for termination. Of course, the list in the ILO Convention has one additional invalid ground, i.e. “absence from work during maternity leave.” This ground is not found under Art. 26(2) and besides the rule is not clear because we can not talk of absence and maternity leave at the same time. Or can we say that the ILO Convention prohibits termination for absence even after the maternity leave? How do see this in line with Article 87(6) of our Labor Proclamation?
- 3 Article 6(1) of the Convention provides that “temporary absence from work because of illness or injury shall not constitute a valid reason for termination”. What does this mean? Does this prohibition also extend to situations of absence even after exhaustion of all sick leave rights?
- 4 Under Article 7 of the Convention, it is provided that a worker shall not be terminated for reasons related to the worker’s conduct or performance before he/she is provided an opportunity to defend himself/herself against the allegations made. Though there is such kind of procedural opportunity in the FCSP regime, the Labor law regime does not require such an opportunity unless such procedural opportunity is agreed in a collective agreement.
- 5 Article 9(2)(a) of the Convention provides an ambiguous rule regarding burden of proof, and according to this rule in order for the worker not to have bear alone the burden of proving that termination was not justified, ...the burden of proving the existence of a valid reason for termination shall rest on the employer. What is the overall spirit of this rule? Under normal circumstance it is well known that burden of proof is on a party who alleges the existence or non-existence of a fact. When it comes to termination, it is obvious that when an employer terminates a worker on account of an offense it is up to the employer to prove the commission of the offense. But in some instances like for example absence the only fact the employer can prove is the worker’s absence. In such cases it would be the worker’s burden to prove that he/she was absent for good cause. Does this ILO provision shifts such burden of proof to the employer and obliges the employer to prove that the worker has no good cause? It seems that in most court cases related to labor issues, judges tend to shift such burden of proof to the employer.
- 6 Under Art. 10 of the Convention, reinstatement as a remedy for unlawful termination is not mandatory. The Convention seems to allow sovereign states to determine on this issue, but in case of lack of reinstatement as a remedy the Convention stresses that there should be adequate compensation in lieu of reinstatement.
- 7 Art. 12 of the Convention deals about entitlement of severance allowance and in this provision there is no any rule which obliges an employer to pay severance allowance to a worker who resigns by his/her own initiation. Since the Convention is about termination by the employer, we can say the employer’s obligation to pay severance pay under the ILO Convention is only in case of termination to be initiated by the employer. So, we can raise the compatibility of Art. 39(1) of our labor law to this Convention when it comes to its rules to oblige the employer to pay severance pay even in case of death and resignation of the worker.
- 8 Article 12(1) of the Convention provides that severance allowance should be paid directly by the employer

or by a fund constituted by employers' contributions. This latter part of the provision helps to understand the interpretation of Article 39(1)(g) of our Labor Proclamation, i.e. severance pay should not be paid in addition to provident fund at any time.

- 9 Art. 13 of the Convention provides the following two important procedures in case of reduction of work force due to economic, technological, structural or similar reasons:-
 - a) to provide to workers' representatives relevant information, including reasons for terminations, number and categories of employees to be affected, and the period when the termination is to be carried out. This aspect is not clearly provided under Art. 29(3) of our labor proclamation, but it can be argued that this obligation will be included in the obligation of consultation.
 - b) to give to workers' representatives an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of the terminations. Is the role of trade union or workers' representatives under Article 29(3) similar with the role provided in the Convention? Given the wordings of Article 29(3) of the labor proclamation, can labor unions or workers' representatives in Ethiopia demand employers for consultation to discuss on measures to be taken to avert or to minimize terminations?
- 10 Article 14 of the Convention also requires employers to notify to the competent authority regarding any reduction of work force due to economic, technological, structural, or similar nature. Such obligation is not imposed on employers under Article 29(3) of the labor proclamation.

Definite contracts

Definite period contracts are an important aspect of today's work organization for various reasons. In areas where work tends to be of a seasonal nature, such as tourism, agriculture and in some manufacturing areas, demand for products and services is not constant throughout the year, and therefore employers can plan for cyclical variations in production through seasonal and contractual work.

Definite period contracts are also frequently used in professional services. Projects requiring specialized services, for example construction, may engage specialists for a definite time period until the completion of the project. It is becoming a frequent practice that consultants prefer to be employed on a project basis, and even in emerging sectors, such as information technology, qualified personnel would offer their services for a specified timeframe.

Definite period contracts offer advantages to both employers and employees. Both are bound to offer their services for the time period that is specified, and, in this respect, the employee has a guarantee of employment while the employer is assured of the provision of the services required for the duration of the agreement. Professionals tend to benefit from premium working conditions when they are engaged for a definite period, and would tend to prefer such contracts to build and diversify their careers. Young people frequently accept work on a definite period basis as a means to gain experience which enables them to find more stable employment.

Temporary work agencies use definite period contracts to enable companies to implement

family friendly policies (e.g. parental leave) at their work place. The main concern with definite period contracts lies in cases where individuals are employed for a definite period, which is followed by subsequent contracts that are also definite. Employees may feel that this reduces their jobs security since they can be terminated once the contract expires and a new one is not issued. Maltese law today stipulates that an employee may only be retained on a definite period contract for a period of four years, following which, if the employee is retained in employment, he/she will automatically be considered to be on an indefinite contract. Therefore the legislative framework offers adequate protection against possible exploitation. There have been cases, prior to the current legislation, where employees have been retained on definite period contracts for decades (incidentally, the civil service is still exempted from the four year limit).

Unions have done their part to protect the rights of definite period employees, both nationally and at European level. Employees on definite period contracts tend to be less likely to join trade unions, even though the law assigns them the same rights of freedom of association as other employees. This is largely because they tend to work independently and job security may not be an issue for them. As long as there are legal safeguards against abuse of the definite period contract, there is no question that such work arrangements work in favor of generating more productive employment, and are an integral part of the concept of flexicurity, that the EU is constantly promoting in the interest of both the employers and employees.

Joseph Farrugia is director general of the Malta Employers' Association

Are unions unnecessary when it comes to individual contract employees?

When talking about employment on contract one cannot generalize because there are different forms of contracts even though by this we usually understand 'individual contract'. However, apart from this contract there are also other 'term contracts' amongst which are those known as 'task contract', where an employee is asked to do a particular job and the employment is terminated as soon as the job is done. There are other job contracts where instead of full-time employment one is employed for a determined period of time after which employment is renewed upon termination.

Even though the General Workers' Union prefers that individual contracts are not done, there were instances where it discussed these kinds of jobs with the employers. The union did this in cases where full-time employees were presented with conditions of individual contracts. Workers who are offered jobs or are asked to switch to an individual contract are usually the 'key employees' which the employer does not want to lose and so they are offered much

better conditions and benefits than the rest of the other workers. These 'individual contract' employees are sometimes subtly lured either to leave their union or not join any at all. Moreover, there were cases where workers who had been offered an individual contract were bound not to join a union.

It is exactly this concept that the GWU disagrees with, primarily because individually contracted workers are not regulated by the collective agreement and secondly because these type of contracts lead to lack of solidarity and the division of the workers on their place of employment. Not to mention the dissemination of a sense of selfishness amongst the workers. Why? Because it can turn out that an individual contract discriminates between workers by allowing extra benefits for some against the rest who hold an inferior position. Once a worker has good or better conditions than the rest of his fellow workers, it is only logical that that particular individual will seek to defend his personal interests. This allows for fertile ground where selfishness can be sown.

Therefore, when and wherever this occurs the concept of collectivity and solidarity is undermined. The GWU cannot be in favor of this and this is why it had several discussions about these sorts of employments. Even though as a union we cannot pressure workers as to the kind of employment they seek, it is our duty to inform workers to assure themselves that by their terms of contract they don't isolate themselves from the rest of the workforce. With regards to jobs on renewable contracts (temporary contracts) the GWU is working hard so that at least the employers recognize the long years of service (loyalty) to the employing company. It is according to this principle that lately the court presided by Judge Philip Sciberras accepted GWU's argument and confirmed this principle. This was not only a triumph for GWU but a victory for all the workers employed on this type of contract.

Tony Zarb is secretary-general of the General Workers Union

Chapter-Three: Special Categories of Employees

By Samuel Asfaw

3.1. Home workers

It is important to note the following points regarding home workers in general and their treatment under Ethiopian Labor law:-

1 ILO Homework Convention no. 177/1996 is the relevant international instrument; but unfortunately Ethiopia did not ratify this Convention. This Convention obliges member states to come up with national policies and local laws to ensure the minimum standards and protections of home workers such as the right to form association, regarding safety matters, equal treatment like other workers, etc...

2 According to the Home work Convention a home worker is a person who works for remuneration in his/her home or in other premises of his/her choice other than the work place of the employer, which results in a product or service as specified by the employer irrespective of who provides the equipment, materials or other inputs used, unless this person is an independent contractor of autonomy or economic independence. (Article 1(a)).

3 Our Labor proclamation defines “home worker” almost similarly as “a person habitually performs work for an employer in his home or any other place freely chosen by him in return for wages without any direct supervision or direction by the employer.” (Article 46(1)). The basic differences of these two above definitions are: (1) our law uses the adjective “habitually” while we do not find such qualification in the ILO definition; and (2) the ILO definition uses the term “remuneration”, which is a wider concept than the word “wage” as used in our Labor law because “wage” is defined in our law as a regular payment excluding other types of payments. It is important to note that the word ‘habitually’ in our Labor law has the objective to exclude those workers who might work at their home or at their own chosen place intermittently, not regularly.

4 Article 46(4) gives power to MoLSA to issue a directive to prescribe the provisions that shall apply to home workers and the manner of their application. Does this provision have an exclusionary effect? One may argue by saying that unless MoLSA comes up with such directive, the Labor proclamation will not be applicable on home workers and since MoLSA did not issue any directive so far the proclamation will not be applicable on home workers.

5 Three important provisions worth of mentioning are: (1) Art. 46(3) a legal presumption, which is an exception to the legal presumption of indefinite employment contract made under Art. 9; (2) Art. 47- Obligation on employers for keeping records on their home workers; and (3) Art. 169-Legal lien right given to home workers in case of liquidation of the employer.

EXERCISES:-Do home workers fall under the definition of “workers” as per Art. 2 (2) vis-à-vis Art.4? Why do you think the law-maker did not exclude home workers under Art.3 (scope of application clause)? Will Art.169 applicable and enforceable without MoLSA’s directive envisaged under Art. 46 (4)? Do you agree to the position that the issue of home workers is not a concern for Ethiopian current context?

3.2. Apprentices

It is important to note the following points regarding apprenticeship under Ethiopian law:-

- 1 Definition of apprenticeship: Article 48(1) states that apprenticeship contract exists “...when an employer agrees to give a person complete and systematic training in a given occupation related to the function of his undertaking in accordance with the skills of the trade and the person in return agrees to obey the instruction given to carry out the training and works related thereto.” One difficult part of this definition is as to how to identify contract of apprenticeship from other types of employment contract for training purpose as excluded under Art. 3(2)(b). Both contracts have training objective behind them and no guideline is put by the law to distinguish one from the other. One possible way of distinguishing these two types of contracts can be as to whether the trainer is a licensed training institution or not-if it is a licensed training institution, then the contract will fall under Art. 3(2)(b) whereas if the trainer is just an undertaking and not licensed for training, then the contract will be apprenticeship. The other important distinction between the two contracts is that while the contract under Art. 3(2)(b) is a contract of employment, but the contract under Art 48 is not a contract of employment because: (1) the principal purpose is training, not to perform work which is just incidental; and (2) wage is not a requirement for apprenticeship, it is remuneration-which can be any kind of payment arrangement.
- 2 Apprenticeship on what occupation? The other problem with regard to the above definition is as to what “occupation related to the function of his undertaking” means? Again, there is no guideline to find out what occupation is or is not allowed for apprenticeship contract. For example, can a Hotel give an apprenticeship to an accountant? Can an oil marketing company give an apprenticeship to a civil engineer? Can a Bank give an apprenticeship to a secretary? MoLSA has been given power to come up with appropriate directives to identify the types of occupations and works in which apprenticeship need to be given, also regarding duration of apprenticeship, and also regarding theoretical and practical aspects of apprenticeships as well as the manner of giving tests (Art. 170(1)(g)(h)&(i)). However, so far the Ministry did not come up with any directive regarding such matters and because of this various labor offices at different levels attest apprenticeship contracts just blindly-no rules, no guidelines!
- 3 There are three legal requirements for the validity of apprenticeship contract; namely,
 1. minimum age of the apprentice should be 14 years (Art. 48(2);
 2. the contract should be in writing (art. 48(3); and
 3. the contract should be attested by MoLSA.

The non-fulfillments of these requirements will have the effect of making the Contract invalid and same can be challenged by either party. What will be the legal effect of challenging such apprenticeship contract? Will the person have automatically the status of an ordinary worker, rather than an apprentice? Why?

- 4 Contents of apprenticeship contract (art. 49): From the mandatory nature of this provision, it is important to note that the three listed down elements shall be always included in the contract of apprenticeship, the concerned Labor officer attesting such contracts shall at least check the existence of these elements. Another important point to note is the element of “remuneration”, which is different from “wage” as used for contract of employment under art. 4(1). So, for the purpose of apprenticeship contract regular payment is not required, i.e. any mode of payment can be considered as remuneration.
- 5 Obligations of the parties: Art. 50(1) imposes an obligation of diligence on the apprentice. On the other art. 50(2) prohibits the employer from assigning the apprentice on an occupation not related to his training. The rationale behind this latter provision is to prevent employers from exploiting apprentices by assigning them on other duties. Art. 52 of the proclamation also imposes an obligation on the employer to give to the apprentice certificate indicating the occupation for which he has been trained and the duration of the training.
- 6 Termination of apprenticeship contract and consequences: Art. 51(1) provides a general rule for grounds of terminations while art. 51(2)-(4) provide detailed grounds of terminations.
 - Art. 51(2) gives the employer the right to terminate the apprenticeship contract with notice due to the specified grounds. Does that mean the employer can, however, terminate the contract of apprenticeship without notice due to the grounds of art. 27? How do you see this issue vis-à-vis art. 51(2)(b) which requires the employer to give notice even for disciplinary violations of the apprentice?
 - Art. 51(3) gives the apprentice the right to terminate his contract with notice due to employer’s failure to observe his obligations, or due to health or some other family problems. It seems that art. 51(3)(a) is an exception to the rule under art. 32(1)(c). Otherwise, art. 51(3) seems to require the apprentice good cause to terminate the apprenticeship contract with notice, which is also an exception to the general rule enshrined under art. 31 for an ordinary worker.
 - Art. 51(4) entitles the apprentice to terminate the contract without notice in the event of the occurrence of any of the grounds listed under paragraphs (a) & (b) of art. 51(4). Can we say that this rule is a clear exception to the rule of art. 32, or can we say that these are just additional grounds in addition to art. 32?
 - Can you really distinguish the difference of the grounds provided under art. 51(3)(a) vis-à-vis art. 51(4)(b)? Similarly, the difference of the grounds under art. 51(3)(b) vis-à-vis art. 51(4)(a)?
 - What is the duration of the notice period requirement under arts. 51(2) and 51(3)? It seems that we can apply the rules provided under Arts. 31, 34 and 35 since these provisions of the proclamation are not excluded from application on apprenticeship (ref. to art. 51(5)).
 - But when it comes to legal effects and consequences of violating these termination rules, we can argue that a party who violates any of the legal conditions and requirements will not be subject to any liability (ref. to art. 51(5)).
- 7 Partial Exclusion clause of Article 51(5): Query- So, what is the purpose of including apprenticeship under labor proclamation? May be, it is just to entitle apprentices to all other minimum working conditions (i.e. max. working hours, leaves, overtime pay, entitlement for occupational injury, etc...) of the proclamation during their stay in the undertaking.

EXERCISES:-Given the lack of guideline on the types of occupations allowed for apprenticeship, do you think apprenticeship is a free-zone for employers to by-pass the restriction of temporary employment under Art. 10? Why do you think there is no apprenticeship arrangement in the civil service regime Proc. 515/07?

3.3. Young employees

It is important to note the following points regarding young workers in general and their treatment under Ethiopian law in general and also in Employment law in particular:-

- 1 Article 36(1)(d) of the 1995 FDRE Constitution provides a constitutional protection for children against exploitive practices, hazardous or harmful works that affect their education, health, or well-being.
- 2 Ethiopia has also ratified the following international conventions related to Children:-
 1. UN Child Rights Convention,
 2. ILO Minimum Age Convention No. 138, 1973, and
 3. ILO Worst Forms of Child Labor Convention No. 182, 1999.

As these conventions are now part and parcels of the Ethiopian laws, students are strongly advised to read the contents, protections, and requirements of these convention.

- 3 Apart from the above constitutional and international protections, the relevant provisions of the Labor Proclamation no. 377/2003 also provide certain protections and limitations regarding young workers between 14 and 18 years old. Article 89(3) provides a general prohibition against employment of young workers for a work which on account of its nature or due to the condition in which it is carried out endangers the life or health of young workers performing it.
- 4 Article 89(4) also gives power to MoLSA to come up with the list of activities prohibited to young workers, which list shall also include the list of activities provided from (a) to (d) of Art. 89(4). Not only engaging young workers on these activities, but it is also prohibited under Art. 91 to engage them at night, on overtime, on weekly rest time, or on public holidays. Finally, the law also made an exception to the normal working hours of 8 hours per day by reducing same to 7 hours per day for young workers under Art. 90.
- 5 It is important to note here that engagement of young persons below 18 years old for civil service is not possible (see Art. 14(1)(a) of FCSP no. 515/2007).
- 6 An important issue to be raised with regard to the legal protections of young workers is the practical enforcement of the law, i.e. are the concerned Labor Inspectorate offices capable of enforcing the law? Do we really have the financial, manpower, facility, information network, etc... necessary for the enforcement of these legal protections?

EXERCISES:-Given the factual economic situation of Ethiopia, where children will be forced to work so as to support themselves and their poor families, do you agree the above protections are really protections for them? Or do you consider them as prohibitions against children?

3.4. Female employees

It is important to note the following points regarding female workers:-

- 1 The 1995 FDRE Constitution enshrined two basic rights for women; namely, (1) the right to equality with men (art. 35(1); and (2) the right for affirmative action (preferential treatment) as per article 35(3). The Constitution does also provide other special types of rights and protections pertaining to their special status (maternity leave, prenatal leave, property right, equality in employment and pay, etc....).
- 2 In 1999, Ethiopia has ratified the ILO Equal Remuneration Convention no. 100, which dictates that women shall not be discriminated with regard to remuneration and thus employers shall pay equal pay for similar posts irrespective of sex. Moreover, Ethiopia has also ratified, in 1966, the ILO Discrimination (Employment & Occupation) Convention no. 111, 1958, which prohibits any kind of discrimination based on sex and other status.
- 3 Apart from the above constitutional and international instruments, the relevant employments laws in both

the public and the private sector have also come up with some kinds of protections and preferential treatments. Art. 13(1) of the FCSP and Art. 14(1)(b)& (f) and Art. 87(1) of the Labor Law clearly prohibit any kind of discrimination against female workers. The FCSP further proceeds and provide the right of preferential treatment for female workers under Art. 13(3) by stating that in recruitment, promotion and development preference shall be given to female candidates with equal or close scores. Though there is no such similar preferential requirement in the private sector, it is however one step to introduce same in the civil service. The practical implementation problem to occur is in determining as to how close should be a female candidate's score to be considered as 'close score' for the law purpose?

- 4 The relevant employment laws do also provide special rights and protections for female workers for some special circumstances such as pregnancy and maternity (refer to Articles 87 & 88 of Labor Proclamation, and also Article 41 of the FCSP).
- 5 It is important to note that the right of female workers against discrimination is not an absolute right, i.e. there might be some acceptable discrimination due to the very nature of the job. For example, it is legally prohibited to employ female workers on type of work that may be listed by MoLSA to be particularly arduous and harmful to their health. However, it seems that unless MoLSA comes up with such list, an employer can not discriminate female workers on the basis of their sex.
- 6 There is some controversy with regard to whether female workers are really beneficiaries of some special rights like prenatal or maternity leaves with pay. The controversy is that though the special rights are provided for their protections, in practice however employers might be naturally forced to opt for a male candidate rather than a female candidate so to avoid unnecessary costs related to their pregnancy and maternity. So, due to this factual situation can we really say that such special rights are for the protection of female workers or against them? What is your opinion on this controversy? Do you think the protections are beneficial or not? Why? Why not?

3.5.

Employees with Disability

It is important to note the following points regarding workers with disability:-

- 1 Apart from Article 25, which enshrines the principle of equality and anti-discrimination in general, and also apart from Article 41(5), which provides for special assistance for disabled persons, there is no other constitutional provision dedicated for disabled persons.
- 2 However, there is a separate proclamation dealing with the Right to Employment of Persons with Disability (Proc. No. 568/2008), which provides detailed rights and protections for persons with disability. This proclamation has made the following important changes and advancements compared to the previous proclamation no. 101/1994:-
 1. It abolishes the obligation of employers to reserve suitable posts for disabled persons. The rationale behind such abolition is specified in the preamble of the law, i.e. providing for reservation of vacancies for disabled persons created an image that people with disability are incapable of performing jobs based on merit.
 2. It introduced a preferential treatment for disabled persons with equal or close scores with others (Art. 4). The practical implementation problem to occur is in determining as to how close should be a disabled candidate's score to be considered as 'close score' for the law purpose?
 3. It provides for prohibition of discriminations and specifies various scenarios of discriminations (Art. 5).
 4. It stipulated obligations on employers to avail reasonable accommodations for disabled workers (Art. 6).
 5. It shifts the burden of proof from employees or applicants to the employer (Art. 7) so to make easier for them to exercise their rights.
- 3 Article 13 of the FCSP has also incorporated both the principles of non-discrimination based on disability (Art. 13(1)) and the principle of preferential treatment (Art. 13(3)).

- 4 The Labor Proclamation does also prohibit discrimination on any ground under Article 14(1)(f), which prohibition definitely includes discrimination based on disability. Though the Labor law does not provide right for preferential treatment, this gap will be filled by the special law (Proc. No 568/2008).
- 5 It is again important to note that the right against non-discrimination is not an absolute right because Article 4(1) of Proc. No 568/2008, for example, starts its rule by saying “unless the nature of the work dictates otherwise”, which qualification allows for reasonable discrimination. Though we do not find similar qualification in the two employment laws of the public and private regimes, we can however apply this rule of exception since this is a special law on the matter.

EXERCISES:-In case of a disabled male candidate and a female candidate, to whom shall the employer give better preferential right? Can you find a guiding principle in the provisions of the applicable laws to solve such problem?

3.6. Non Ethiopian employees

It is important to note the following points regarding non-Ethiopian workers and their treatment under the two employment law regimes:-

- 1 Under the FCSP (Art. 22(2), the employment of a non-Ethiopian national in the civil service will be only for temporary period, and only on condition that it is impossible to fill a vacant position that requires high level professional by an Ethiopian through promotion, transfer, or recruitment. So, it seems that engagement of a foreign national to a civil service institution is very restrictive.
- 2 However, the rule regarding employment of foreign national in the private sector is less clear than the rule in the civil service. Article 170(1)(e) empowers MoLSA to issue directive to identify the types of works which require work permits for foreigners in general, and the manner of giving work permits. Since work permits are being issued for different foreign nationals, we can assume that MoLSA has already some sort of directive on this matter. However, from the types of work permits being issued for foreigners we can tell that the rule in the private sector is not as restrictive as in the civil service because the trend is that MoLSA gives work permits even for those posts for which local experts can be easily available.
- 3 Article 174(1) stipulates that any foreigner may be employed in any type of work in Ethiopia where he possesses a work permit given to him by the Ministry. The work permit to be given to a foreigner will be time barred for three years, subject to renewal (Art. 174(2)). The issue to be raised here is what is the effect of employing a foreign citizen without work permit? Will the employer have the right to terminate the employment contract subsequently due to this ground? If so, on which of the termination grounds of the law? Isn't the relationship between the foreigner and the employer distinct from the relationship of the foreigner and the government? What amendments do you recommend in the labor law to address such problem?

Do you think Article 174(2) dictates the employment contract of a foreign citizen to be for a definite period only?

How do you see this in line with the legal presumption provided under Article 9 and the exhaustive grounds of definite period employment contracts under Article-10? Let us assume that a foreigner's work permit expires after 3 years period, does that mean the employment contract will be terminated automatically? What measures can the employer legally take on the foreign national who fails to renew his/her work permit? On the basis of which provisions of the law? **PART-IV DISPUTE RESOLUTION MECHANISMS AND PERIOD OF LIMITATIONS**

Basically there are two modalities of dispute resolution mechanism; namely, submission of cases to a body with judicial power, or alternatively to take industrial actions. Especially, the latter modality might be useful to enforce rights and demands when the former option is not possible; and vice versa, submission of disputes to a judicial body will be an indispensable option when industrial action is not legally possible. Under this part, we will try to briefly overview the functionalities of these modalities. In this connection, we will also try to see period of limitations in

labor law matters under this part. But before discussing all these issues it would be pertinent to discuss the meanings and types of disputes under our law.

4.1. Meaning and Types of Labor Disputes

‘Labor dispute’ is defined under Article 136(3) as follows:-“ any controversy arising between a worker and an employer or trade union and employers in respect of the application of law, collective agreement, work rules, employment contract or customary rules and also any disagreement arising during collective bargaining or in connection with collective agreement.” Though this provision defines ‘labor dispute’ in terms of any controversy, it is however, important to understand that it does not cover all controversies between worker(s) and employers because the definition is given with restriction to controversies related to employment matters. So, a controversy related to a loan relationship between workers and employers will not be considered as labor dispute.

Regarding types of labor disputes, it is important to note that there are two basic categories of labor disputes; namely, Individual Labor Disputes and Collective Labor Disputes. Unfortunately, the labor law does not give the definitions of these two types of disputes. However, Articles 138 and 142 are the relevant provisions referring to these types of disputes and they are also provisions helping courts to interpret the exact meaning of these types of disputes.

- Individual Labor Disputes:- Article 138(1) states that the labor division of the regional first instance court shall have jurisdiction to settle and determine the following and other similar individual labor disputes:-
 - ✓ Disciplinary measures
 - ✓ Dismissal
 - ✓ Termination or cancellation of employment contract
 - ✓ Issues related to hours of work, remuneration, leave, and rest period
 - ✓ Issuance of certificate of employment and release
 - ✓ Employment injury

The above issues are concerned with individual workers, and the list is not exhaustive. So, any other issues of similar issues which concern only individual workers will be considered as Individual Labor Disputes.

- Collective Labor Dispute:- on the other hand, Article 142(1) provides that the conciliator appointed by the Ministry shall endeavor to bring about a settlement on the following and other similar matters of collective labor disputes:-
 - ✓ Wages and other benefits (Please note the Amharic version which provides about determination of wages and benefits)
 - ✓ Establishment of new conditions of work
 - ✓ Conclusion, amendment, period, & invalidation of collective agreement
 - ✓ Interpretation of law, collective agreement, and work rules
 - ✓ Procedure of employment and promotion of workers

- ✓ Matters affecting the workers in general and the existence of the undertaking
- ✓ Measures taken by employer regarding promotion, transfer, and training
- ✓ Reduction of workforce

Again, the above list is not exhaustive and thus any other similar matters which concern collective workers in general or which will have impact on all workers will be taken as collective labor disputes. So, what matters in distinguishing between individual and collective labor disputes is not the number of workers involved in the dispute but the effect or impact of the decision on all other workers.

4.2. Submission of Cases to a Body Having Judicial Power

There are various forums provided by the labor law regarding submission of cases to a judicial body. The following are the forums for settling or deciding of labor disputes:-

- Ordinary courts of law:- at first instance level courts will have to decide only individual labor disputes. But at appeal level, the High court will have to see and decide both individual as well as collective labor disputes. The High court's jurisdiction to see the decisions of boards by appeal is restricted only on questions of law because the decision of the labor boards is final and conclusive on questions of facts. (see Articles 140, 153, and 154 of the Labor Proclamation).
- Conciliation:- Government vs. Private Conciliation. The Government conciliation has the power to settle collective labor dispute, but the private conciliation freely chosen by the parties (per Article 143) can see and settle any kind of disputes without any restrictions. In both cases, the role of conciliators is just to assist the parties to come to an agreement; otherwise, the conciliators will not give an executable decision. But the private conciliation option is not utilized in practice.
- Labor Board:- (permanent vs. ad-hoc Boards) this is government sponsored arbitration forum. The board has the power to see and settle and decide collective labor disputes. The ad-hoc labor board is introduced in the labor law to see and decide labor disputes related to essential public services undertakings as defined under Article 136(2).
- Private Arbitration:- see Article 143 of the Labor Proclamation which provides the possibility of settlement of labor disputes by arbitration freely chosen by the parties. This is a forum not being utilized in the practice-it is not usual and common for employer and workers to submit their cases to private arbitration. What do you think is the reason for this?

The following are important issues to know when it comes to submission of cases to judicial bodies:-

- Limitation of powers: - both courts and boards are not allowed to see and decide on determination of wages and benefits. (see Article 138 and 147(1)(a) of Labor Proclamation). It is only the jurisdiction of a conciliation to see the issue of determination of wages and benefits as per Article 142(1)(a). But since the conciliation does not have the power to decide, it would be meaningless to bring such issues to it.
- Power of the ad-hoc Board:- the ad-hoc board has the power to decide on issues of determination of wages and benefits regarding essential public services undertakings (see Articles 144(3) and 147(2) of the labor

proclamation). What do you think is the legal rationale behind such distinction in the law?

- Time frame for decision:- the law provides the maximum period of time within which time decisions should be given by judicial bodies. Courts should give decisions within 2 months time, and boards shall give decisions within 1 month time. (see Articles 138(2), 139(3), and 151 of labor proclamation). But in practice this is not being implemented due to work loads.

4.3. Industrial Actions as Dispute Resolution Mechanism

A-Definition

Industrial action refers collectively to any measure taken by organized employees or trade unions to stop work or to reduce productivity in a workplace. Usually and mistakenly, this term is used and interpreted as a substitute for a strike, but the scope is much wider.

B-Types of Industrial Actions by Workers

1. Strike: is a work stoppage caused by employees. A strike usually takes place in response to employee grievances or disagreements with their employers. Strike can include both workers refusing to attend work or those who are picketing outside the workplace to prevent or dissuade people from working in their place or conducting business with their employer. However, strike may also include workers who occupy the workplace, but refuse either to do their jobs or to leave. This is known as a sit-down-strike. Most strikes called by unions are normally predictable. However, not all strikes are called by unions because strikes can also be made by employees to pressurize their employer to acknowledge their union. Wildcat strikes: strikes may be spontaneous actions by working people. Spontaneous strikes are sometimes called "wildcat strikes"; most commonly, they are responses to serious (often life-threatening) safety hazards in the workplace rather than wage or hour disputes, etc.

Japanese strike: on the contrary workers maximize their output. They are nominally working as usual, but the surplus can break the planning of their employer.

General strike: is a strike action by a critical mass of the labor force in a city, region or country. While a general strike can be for political goals, economic goals, or both, it tends to gain its momentum from the ideological or class sympathies of the participants. It is also characterized by participation of workers in a multitude of workplaces, and tends to involve entire communities.

2. Slowdown or Go-Slow:-slowdown or go-slow is a term used in industrial relations used to define a slowing down of production or provision of a service by a labor force in pursuance of an industrial dispute or grievance, as opposed to a direct interruption of it. When implemented a slow down or go-slow can utilize a number of techniques, including for example refusal of overtime working. A slowdown is an industrial action in which employees perform their duties but seek to reduce productivity or efficiency in their performance of these duties. A slowdown may be used as either a prelude or an alternative to a strike, as it is seen as less disruptive as well as less risky and costly for workers and their union. Striking workers usually go unpaid and risk being replaced, so a slowdown is seen as a way to put pressure on management while avoiding these outcomes. Other times slowdowns are accompanied by intentional sabotage on the

part of workers to provide further disruption. Nonetheless, workers participating in a slowdown are often punished, sometimes by firing and other times by law.

3. Occupation of factories is a method of the workers' movement used to prevent lock-outs.
4. Work-to-rule; is (unconventional tactic also known as an Italian strike) an industrial action in which workers do no more than the minimum required by the rules of a workplace, and follow safety or other regulations to the letter or they might refuse to work overtime in order to cause a slowdown rather than to serve their purpose. This is considered less disruptive than a strike, and just obeying the rules is less susceptible to disciplinary action. Sometimes the term "rule-book slowdown" is used in a slightly different sense than "work-to-rule". But the terms may be used synonymously. Sometimes work-to-rule can be considered malicious compliance by employers as they pursue legal action. In practice, many rules are loosely interpreted in the interest of efficiency. A union seeking to employ a slowdown tactic may take advantage of these common rule oversights by having workers "follow the rules," obeying each and every rule to the fullest extent, which consequently will greatly reduce productivity. This has the advantage of allowing workers and unions to claim that no malfeasance is being committed, since they are doing only what the management's rules actually require them to do. Such strikes may in some cases be a form of "partial strike" or "slowdown".
5. Overtime ban: is a form of industrial action where workers limit their working time to the hours specified in the law or in their agreement, refusing to work any overtime. Overtime bans are less disruptive than strike, and since there is no breach of contract by the employees there is less chance of disciplinary action by the employer than there is with strikes. However, an overtime ban can have a significant impact on industries which normally operate outside of regular office hours. An overtime ban is similar to a work-to-rule, in that both involve employees refusing to do more than is strictly required of them. However, and in contrast with a work-to-rule, when an overtime ban is in place workers may still perform duties not required of them, providing they do not go outside their contracted hours.
6. Picketing: is generally a form of protest in which workers congregate outside a place of work or location where an event is taking place with the purpose to prohibit others from going in (from "crossing the picket line"), but it can also be done to draw public attention to a cause. Pickets should be normally endeavor to be non-violent. It can have a number of aims, but is generally to put pressure on the party targeted to meet particular demands. This pressure is achieved by harming the business through loss of customers and negative publicity, or by discouraging or preventing workers from entering the site and thereby preventing the business from operating normally. Picketing is a common tactic used by trade unions during strikes, who will try to prevent dissident members of the union, members of other unions and non-unionized workers from working. Those who cross the picket line and work despite the strike are known as scabs.

Disruptive picketing is where picketers use force, or the threat of force, or physical obstruction, to injure or intimidate or otherwise interfere with either staff, service users, or customers. Picketing, as long as it does not cause obstruction to public peace and security is legal in many countries and in line with freedom of assembly laws. However, many countries have restrictions on the use of picketing.

C- Counter-Industrial Actions by Employers

1. Strike preparation

Salaried employees may be called upon to take the place of strikers, which may require advance training of these employees. If the company has multiple branches, personnel may be redeployed to meet the needs of reduced staff.

2. Strike breaking

Some companies may see a strike as an opportunity to eliminate the union. This is sometimes accomplished by the importation of replacement workers, or strikebreakers. Historically, strike breaking has often coincided with union busting.

3. Union busting

One method of inhibiting a strike is elimination of the union that may launch it, which is sometimes accomplished through union busting. Union busting campaigns may utilize the services of security agencies that provide asset protection services. Similar services may be engaged during attempts to defeat organizing drives.

4. Lockout

Another counter to a strike is a lockout, the form of work stoppage in which an employer refuses to allow employees to work. Lockouts are, with certain exceptions, lawful under the laws of many countries.

D- Industrial Actions under Ethiopian Labor Law

Meanings:- It will be pertinent to question at this point in time as to how an 'industrial action' is considered as a dispute resolution mechanism. This is because the purpose of industrial actions is to force or influence the other party in dispute to accept the demands of the party taking the action. If you see both Articles 136(4) and 136(5) respectively defining 'lock out' and 'strike', they define the terms as follows:-

Lock-out:- means an economic pressure applied by closing a place of employment in order to persuade workers to accept certain labor conditions in connection with a labor dispute or to influence the outcome of the dispute.

Strike:- means the slow-down of work by any number of workers in reducing their normal output on their normal rate of work or the temporary cessation of work by any number of workers acting in concert in order to persuade their employer to accept certain labor conditions in connection with a labor dispute or to influence the outcome of the dispute.

So, industrial actions as defined above are dispute resolution mechanisms because (1) they follow disputes and thus

they are not disputes themselves, (2) they serve just to force the other party to accept the other party's demands and to settle the matter, and (3) they also serve as alternative mechanisms for the parties when they are not able to use judicial forums.

The Recognized Rights for Industrial Actions:- from the above provisions of the law, and also from the provisions of Articles 157-160, we can understand that only the following are the industrial actions recognized under Ethiopian labor law:-

- Strike:- Article 160(3) prohibits to accompany strike with violence, threats of physical force or with any act which is clearly and officially unlawful. Do you think this provision indirectly allows non-disruptive picketing to be made by workers? Discuss and take your own position.
- Slow down:- does this industrial action under Ethiopian labor law include actions like work-to-rule or overtime ban? Please discuss and take your own position.
- Lock-out: - it seems that this action is defined under Ethiopian law in terms of 'closing a place of employment'. And Article 160(3) provides that it is prohibited to accompany lock-out with any act which is clearly and officially unlawful. So, does this mean the employer cannot lock-out and at the same time use other industrial actions like strike preparation and strike-breaking? Please comment on this.
- Restriction to the Right:- workers and employers of essential public services undertakings as defined under Article 136(2) cannot take any of the industrial actions recognized in the law. As alternative to this, they can use the judicial forum of ad-hoc labor relations Board for settlement their disputes.

Conditions, Requirements, and Prohibitions for the Exercise of the Rights:- Articles 158, 159, and 160 provide clear conditions, requirements, and prohibitions for the exercise of the rights; which are the following:-

- Advance notice of 10 days to the other party indicating its reasons for the action
- Advance notice of 10 days to the representative of MoLSA
- Amicable settlement:- effort to solve and settle their dispute through conciliation
- Majority decision of members of the union
- Safety measures and accident prevention procedures should be taken
- Lapse of 30 days after favorable decision by board or court is necessary
- Not to accompany with violence, threats of physical force, or with any unlawful act

4.4. Period of Limitation & Priority of Claims under Ethiopian Labor Law

Period of limitation:- it is a time bar to stop parties from taking actions after the expiry of a certain period. There are various types of period of limitations for various types of actions. Some limitations may be made on parties not to take any action which they would be entitled to make if not for the expiry of the time. Some period of limitations

may be made on parties not to take any court actions after expiry of the time bar provided by law. The following can be good examples for these periods of limitations:-

- Limitation on the right to terminate: - Article 27(3) provides a 30 working days period of limitation on employers; i.e. they cannot take termination action after lapse of 30 working days from the date the employer knows the ground for the termination.
- Limitation on the right to resign without notice:- According to Article 32(3) the worker's right to terminate his contract without notice shall lapse after 15 working days from the date on which the act occurred or ceased to exist.
- Limitation on reinstatement:- a worker cannot claim for reinstatement after 3 months lapsed from the date of termination (Art. 162(2)).
- Limitation on wages, overtime, and related payments:- will be barred by 6 months after they become due. (Article 162(3)).
- Limitation on any kind of payment:- shall be barred 6 months after the termination date. (Article 162(4)).
- Limitation on other claims related to employment: - shall be barred after one year from the date on which the claim becomes enforceable. (Article 162(1)). It is important to know that any action taken before a judicial body or to any enforcing government organ or any express recognition of the other party's right will interrupt the count of the period of limitation (see Article 164 of the labor proclamation). In such events, the period of limitation shall start to count afresh. Besides, the concerned judicial body may disregard the lapse of the period of limitations in the event of force majeure, such as illness and transfer of the worker or call of the worker for national service (see Article 166).

Priority Claims:-Article 167 provides that any payment claim of a worker arising from employment relationship shall have priority over other payments or debts. However, it is important to know that this priority will not be operative with regard to government claims for taxes, which will have priority over any claims pursuant to the relevant law.