

Employment & Labor Law

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Chapter 1: Introductory Remarks on Employment & Labor Law

Main points:

1. Meaning of employment and Labor Law
2. *Raison d'être* and Historical Development of Labor Law
3. Labor Law Development in Ethiopia
4. Sources of Labor Law

1.1 The meaning of Employment and Labor Law

⊠ ***What comes to your mind when you hear "Employment and Labor Law? How do you see their difference?***

- Employment law can be defined as an area of law that regulates **employment relationships**.
- Hence, one needs to get the clear meaning of the term employment relationship for the sake of giving a comprehensive definition of this regime of law.

⊠ **What is employment r/ps?**

- Employment relationship deemed to exist where a person (the employee) **agrees**, directly or indirectly, to **perform work** for and **under the authority** of another (the employer) for a **definite period, indefinite period or piece work** in return for wages.
- Elements
 - a. **Agreement**- compulsory labor force excluded. It can be expressed directly or indirectly. E.g. through agencies
 - b. **Performance of work**- (in person) to the employer
 - c. **Under the authority of the employer**- direct, supervise and control-determine the what, where, when and how of the work
 - d. Length of employment- **definite period, indefinite period or piece work**
 - e. **Wage**

- It includes all types of employment relations irrespective of the employment sector and the parties thereof
 - ⊠ Civil servants
 - ⊠ Workers in the industrial sector
 - ⊠ Legislators
 - ⊠ Judges
 - ⊠ Public prosecutor
 - ⊠ Police
 - ⊠ Defense Force...etc.
- Employment relationship, hence, includes all such relationships as defined above irrespective of the **sector of employment** or the **identity of the persons** (be it government or private) involved in the relationship.

- Employment law is, therefore a very broad name that refers to all those areas of laws which are made to regulate the different aspects of employment relationships.
- Hence, there is no as unified employment legislation.
- Instead there are separate laws that are specifically aimed at regulating certain aspects of employment relationships.
 - ☒ Civil servants---Federal Civil Servant Proclamation no. 1064/2017 and respective regional laws. e.g. The Amhara National Regional State Civil Servants Revised Proclamation no. 171/2010
 - ☒ Workers in the industrial sector---has been regulated by Proclamation no. 377/2003 and its subsequent amendments (466/2005, 494/2006) & now by 1156/2019
 - ☒ Legislators, Judges, Public prosecutor, Police, Defense Force...etc.

Employment Law Vs Labor Law

- Employment Law and Labor Law are not terms strictly referring to two different regimes of laws having their own distinct features, nor are they terms that can be used interchangeably.
- This is to mean that it is hard to draw the distinction between Employment Law and Labor Law.
- In the lips of academics Employment Law refers to a vast area of laws regulating all sorts of employment relationships, where as Labor law refers to an area of law regulating employment relationships only within specific sectors.

- In general terms, "employment law" is an umbrella term that represents vast area of laws which are made to regulate any aspect of employment relationships. In this context, there is no as such a single or unified legislation (law) named employment law.
- As compared to employment law which is interested in all employment relationships; labor law is narrow in scope.
- The subjects of labor law are only those which are found mainly in the *industrial sector*. That is why labor law is also known as "**the law of Industrial Relations**".
- It can be named as **labor relationships**
- Therefore, unlike employment law, labor law is not interested in all employment relationships, as so many of such relationships are outside the ambit of this law.

- Industry for the purpose defining labor relationships doesn't solely refer to the manufacturing sector. It rather denotes the profit making sectors of the economy
- In short, using the words of Mathematics Labor Law can be taken as the proper sub-set of Employment Law.

1.2 The Raison D'être and Historical Background of Labor Law: General

⊠ Employment relation necessarily needs “free labor”
how? why?

1.2.1 The slave owning society

- For employment relationship to exist free labor, labor which is entitled to enter into a free contractual agreement, should be there.
- In this society we have slaves and slave owners.
- Since there was no free labor that bargains with capital, one can't imagine employment relations to exist in that society.
- Therefore, in the slave owning society there was no employment law and even no need of having such a law, as there is nothing to be regulated by it.

1.2.2. Feudalism

- instead of owning human beings, men started to own the land
- the principal actors on the scene became the tenant and his land-lord.
- Though there was a relatively better situation in terms of the livelihood of the tenant, unfortunately, he was not lucky enough to decide on his labor; as the system obliges him to render various services either for his land lord or for the various state and religious institutions. For example,
 - ⊠ The tenant was supposed to deliver part of his produce to the land lord,
 - ⊠ He was also obliged to be directly engaged in some domestic activities of the **land lord**.
 - ⊠ If and whenever a need arises to wage war
 - ⊠ Beyond all these, the tenant was duty bound to give part of his produce to the church.

- In the then society, let alone freely bargaining with his labor, the tenant was not in a position even to choose his master. As a resultant effect of all these it was unthinkable to get an employment relationship that is an outcome of freedom of contract.
- Hence, there was no employment law here too.

1.2.3. Capitalism

- Mainly characterized by **liberal democracy principles** has recognized. So many principles for its fellow citizens, to mention, freedom of expression, freedom of movement, **freedom of contract** principles, the **market economy principles** and so on.

- Though agriculture took the mechanized form, we can't think of it to be hundred percent mechanized, hence, on the part of capital there was still a need to employ labor. In the manufacturing and business sectors on the other hand when capital owners begun to expand their undertakings and their business enterprises by the accumulation of profits, family members labor was found to be inadequate to respond to the change. There arose a need to employ extra labor.
- Besides such need for employment of extra labor, as it was already said previously, we had a large free labor which had no option but to sell its labor. So, capital and labor became keen to bargain and establish employment relationships. Employment no longer is a status as in the slave owning and feudal society. It's rather a contract.
- The employee can choose his employer and successfully terminate his contract since he has something that can move with him freely i.e. labor.

- Though this was the then assumption, freedom of contract principle has brought so many problems.
- During that period, capital owners were few in number compared to the huge number of labor.
- labor had as its aim eating for today, it was also bargaining individually.
- All these gave labor no option to bargain, and made it weak in this bargaining.
- In effect, labor was made to freely adhere to the terms the capital owner stipulates in the contract.

- Ultimately, ***low wage*** started to subject the employee to ***longer working hours*** per day to earn more, and this led the employee to over ***exhaustion*** and finally to ***employment injury***. But, the employee had no remedy even to get benefits for the injury he sustains at work due to his prior agreement ***voluntary assumption of risk***.
- There was also a severe problem with regard ***employment security*** since termination by will is there in their agreement.
- Employees then started to express their ***anger and dissatisfaction*** in various ways, such as by destroying the means of production and slowing down production.
- But it was very unsuccessful & Effective Employment law was not there due to **principles of freedom of contract & market economy**.

1.2.4 Emergence of Marxist Ideology

- Following the working classes anger and dissatisfaction, which culminated in the demand for betterment in terms of employment conditions as well as in the life of the employees, there came out the Marxist Ideology which went further and came up with an **extreme thought**.

This ideology agitated the working ~~class~~ *not* only *better life conditions* but for *seizure of power* to the proletariat.

- In this regard, the October 1917 Russian Revolution was the successful one to be taken as a turning point in the history of the evolution of employment laws.

- Capital, they said, is an ***accumulation of unpaid wage*** that should have gone to the employee; so decided all the means of production to be handed to the working class who is the legitimate owner of “capital”, hence, ***nationalization***.
- This unexpected occurrence in Russia posed fear and frustration in the west. They thought their respective workers would take a lesson from outside and revolt against the system. Therefore, they had to look for a possible solution to avert such likely disaster.
- Hence they started to give a better protections to the employees so that the workers do not at least raise the issue of assumption of political power.
- Finally the west come up with employment law & the ILO

- Generally, the west frustrated by Russian Revolution designed alternative measures
 - ⊠ crush the Russian Revolution- Verily unsuccessful!
 - ⊠ Hold it there within the territory of Russia. To do so they provide better protection for workers through establishing International Labour Organization (ILO) in 1919
- ILO
 - ⊠ It begins with a slogan of “Distributing Justice in Equitable Manner”
 - ⊠ provide guidelines that member states employ as inputs for measures they take in order to avert the problem of the free market economy brought.
 - ⊠ Accordingly, member states enact their own domestic labour legislations that determine minimum labour conditions

1.3 The Emergence and Development of Employment Law in Ethiopia

- Labor relations in Ethiopia have been very low and slow in development.
- The cultural, religious and legal settings have had their respective shares for such an outcome.

A. Culturally

- The Ethiopian society's attitude towards labor and laborers has been very discouraging
- All occupations except priesthood were relegated to members of the population who were thought of as a lower class.
- To the worst some kinds of workers have been segregated from the society and labeled negatively. E.g. Qetqach, Felasha, Buda, mechagna nekash, Kutit betash e.t.c.

- To tackle this problem, in 1908 Emperor Menilik issued a positive promulgation towards labor and laborers

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

- However unfortunately the over entrenched cultural attitude of the society towards labor and laborers make the Emperor’s promulgation futile.

B. Religion

- The religious rules in Ethiopia also are somehow unfavorable to labor and laborers.

C. Law

- Legally, though Ethiopia has been a member of the ILO since 1923, **slavery** had legal protection and was entrenched as a system for long time in Ethiopian history.
- It was in **1931** that an attempt to abolish Slavery, through law, was undertaken in Ethiopian history.
- During this period, emperor Haileselassie issued a proclamation with this purpose in view. The relevant part of the proclamation contained the following:

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

- This proclamation has somehow positively contributed to labor relations.
- But, as it was not a determined one to emancipate all slaves but only those who need to be so, it was not that significant in its contribution to the emergence of free labor.
- Again, freedom from slavery was not a right to be acquired automatically, since there was a need to ask it before a judge who was hardly accessible to majority of slaves.
- During the *Italian occupation* (1936-1941) despite all the insecurities we faced, there were some starts to establish industries and capitalist notions were started to be seen.

- In **1941** , after the coming to an end of the foreign occupation, the Emperor came up with a proclamation that clearly and ***wholly abolished slavery without any limitations*** . This had a huge impact on labor relations
- not only did we get the concept of it, **industries from the occupation**, we had also **free labor** which could be employed.
- Though we had labor relations of huge magnitude starting from this period a remarkable development of labor law in Ethiopia came only ***after the 1955 revised constitution*** . This constitution had recognized and guaranteed various rights and freedoms of the citizens like freedom of associations

Article 47:-

“Every Ethiopian subject has the right to engage in any occupation and to that end form an association.”

- This constitution could be regarded as a turning point for regulating labor relations

- The issuance of *the 1960 Civil Code* of the Empire of Ethiopia opened the door for the implementation of this constitutional right by answering some of the questions. With respect to:
 - ⊠ The formation up to registration of associations see Articles 400 – 482,
 - ⊠ The minimum working conditions and standards of employment when one can take a look at Arts 2512-2609.
- However the provisions in the code have their own limitations.
 - ⊠ It did not regulate collective labor relations
 - ⊠ Lacks comprehensive labor dispute resolution methods

- Hence, in the 1960s there were so many strikes in industries throughout the country. Under this emergency situation, the Emperor passed the 1962 decree on labor relations, which later became a proclamation, Proc No. 210/1963, in 1963. This proclamation provided provisions on different subjects, such as:
- several developments are introduced:
 - ☒ Collective labor relations: via the legalization and registration of trade unions and employers' associations.
 - ☒ Establishment of labor relation board
 - ☒ Employment injury and employer's liability
- Following ***the 1974 Revolution*** of Ethiopia, Proclamation No. 64/1975 was issued. It was a law issued with socialist orientation.
- Due to these basic reasons the tendency of the Proclamation was that it gives undue emphasis for the contribution of labor to the economy.

- It excessively protect labor at the expense of the employer.
 - ☒ Limited grounds of dismissal and excessive compensation
 - ☒ Prohibition of employers association
 - ☒ Extended leaves with pay...etc.
- It arises from the assumption that, workers solely are sources of fortune instead of capital which is considered as enemies of the Revolution.
- Following the coming in to power of the ***EPRDF in 1991*** , **labor proclamation no. 42/1993** was issued. Latter it also replaced by proclamation no. 377/2003.
- Proclamation no. 377/2003 again amended by proclamation no. 466/2005 and 494/2006
- Finally all these are repealed by Labor Proclamation No.1156/2019
- ☒ **So what the major changes introduced by Labor Proclamation No.1156/2019?**

⌘ **More obligations to Employers:**

- The new Proclamation maintains the obligations of the employer under the existing law, such as providing work to the employee, paying wages, respecting the dignity of the employee etc.
- In addition, the new law obligates the employer to:
 - a) deduct union dues from the employee's regular wage, and transfer the cash into the trade union's bank account, if so requested by the employee
 - b) raise awareness of employees on work rules of the organization
 - c) register information on workplace location and work-related data and transfer to the Ministry of Labour and Social Affairs (MoLSA).

⌘ **New Rules on Minimum Wage:**

- the idea of introducing a minimum wage has been a topical issue for the Ethiopian government for quite some time.
- Previous administrations have commissioned studies on minimum wage, though none of these were able to see the light of day.
- Under the new Proclamation, the government has gone one step forward to establish a Wage Board comprising of representatives of government, employees and trade unions together with other stakeholders that will carry out studies for setting and periodically revising minimum wages.

☒ **Increased Minimum Working Age:**

- the Proclamation raises the minimum working age from fourteen years of age to fifteen while maintaining the list of tasks and conditions permitted to young workers.
- How would you compare it with the international standards?

☒ **Added Employee Benefits:**

- The new Proclamation extends existing maternity leave from 90 consecutive days to **90 *working* days**. The 30 working days are granted prior to the mother giving birth and 60 working days subsequent to birth. Furthermore, the law introduces, for the first time, ***paternity leave three consecutive days*** for male employees. This is less generous from the ***working days*** paternity leave that is granted to civil servants under the Civil Service law.

☒ **Amendment to Annual Leave Entitlements:**

- The new Proclamation increases employees' annual leave days from ***14 working days*** on the first year of service to ***16 working days***. An additional one leave day will be granted for ***every two years*** of services as opposed to ***every year of services*** as it was currently provided.

⌘ **Extended Probation Period:**

- probation period is doubled from ***45 consecutive days*** to ***60 working days***. A probation period gives an employer the opportunity to test the suitability of the employee for the position. Both employees and employers will have the right to terminate contracts without notice and with no legal consequences prior to the expiry of the probation period. The new proclamation retains the existing rules that a probation period must be agreed between the parties and it must be done in writing. The law does not presume probation to exist in the absence of a written undertaking. At the completion of a probation period, if the employment is not terminated, then a contract of employment for an indefinite period is presumed to have been created.

⌘ **Adjustment to Overtime Work and Payment:**

- the new Proclamation retains the maximum working hours to 8 hours a day and 48 hours a week. Work done in excess of these hours is considered overtime work. Under the new law ***maximum overtime work is capped at 4 hours per day and a maximum of 12 hours per week*** ***The maximum monthly and annual overtime hours of 20 and 100 hours respectively were removed***. Depending on the time of work, the rate of payment for overtime work has also slightly increased from ***1.5 multiplied*** by daily hourly rate ***1.75 multiplied*** by the daily hourly rate. As the previous legislation, the new Proclamation does not offer any flexibility for parties to agree on the extension of overtime beyond the limit stipulated by law

☒ **Vicarious Liability of Employers:**

- under the existing labour law, employers will be liable for any unlawful acts prohibited by law. These unlawful acts are those *including but not limited to*, discrimination of employees based on ethnicity, sex, religion, political outlook, HIV/ AIDS or disability or any other grounds; terminating a contract of employment contrary to the law; compelling employees to execute any task which is hazardous to life; committing sexual harassment or sexual assault at workplace; and physically abusing anyone in a workplace. The new Proclamation holds the employer liable if these acts are committed by any of its management employees. The effect of commission of these acts by either the employer or the managerial employee is that it will expose the employer, depending on the nature of the act committed, to a fine of up-to ETH 60,000 (approx. USD 2,000) or if repeated more than three times, for the closure of its organisation.

☒ **Employee Liability:**

- the Proclamation ***expands the list of unlawful acts by employees*** (which under existing law include endangering life and property of the employer, taking away properties, reporting to duty while intoxicated, refusing to observe safety and accident prevention and refusing to submit to medical examination with the exception of HIV/AIDS), to include the following acts:
 - a) making use of falsified document or an attempt thereof:

- a) conducting meetings during working hours in disregard to the time assigned by the collective agreement or without obtaining the permission of the employer;
- b) commit sexual harassment or sexual violence at workplace; and
- c) physically abusing anyone in a work place.

The implication of the above unlawful acts is that the employer will be able to terminate the contract of employment without prior notice to the employee within 30 days of knowing the existence of commission of such acts.

☒ **New Rules on Sexual Harassment and Sexual Violence:**

- The Proclamation introduced a new regime to regulate workplace sexual harassment and sexual violence. Sexual harassment includes any act that is made to persuade or convince another through utterances, signs or any other manner, to submit for sexual favor without his/her consent. Sexual violence includes any sexual harassment accompanied by force or any attempt thereof. Accordingly, employees that have suffered sexual harassment or sexual violence will be entitled to terminate their contracts without notice, and will also be eligible for severance payment and compensation. The law provides a higher amount of compensation payment for employees who are forced to terminate their contract, without notice, for reasons of sexual harassment and sexual violence. Forced termination of contracts by employees for reasons that are unlawful acts of the employer will entitle the employee to one month compensation payment whereas sexual harassment and sexual violence victims will be granted three months of compensation payment.

⌘ Grounds for Termination of Contracts:

- the existing Labour Proclamation allows employers' ability to terminate contract of employments only to specific conditions provided by law. Any termination that is not in line with the labour law will be deemed as unlawful termination. An unlawful termination of a contract by an employer may have two consequences. a) It may either allow the employee to be reinstated to his/her previous position or b) it may entitle the employee severance and compensation payments.
- Under the new proclamation, the same approach is retained and grounds for termination of contracts (with notice and without notice) are exhaustively listed. However ***there were some adjustments made to the maximum number of days that employees may be late or absent from work.*** Failure to adhere to these numbers of days will entitle the employer to a summary termination of employment contracts. Accordingly, the new law provides that
 - a) reporting ***late to work eight times*** in six months period; and

b) absence from work for a total of ***five days*** in six months' period while being warned in writing of such a problem will lead to termination of contracts without notice.

c) employers will be able to terminate contracts of employment with prior notice, if there is ***amanifested loss of capacity or skills on the part of the employees*** .

Employer must, however, prove this by creating a performance evaluation system.

⊠ **Administrative penalties:**

- the Proclamation ***increases the administrative penalties*** to be imposed on employers violating the rules of the Labour Proclamation. Accordingly, the range for fines attributed to various violations under the Proclamation has increased from 300-1200 to 5,000-70,000. In practice, these administrative penalties were seldom enforced by the MoLSA.

1.4. Sources of Employment Law

- Material vs Validity sources
- Be that as it may, sources of law in this context should be understood to mean “legal instruments which will have impact in regulating employment relations or in resolving employment disputes if and when they arise.”
- These sources could be categorized into national and international or into public and private instruments. The international ones are mainly **Conventions and Recommendations.**

- **Conventions** are instruments designed to create international obligation for the states which ratify them, while **Recommendations** are not designed to create obligations but provide guidelines for government action. At this juncture, mention should be made as to “any international agreement ratified by Ethiopia is an integral part of the law of the land”. (Art.9 (4) FDRE Constitution).
- Ethiopia is one the founding member of ILO and known for actively ratifying different conventions attached therein.
- For instance, it ratified 23 ILO Conventions, of which 22 are in force while 1 Convention has been denounced.
- To be specific, Ethiopia ratified 8 of 8 Fundamental ILO Conventions. Hence, Ethiopia’s ILO membership, and its subsequent ratification of different conventions ensued there from, helped in introducing some of the basic principles of these instruments into the domestic legal system, albeit successive regimes in the country have customized the contents of the instruments in a manner that reflected the policies of the respective regimes and social realities in the country.

Ethiopia, for instance, ratified

- ☒ Forced labor Convention, 1930(No.29) in 2003;
- ☒ Freedom of Association and Protection of the Right to Organize Convention,1948(No.87) in 1963;
- ☒ Employment Service Convention,1948(No.88) in 1963;
- ☒ right to Organize and Collective Bargaining Convention, 1949(No.98) in 1963;
- ☒ Abolition of Forced labor Convention,1957(No.105) in 1999;
- ☒ Minimum Age Convention,1973(No.138) in 1999;
- ☒ Occupational Safety and Health Convention,1981(No.156) in 1991;
- ☒ Termination of Employment Convention,1982(No.158) in 1991;
- ☒ Private Employment Agencies Convention,1997(No.181) in 1991.
- ☒ Equal Remuneration Convention, 1951 (No. 100);
- ☒ Discrimination (Employment and Occupation) Convention, 1958 (No. 111);

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

1.4.1. Public Acts as sources of law

- The public acts include; **the FDRE Constitution, the labor Proclamation, the Federal Civil Service Proclamation and the Regional Civil Service Proclamations** of the respective Regions; **Pensions' Proclamations** etc.
- Furthermore, subsidiary instruments such as **Regulations** of Council of Ministers and Directives of the Ministry of labor and Social Affairs; **Directives** of Civil Service Agency and the Regional actors need to be consulted.
- Due emphasis should also be given to the ***constitutional principles*** such as the right to association; the right to freedom of movement; the rights of labor; equality and non discrimination and other relevant items of the same document.

- Last but by no means least, **decisions** of the Federal Supreme Court Cassation Bench should be noted as sources of employment as these decisions are binding by virtue of Proclamation No.454/2005.
- In this connection, it would be important to note that labor law *is within federal jurisdiction* while Civil Service law is within the concurrent jurisdiction in the sense that the federal civil service is within the federal competence while the regional civil service is left to the respective Regions.

Art.55(3) & Art 52(2)f FDRE Constitution.

1.4.2 Private Instruments as Sources of Law

- (Art15 of Labor Proc.)The private acts are instruments of private nature but binding as though they are law (Art.1731 (1) Civil Code).
 - Thus, strictly speaking they are not law; all the same they are assimilated to law.
 - These are: **Contracts of employment, Collective agreements and Work rules.**
 - The first two instruments are bilateral ones while the third one is a unilateral instrument.
- ☒ ***Do you think these instruments applicable to civil service relationships?***

- Private act as a source of law for the Civil Service does not seem to be applicable.
- ⊠ For one thing, the contract of employment between the Civil Servant and his/her employer (i. e. the government office) will be **administrative** in nature and **public law** in branch.
- ⊠ Letter of appointment accompanied by job description, rather than a contract of employment, is to be issued to the civil servant by the head or any other authorized official of the government institution. Arts.18 & 22 of FCSP

Chapter 2: SCOPE OF APPLICATION OF THE LABOR PROCLAMATION NO 1156/2019

- This unit is aimed at helping you appreciate the kinds of employment relationships that labor law intends to govern.
- The Proclamation doesn't apply to all employment relations. It only applies to employment relations between an employer and a **worker**.
- Hence in this chapter we will basically address the following 4 issues;
- Who is a worker?
- Distinction between a worker and other similar terms
- Who is an employer? and
- Exclusions

2.1. Definition of a worker

- In employment relationships there is always an employee and an employer.
- But, labor law does not regulate each and every employment relationships.
- It normally regulates employment relationships established between a worker and an industrial employer.
- It is if and only if the person who is an employee can be considered as a “worker” that the labor law will be applicable to him.
- Other employment relationships are basically excluded from the ambit of labor law.
- In order to identify the scope of application of the proclamation we have to identify the three key elements:
 - ☒ Worker?
 - ☒ Employer?
 - ☒ Employment relation?

- Indeed, who is a worker and an employer might be different depending on the specific laws we are referring.
 - ☒ For instance, unemployed job seekers are characterized as workers under the Ethiopian Oversea Proclamation No. 923/2016.
- But, it is unlikely that unemployed persons can be characterized as workers in the labor proclamation.
 - ☒ In the investment proclamation, non profit motive organizations are excluded, which is unlikely in the labor proclamation
- Thus, in this section, our focus would be to understand the meaning of a worker, by looking at the definition as given by the proclamation Art 2(3); and by making a distinction between a worker and other similar terms in accordance with Art 3 and 4 sub article 1 of the labor Proclamation in the next sections.

- Art 2(3) of the labor proclamation No. 1156/2019, ***“a worker means a person who has an employment relationship with an employer in accordance with Article 4 of this Proclamation.”***
- The definition of Article 2 sub article 3 is a sort of incomplete definition as it cross refers us to Article 4, and hence we have to see the meaning of an employment contract as enshrined in Article 4.

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

6 Elements of the definition

- from Articles 4(1) and 2(3) respectively, the agreed worker must be ***natural or physical person*** . This can be inferred from the wording of the Amharic equivalent of Article 2(3) which especially says “ግለሰብ”.
- In addition, to be a worker such physical person must be one who renders ***physical or intellectual services*** .

lawful activity 2(2)

- More over, such service is to be rendered under the ***authority of the employer*** .
- the person's duration of contractual engagement may be concluded for ***a definite or indefinite time or piece*** . Arts 9-11
- Besides all these the person is regarded as a worker if and only if the ***wage element*** is satisfied. Arts 53-60
- ***Existence of kt*** .

2.2 Distinction between a Worker and Other Similar Terms

- a worker is defined as a *physical person* that *renders service* for an employer on the basis of an employment **contract for wage** .
- However, there are some other persons that fulfill some or many of the elements of a worker without being workers, and that give service for another party.
- Therefore, how is an employee or a worker/ different from an agent, or a contractor

A. Worker v

Art. 2179. - Source of authority.

“The authority to act on behalf of another may derive from the law or a contract.”

- ⊠ ***Source of Authority:*** According to Article 2179 of the Civil Code of Ethiopia, the source of authority of the agent could be ***law or contract*** , whereas the source of employment relationship or the worker’s source of authority is **only a contract**. Hence, we can not get an employment relationship or worker’s authority that emanates from the law as it is clearly provided under Article 2(3) cum 4(1)
- ⊠ ***Wage:*** As already said before, wage is an element of an employment relationship. So, we can not get a “worker” who serves for free. But, remuneration is not so essential in agent – principal relationship, as we don’t find this element in the definition of Agency. Art 2019cu 2020

Art. 2219. - Contractual remuneration.

- (1) The agent shall be entitled to the remuneration fixed in the contract.
- (2) The court may reduce the remuneration fixed in the contract where it appears excessive and out of proportion to the services rendered by the agent.

Art. 2220. - Remuneration not fixed by contract.

- (1) In the absence of a stipulation in the contract, the agent shall not be entitled to remuneration unless he carried out the agency within the scope of his ***professional duties*** or where such ***remuneration is customary***.
- (2) Failing agreement between the parties, the court shall fix the remuneration in conformity with recognized rates and usage.

⌘ ***Under whose name the service is rendered***: this is the other parameter that distinguishes a worker from an agent. Art 2199

Art. 2199. - Definition.

“Agency is a contract whereby a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts.”

- As you may remember from your course on Law of Agency, the agent renders service in the name of the employer i.e. the principal. For instance, if the agent is authorized to enter in to transactions by representing his principal, he signs the contract in the name of the principal.
 - But such is not the case for the worker. Though the service he renders is in the interests of the employer, the worker always provides service in his own name.
- ⌘ Whereas a worker is essentially a physical person, an agent could be a legal person or a physical person.

B. Worker v.

Art. 2610. - Definition.

A contract of work and labor is a **contract** whereby one party, the contractor **undertakes to produce** a given result **under his own responsibility**, in consideration of **remuneration** that the other party, the client, undertakes to pay him..

- Just like the agent and the worker, an independent contractor **renders service** for another party called client.
- the two relationships are similar in that their source of relationship **emanates from contract** and remuneration is an element for both.
- The first yardstick we can employ so as to identify is the **direction element**. For example, if you order a tailor to render you with a suit, you are only interested in the final product, not in his manner of work.
- A contractor could be **physical or legal person** as the case may be. But a worker is always a physical person. This assimilates an agent with a contractor.

	worker	Independent contractor	Agent
Nature of obligation	Service for the employer	Service to the client	Service to the principal
Sources of obligation	Contract	Contract	Law or contract
Remuneration	wage	Remuneration/ wage	May/may not
Direction by the employer	yes	less	less

2.3. The Meaning of an Employer

- Article 2(1) of the labor Proclamation,
“employer means a person or an undertaking that employs one or more persons in accordance with Article 4 of the Proclamation.”
- This definition of the law does not take in to consideration the number of persons a person or an undertaking should employ for it to be deemed as an employer and ultimately to be governed by our labor law.
- In other jurisdictions, as the protection of labor law grants for the worker is often at the expense of the employer, the person's or the undertaking's employment of more than twenty or twenty five persons is required for labor law to apply.

- Undertaking is also defined under sub-articles 2 of Article -2 to mean

*“ Any entity established under a unified management for the purpose of carrying on any commercial, industrial, agricultural, construction or **any other lawful activity.**”*

Any branch carrying on the activities of an undertaking which is designated separately and which enjoys organizational or operational autonomy shall be deemed as a separate undertaking”.

- Thus, an employer can be a physical/natural person or an entity such as Business Company, factory and the like. When we see the above provision’s listing of activities that are to be performed by such entity they are **economic in their nature** ; and some even tend to be profit making activities.

⊠ **What kinds of activities are those which fall under the category “any other lawful activity” for the purpose of defining a person or an undertaking and then an employer? Is this expression referring to any activity /lawful/ with no need to have an economic nature or profit purpose?**

- According to some lawyers, the phrase “**any other lawful activity**” should be construed to mean activities with nature similar to the prior listing of the law. So, on the basis of the illustrative listing, activities which are only economic in nature and profit oriented should be regarded as lawful activities for the purpose of defining an undertaking under Article 2(2).
- Others, on the other hand, say so long as the activity performed by an entity is a lawful one, and unless it is excluded by the exclusion part of the Proclamation, such entity should be considered as an undertaking.
As the exclusion under Article 3 mentions some non-profit activities; one can say that the definition has thought of all activities.

2.4. EXCLUSIONS

Article 3 sub article 1 of the Proclamation. It reads,

“Without prejudice to Sub-article (2) of this Article this Proclamation shall be applicable to employment that exists between a worker and an employer.”

“Without prejudice to Sub-Article (2) of this Article, this Proclamation shall be applicable to employment relations based on a contract of employment that exist between a worker and an employer including recruitment process [added in the new Proc]”

- As there are various employment relationships that are excluded from the application of labor law, employment law and labor law are different in the Ethiopian Legal System. Employment relations are wider as the legislator excludes some sorts of such relations from being governed by labor law. So, labor law /relation is only one segment of employment law / relation.

2.4.1. Exclusion in historical context

a) Public Servant

- *The Civil Code of Ethiopia*, the pioneer to provide regulatory rules for employment relations in the country, defines employment relationships and under Article 2513, it excludes some relationships.
- This provision of the Civil Code has excluded public servants from the protective coverage of the Code's provisions.
- Can you guess to whom the term “public servant” is applicable?
- In the *latter proclamations*, the traditional exclusion of public servants dating back to the Civil Code of Ethiopia was/ is consistent and persistent regardless of the existence of worker definition elements. The 1975 proclamation, proclamation No. 42/93, 377/2003 and the currently enforce proclamation have excluded the public servants from the labor laws' coverage.

b) The Management Staff

- The management staff, the decision making staff at the top layers of the undertakings/ enterprises or branches thereof were not excluded by the Civil Code. ***Proclamation 64/75 excluded them*** from the ambit of labor law. Accordingly, manager and deputy managers of an enterprise or its branch and officials accountable to either the manager or deputy manager were excluded.
- Similarly, ***proclamation No. 42/93 under its Article 3(2) (e)*** has excluded the management staff. As this proclamation had excluded those contracts relating to persons ***holding managerial posts and engaged in major managerial functions*** from its coverage, we observe a deviation in its approach of defining the meaning of a “management staff”. As opposed to proclamation 64/75, which provided ***assumption of post*** as a conclusive yardstick for the exclusion of workers, the latter law had included ***exercise of managerial functions as an additional requirement*** to do so. Therefore, unless a worker is entitled to exercise major managerial functions, his mere assumption of managerial post was not adequate enough to consider him as a “management staff and, then for his exclusion from the scope of labor law.
- Under ***the 2003 labor proclamation***, the same Article and sub-article exclusion of the management staff is transplanted from the 1993 proclamation. But, the latter proclamation has adopted a purely functional approach & come up with a new group to be excluded, a professional staff. These are people ***who recommend measures for managers*** on the basis of their expert knowledge. But previously, only the decision making organs were excluded as management staff.

c) Domestic Servants

- Domestic servants were part of employment relation and were to be governed by the Civil Code. But, because of the special nature they possess they were given special provisions, starting from Article 2601-Article 2604 of the Civil Code.
- ***The 1975 labor proclamation***, however, had excluded domestic servants from its coverage. It was from that time on that domestic servants are excluded from being regulated by the Ethiopian labor law. Later ***Proclamation 42/93*** with different wording excluded the same. Under the same sub-article and by the same wording domestic servants are excluded under the labor proclamation 377/2003.

2.4.2. Exclusion under the 2019 labor Proclamation

- The proclamation stipulates two broad classes: as out right exclusions and conditional exclusions.
- The first class includes employment relations that are automatically excluded by the proclamation, and hence by no means can they be governed by the proclamation.
- For the latter class of exclusions the exclusion applies upon the fulfillment of the attached conditions. Hence, until the specific condition the proclamation sets for their exclusion is satisfied, such employment relations are to be governed by the existing labor Proclamation.
- What is the policy reason to exclude some employment relations conditionally and others automatically?

I. Outright exclusions

- “the proclamation shall be applicable to employment relations based on a contract of employment between a worker and an employer”. Art 3(1)
- But under its sub-article 2 of Article 3, the law excludes some lists of employment relationships from the coverage of the Proclamation. In the following manner;

This proclamation shall not be applicable to the following employment relations:

- a. “contracts for the purpose of upbringing, treatment, care or rehabilitation”***
- b. contracts for the purpose of educating or training other than apprentice:***
- c. managerial employee who is vested with the powers to lay down and execute management policies by law or by the delegation of the employer depending on the type of activities of the undertaking with or without the aforementioned powers an individual who is vested with the power to hire, transfer, suspend, layoff, assign or take disciplinary measures against employees and include professionals who recommend measures to be taken by the employer regarding managerial issues by using his independent judgment in the interest of the employer.***

d.e.f

- The above listed relationships are automatically excluded from the ambit of labor law. In other words, labor law does not regulate these relationships in any conditions.

A. Contracts for the Purpose of Upbringing, Treatment, Care or Rehabilitation

- As the purpose of these relations is not tuned by profit motive of the employer, the law maker has opted for their unconditional exclusion. In fact when we talk about employment contracts a person undertakes to render service for his/her employer and all the elements which are given under Article 4(1) are met. However, under these excluded relationships, the parties' employment engagement is part of the upbringing treatment, care or rehabilitation of the person which is rendering the service.
- As an illustration, we can take the relationship between a guardian/tutor and his/her minor/child. The minor may, occasionally, be made render service for his/her guardian/tutor in order to enable him develop positive attitude towards work.

- Similarly, the rehabilitation scheme for prisoners in prison is there to mold the latter's criminal behavior, and to make them good member to the society. The prisoners may, therefore, be made render certain services to the prison. When we look in to the purposes such relationships serve in comparison with the purpose of labor law, to regulate such kinds of employment relations by labor ~~might~~

bringing about undesirable consequences.

B. Contracts for the purpose of educating or training

- According to Article 3(2) (b) of the proclamation, if an employment contract is concluded for the purpose of educating or training a person, the relationship between the educator or the trainer and the student or trainee is not to be governed by labor law, unless the engagement is one of apprenticeship.
- both ***students and trainees are there to acquire knowledge or skill*** . Hence, the service they render for the employer is ***only incidental*** .
- such service, if considered as part of the curriculum, can not be considered as one among the employment relationships which are to be regulated by labor law.
- The same holds true for services rendered by trainees. Trainees normally focus on the practical skills of the training program.

- ***Apprentices*** , on the other hand, are persons who undergo certain trainings while rendering services to their employers. The employer is duty bound not only to pay wages for the apprentices but also to enable them acquire the skills that the services require. As the purpose of the employer/undertaking is to do some other businesses rather than giving training, it also employs other workers who are there only to render service. Thus, labor law intends to regulate the relationships of the employer both with the apprentices and other workers.
- However, due to ***their special nature*** contracts of apprenticeship are governed by their own separate provisions of the labor Proclamation, starting from ***Article 48 up to Article 52 of the proclamation*** .

C. Members of Management Staff

- In the Ethiopian legal system members of the management staff (decision making at the top layer of an undertaking) are excluded by all the labor laws dating back to the promulgation of proclamation No. 64/75 . proclamation No. 64/75 excluded workers who assumed certain posts as members to the management staff. Accordingly, general managers, deputy general managers, or assistant manager and workers who are directly accountable to them were outside of the scope of the labor laws. Therefore, by simply looking at the structure of an undertaking or enterprise one can easily identify who the members of the management staff are.

- Even though this ***structural approach*** is clear and simple to administer, it has some problems especially in the Ethiopian legal system. In a given undertaking you can, for instance, easily identify the general manager and his deputy. But as you go down from the top, things get complicated making it difficult to easily differentiate the rank and file from members of the management staff.
- the employers practice of indiscriminately using managerial title for their ordinary workers saying, for example, you are supervisor, director etc.
- to avert such problem, ***the 1993 labor Proclamation*** adopted the ***functional approach*** with the previously employed structural approach. During that period the structural approach, unless coupled with analysis of managerial function of an employee would not be of any help for exclusion. To put differently, to be deemed as a member of the management staff and hence to be excluded from the Proclamation's coverage, one has to:
 - ☒ hold a managerial post/ title, and
 - ☒ should also engage in managerial functions.

- ***The 2003 and 2019 Labor Proclamation*** has come up with a ***purely functional approach*** for the identification of the management staff. Therefore, a worker's assumption of post / title would no more be a yardstick for the determination of the applicability or otherwise of the labor Proclamation on the relationship between a worker and an employer on the basis of Article 3(2) (c) of same.
- Under its Article 3(2) (c) the Proclamation provides the inapplicability of the labor proclamation for
- “Managerial employee” means an employee who, by law or delegation of the employer, is vested with powers to lay down and execute management policies, and depending on the type of activities of the undertaking, with or without the aforementioned powers an employee who is vested with the power to hire, transfer, suspend, layoff, dismiss or assign employees, and includes a legal service head who recommend measures to be taken by the employer regarding such managerial issues, using his independent judgment, in the interest of the employer.

- why such staff is excluded from the protective umbrella of labor law?
- In almost all legal systems of the world, including the Ethiopian labor law legal regime, the exclusion of members of the management staff is closely tied with the notion of trade unionism in collective labor relations.

☒ **So what is the *lex causa*?**

- See the decision of the FSCCDD V. 8 File No. 42901, V. 15, File No. 92466
- Thus, employment relation of managerial employees will be governed by
 - ⊠ Their **employment contracts**, see the FSCCDD V. 13, File No. 60489
 - ⊠ **Arts, 2512-2593** of the Civil Code, see the decision of FSCCDD V. 2, File No. 18307, V. 3 File No. 15815, V. 7 File No. 23609,
 - ⊠ **General provisions of the contract** under the Civil Code, arts. 1675-2026

D. Domestic Servants

- Domestic servants are workers who have an employment relationship with their employer in order to give services in a house-hold and not in business place.
- 2(16)
- **Bear** in mind, it is not the nature of the service, it's rather the question to whom the worker renders service, that matters in defining their relationships. This is because, similar services like those given by the domestic worker can be given in other enterprises that are included under the coverage of labor law. As an illustration take the usual house hold chores of the domestic servant such as cooking food, washing the bed sheets of the employer and the like. These similar services may be given by another worker who is employed in a hotel. Though the nature of services performed by the two workers is identical, the house hold worker's employment relationship is excluded from the application of the labor proclamation. Whereas, the latter is still under the coverage of the law, for his employer is not a house hold.

- Their exclusion is not due to the types of services provided by them
- However, oversea domestic workers are not excluded, see the FSCCDD V. 20, File No. 98771 and V. 19, File No. 101675
- The reason is, the identity of the service recipient, for non-profit making purposes
- Their employment relation will be governed by
 - ⊠ Their contractual documents
 - ⊠ Arts. 2601-2604 of the civil code
 - ⊠ General provisions of the contract
 - ⊠ Regulations, if promulgated (see art. 3(3) of the proclamation)
- ⊠ Do you think it is rational to exclude domestic workers?
Why?

E. Public Servants

- As the naming tells, this category of employees is inclusive of all employees of the executive, legislative and the judicial tiers of the government machinery. According to Article 3(2)(e) of the 2003 labor Proclamation, these employees include:
 - ☒ members of the Armed Force,
 - ☒ members of the Police Force,
 - ☒ members of judges of courts of law,
 - ☒ prosecutors, and
 - ☒ employees of state administration.
- The reading of the provisions of this sub-article tells us that the ground for the exclusion of these employees is the ***existence of special laws governing the relationship of the employees and their employer***. As the enumeration is illustrative in the future we might even get some other excluded relationships between the government and its employees pending the issuance of special laws.
 - ☒ **Why these employees are excluded from the coverage of labor law and are made subjects of special laws?**

F. Independent contractors

- Article 3(2) (f) of the labor Proclamation is the last exclusion among the outright exclusions that are made by the Proclamation.

☒ ***Is this exclusion relevant? Wouldn't this tantamount to "killing the already dead"?***

☒ ***Lex causa?***

☒ ***Their Kt***

☒ ***2610-2631 ...***

- Where the situation doesn't squarely fit to the exception i.e. the exclusion ***the benefit of doubt should be for the worker*** , since **exclusions are exceptions** and in principles of interpretation exceptions should be interpreted restrictively (narrowly) not liberally. So it would be better to consider this kind of relationship as covered by the labor Proclamation.

II. Conditional exclusion, art. 3(3)(a).

- a. Employment relation in the diplomatic missions or international organizations, art. 3(3)(a)
 - Application of the proclamation will be excluded when there is otherwise stipulation in a treaty, that Ethiopia is a signatory, or regulation, issued by Council of Ministers. See FSCCDD V. 13, File No. 67996
 - In practice, the Ethiopian Ministry of Foreign Affairs makes an agreement with diplomatic missions and international organizations for inapplicability of the labor proclamation and limits the workers right to access to justice
 - Thus, employment disputes will be resolved through diplomatic channels, than court litigation. For that there is a department called “Protocol General” within the Ministry of Foreign Affairs
- ⌘ Do you think the practice is consistent with the Constitution (art. 77 (13)) , and the proclamation (art. 3 (3) (a))?
- ⌘ Comment the FSCCDD V. 17, File No. 98541, Ato Alemayehu Olana vs. UNDP
- ⌘ Comment the Constitutionality of the FSCCDD V. 19, File No.117390.
The decision impairs the workers constitutional right of access to justice (art. 37 Cons.)

b) Employment relation in the religious and charitable organizations, art. 3(3)(b)

- The proclamation will be inapplicable when the Council of Ministers enact regulation that provides other wise stipulations.
- Council of Ministers enacted a regulation No. 342/2015 in this regard.
- It stipulates:
 - ⊠ The proclamation is **inapplicable** for workers who:
 - ⊠ gives spiritual service to religious organizations
 - ⊠ Give spiritual and administrative/ Spiritual and charitable works simultaneously
 - ⊠ The proclamation is **applicable** on workers who:
 - ⊠ engaged in income generating, administrative or charitable activities undertaken by religious organizations
 - ⊠ Engaged in income generating, administrative and charity activities undertaken by Charitable Organizations
- See FSCCDD V. 13, File No. 67996

- In the FSCCDD, V. 8, File No. 18419, ሐመረወርቅ ቅ/ማረያም ቤ/ክርስቲያን ሰበካ ጉባኤ ጽ/ቤት እና እነ ዲያቆን ምህረት ብርሃን(ስድስት ሰዎች)
- The court makes a classification between spiritual and material services in religious institutions.
- Accordingly workers engaged in spiritual service is excluded from the ambit of the proclamation

C. Art 3(3)c

*“the Council of Ministers **shall** issue regulation governing conditions of work applicable to personal services.”*

- *Cum Art3(2)d*
- *It is not exclusion in the strict sense*

Chapter 3: CONTRACT OF EMPLOYMENT

3.1. FORMATION OF A CONTRACT OF EMPLOYMENT

General Remarks

Art. 1675-Definition

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligations of a proprietary nature

Art. 2512-Definition

A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him. See also Art 4(1)

- Employment contract is a special kind of contract.
- Hence, unless the labor proclamation draws its own specific rules (exceptions) on specific issues, the civil code's general rules on contract would be applicable on employment contracts.
- Contract of employment is the starting point for the parties to have employment relationship.

☒ **How it can be formed then? By whom?**

- Article 4(2) of the Proclamation

“A contract of employment **shall be stipulated clearly** and in such manner as that **the parties are left with no uncertainty** as to their respective right and obligation under the terms thereof”

⊠ Accordingly, the details of the contract are to be laid down by the parties to the contract

⊠ Clear and certain

⊠ But the law tries to make sure that certain requirements are fulfilled. These requirements, as you remember from the discussion of unit- two, are what we call **elements of contract** of employment.

- Besides, the **issue of validity** deserves due attention.

⊠ For employment relation **is a contract & due to Art 1676**, the general validity requirements of contracts need to be fulfilled.

⊠ These general requirements are provided under **Art 1678**

I. Capacity

- Presumed
- **Onus of proof** is on the party who is alleging incapacity
- Gives *locus standi* only to the party whose capacity defective
- **Grounds** of incapacity:
 - ⊠ Legal interdiction: as criminal sanction,
 - ⊠ Judicial interdiction: to provide protection
 - ⊠ Special function,
 - ⊠ Foreign nationality &
 - ⊠ Age...

- As a rule attainment of majority (18 yrs) is necessary to enter into a valid contract of any kind Arts 198 & 199.
- With respect to labor law we seem to have exceptions.
- A contract of employment could be concluded prior to the attainment of majority. Such workers who do not attain majority are referred to as *“young workers”*.
- Article 89(2) labor proclamation:

“It is prohibited to employ persons under 15 years of age.”

- *acontrario* reading of the same allows one to hire workers of 15 years of age or greater.
- So the domain of young workers encompasses workers of both sexes who fall between 15 & 18 yrs of age.
- See also Art 48(2)

II. Consent

- Declared to the parties one an other

-

- *consensus ad idem*

-

- *Intentio obligandi*

-

- *Free from vices*

-

- Art 4(1) “...agrees directly or indirectly...”
- Art 4(2) “A contract of employment shall be stipulated clearly...”

III. Form

- *Art. 1678 (3)*

No valid contract shall exist unless the contract is made in the form prescribed by the law, if any

- article 1719(2) of the 1960 civil code of Ethiopia.
- No special form is required unless the law demands.
- the principle here is “freedom of form” and form is required only when deviations by the law are found.
- Article 5 Labor proclamation:

Form

“Unless otherwise provided by law, a contract of employment shall not be subject to any special form.”

- Though this is the rule, under some exceptional instances the labor proclamation demands a written contract of employment.
- ⊠ As an illustration to this we can take article 11(3) contract of employment with ***Probation***
- ⊠ Art 15(3) which orders a written agreement when ever parties ***modify*** their contract of employment. Hence, in what ever manner a contract of employment is concluded (either orally or in writing) modification of the contract would be legal only when it is done in writing.
- ⊠ Similarly, a contract of ***apprenticeship*** is to be made in writing (Article 48 (3) labor proclamation).
- ⊠ **What would be the effect of failure to make these contracts in writing?**

- ⊠ On the other hand, if the parties decide to make their contract in writing, Art 6 cum 4(3) of the proclamation lays down the contents the parties must specify there in. These are;
 - 1/ The name and address of the employer;
 - 2/ The name, age, addresses and work card number, if any, of the worker;
 - 3/ the agreement of the contracting parties made in accordance with Article 4 (3) of this Proclamation;
- ⊠ The type of employment and place of work,
- ⊠ the rate of wages, method of calculation thereof, manner and interval of payment and
- ⊠ duration of the contract
- 4/ The signature of the contracting parties.
- ⊠ Art. 6(4) proclamation “signature of the parties” vs. art. 1727 of the c.c

- ⊠ If the contract of employment is one entered into orally the employer is duty bound to reduce it into writing & give a copy thereof to the worker Art 7(1).
- This ***letter of employment*** is to be given to the worker within 15 days as of the date of conclusion of the contract.
- Art 7(2)
- ⊠ **What will be the effect of failure to comply with Art 6 & 7 of the proclamation?**
- Failure to comply with such duties shall not trigger invalidation of the contract.
- As the contract is still valid under both instances, the worker is yet allowed to enjoy all the rights the contract provides to him.

- ⊠ **Why is a written instrument required by article 7(1)?**
 - This is just to avoid problem of proof at a latter stage
- ⊠ **So, if a written instrument of this kind is believed to have all these advantages, why did not the law make it a mandatory requirement?**
 - It seems duty of the employer
 - To give the benefit of doubt to the weaker party
- ⊠ **Art. 8 Failure to comply, it should not affect rights of the worker**

IV. Object of the contract

- It is required to be sufficiently defined, humanly possible, moral & lawful. Arts 1711-1718
- ⊠ ***sufficiently defined*** Art 4(2&3) See also Art 6 &7
- ⊠ The rule under article 4(4) which reads “A contract of employment shall not be concluded for the performance ~~of~~ ***unlawful or immoral*** activities” is a restatement of the civil code’s provision on the “object” of a contract as a validity requirement.
- ⊠ Should not provide less favorable terms than those provided by law, collective agreement or work rule, art. 4(5): Also known as ***Content Requirement*** ”

V . Contents of the Contract

- The previously discussed validity requirements for a contract of employment are almost identical with the requirements all contracts should comply with.
 - However, the labor proclamation goes further and it displays due concern even for the parties' stipulations (contents) in their contract of employment. Please, read article 4(5) of the proclamation
 - the parties to an employment contract are prohibited to provide for the worker less favorable conditions than the minimum conditions stipulated by the proclamation, the collective agreements, or work rules.
- ⊗ **Is the requirement of “content” under the proclamation a validity requirement like consent, capacity, form and object, making the contract invalid?**

- The purpose of such a requirement is to protect the interests of the worker who is the weaker party in bargaining,
- To invalidate the contract as a whole is likely to hurt the worker himself,
- Hence, the requirement under Article 4(5) should not be taken as a validity requirement.
- Instead of invalidating the contract, it seems sound to replace better or highly favorable conditions in those less favorable conditions of the contract from provisions on the law, collective agreement or work rules.
- Article 134(2) gives us a similar guidance to resolve such issues, *“Where the collective agreement is more favorable to the workers in similar matters than those provided for by law, the collective agreement shall prevail. However, where the law is more favorable to the workers than the collective agreement the law shall be applicable.”*
 - “Favor the worker”
- ☒ **How long a contract of employment would stay in force once it is validly concluded?**

3.2. DURATION OF CONTRACT OF EMPLOYMENT

- Its base is art. Art. 4 (1) that it specifies the employment contract can be for “Definite period, Indefinite period or Piece of work
- There are different views on how to determine the duration of contract of employment
- Why do we worry about duration of contract of employment?

Art 24(1)

“a contract of employment shall terminate on the following grounds: 1/ on the completion of the work where the contract of employment is for a specified work;...”

1. It shall be determined by express agreement of the parties

☒ Article 4 (1) and (3)

2. It shall be determined by the **nature** or **situation** of the work for which a worker is employed- The factor should be whether the work has continuing nature

3. It should be strictly determined by the law.

☒ Presumption: All emp't contracts are for indefinite period- Art. 9

☒ Exception: Emp't for definite period or piece of work is only what has been mentioned under art. 10.

☒ What are contracts for definite period of time?

See art 10 of the proclamation

a. For piece of work.

☒ E.g V. 9, File No. 48648, የፃልቄ የትምህርትና የተቀናጀ የልማት ማህበር vs. እነ አቶ ታጠቅ ደጀኔ

“በአሰሪና ሰራተኛ በኩል በአጠቃላይ ለፕሮጀክት ሥራ በሚል የተደረገ የሥራ ውል በአሰሪና ሰራተኛ ሕጉ አንቀጽ 10(1)(ሀ) መሰረት የተደረገ”

– However, the contract shall sustain as far as the project is not completed that caused termination of the worker. See the decision, V. 11, File n. 62370,

የኢትዮጵያ ኤሌክትሪክ ኃይል ኮርፖሬሽን vs. እነ አቶ እዮብ መለሰ

“ከሥራ ክርክር ጋር በተያያዘ ሠራተኞች እየሠሩ የሚገኙትን ሥራ በተመለከተ የሥራ ውል አላደሱም ወይም ለማድረግ ፈቃደኛ አይደሉም በሚል ለማሰናበት የሚያስችል የህግ መሰረት የሌለ ስለመሆኑ”

- b. The replacement of a worker who is temporarily absent due to leave or sickness or other causes;
- c) The performance of work in the event of abnormal pressure of work;
- d) The performance of urgent work to prevent damage or disaster to life or property, to repair defects or breakdowns in works, materials, buildings or plants of an undertaking;
- e) An irregular work which relates to permanent part of the work of an employer but performed on irregular intervals;
- f) Seasonal works which relate to the permanent part of the works of an employer but performed only for a specified period of the year but which are regularly repeated in the course of the years;

g) An occasional work which does not form part of the permanent activity of the employer but which is done intermittently;

h) The temporary placement of a worker who has suddenly and permanently vacated from a post having a contract of an indefinite period;

- ☒ Only once and should not be more than 45 working days, art 10(2)

i) The temporary placement of a worker to fill a vacant position in the period between the preparation of an organizational structure and its implementation

- ☒ Only once and should not be more than 45 working days, art 10(2)

- Some court decisions:

- V 3, File no. 11924, የኢትዮጵያ ቴሌኮሚኒኬሽን vs. ወ/ሪት ትግስት ወርቁ

- ☒ All employment works should be presumed for indefinite period

- ☒ All employment contracts made between the employer and the worker should be presumed for indefinite period of time

- ☒ employment contract for definite period of time is an exception and should be expressed and confined to works specified under art. 10 of the proc

- ☒ Similar decision, V. 4, File No. 20885, የኢትዮጵያ ቴሌኮሚኒኬሽን ኮርፖሬሽን vs. አቶ ገብሣየስ የማነ

- Justiciability of instituting an action claiming indefinite period of time
 - ☒ V. 2, File No. 16273, የኢት/ቴሌኮሙኒኬሽን ኮርፖሬሽን vs. እና አቶ ገንታ ገምአ
 - ላልተወሰነ ጊዜ የተቀጠርኩ እንደሆንኩ ብቻ ይወሰንልኝ በሚል የሚቀርብ ጥያቄ የክስ ምክንያት የሌለው ስለመሆኑ
 - ☒ Art. 37 (1) Constitution:
 - Everyone has the right to bring a justiciable matter (በፍርድ ሊወሰን የሚገባውን ጉዳይ) to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.
 - ☒ Art. 33 (2) of C.P.C.
 - No person may be a plaintiff unless he has a vested interest in the subject-matter of the suit.

PROBATIONARY EMPLOYMENT

- Once a contract of employment is validly formed, the next step the worker **may** pass through is the probation period.
- This period is a period that enables both the worker and employer to determine each other's suitability. Art 11(1)
- this period or stage is a **permissive one**; and hence not all workers are required to pass through it. Art 11(1)
- Unless probational employment is ***agreed expressly*** and ***in writing*** , silence about it doesn't amount to presumption of probation period. Art 11(3)
- With respect to the duration of the probation period shall not exceed ***60 working days*** beginning from the first date of employment. Art 11(3)

- It has been for 45 consecutive days in the previous proclamation Art 11(4)
 - V.17, File no. 101890, የኢትዮጵያ አየር መኪና vs. ወ/ት ፍፁም ሀይሉ
 “አንድ አሠሪ ለመከራ የቀጠረውን ሠራተኛ በቀጠረው በ46ኛው ቀን ለስራው ብቁ አይደለም ብሎ የሰንብት ደብዳቤ ቢጽፍለት ድርጊቱ ህገ ወጥ ነው ሊባል የማይችል ስለመሆኑ”
 - By analogy in the current proc on 61st working day
- There is no probation for re-employment of a worker by the employer in the same job Art11 (2)
- Effect:
 - ☒ They have the same rights and obligations Art11 (4)
 - ☒ Both of the parties can terminate the contract without the need to give notice Art 11 (5&6)
- ☒ **What would be the effect if parties provide the duration of probation to be longer than that the law spells out i.e. 60 working days? What if it is not made in writing?**

- Under the 2017 federal civil service proclamation, the first **6 months** of employment are already spelled out as a period of probation for any civil servant. Art 19
- More over, if need be the 6 months probation period **could be extended to 9 months.**
- When we compare the labor proclamation with its civil service counter part we get deviations which can be examined from two perspectives.
- ⊠ in the civil service law probation period is a **mandatory one**, requiring all of its employees to pass through this stage.
- ⊠ difference on the **duration** of the period of probation.

3.3. OBLIGATIONS OF THE PARTIES

- Once a contract of employment is concluded **both parties** have obligations imposed by the law.
- The labor proclamation provides **minimum obligations** that should exist between the employer and the worker, Arts 12, 13 and 14, ...

3.3.1 Obligations of the Employer: Arts 12 and 14 (1) of the Proclamation

- broadly classified as positive & negative obligations (prohibitory norms)

☒ Positive obligations

- Article 12 talks about positive obligations or obligations to do of the employer. These are

Duty to provide work 12(1)a

- work is an aspect of human dignity or source of honor and for the individual to feel he / she is contributing something to the society.
- Payment w/out work is ultimately believed to hurt his integrity.
- in current ILO standards

Obligation to provide implements & materials Art 12(1)b

- In principle, it is the employer who is duty bound to provide the necessary tools and materials for the worker to render services.

Obligation to pay wage and other benefits Art 12(2)

- the service given by the worker is not for free.
- This wage element is crucial even to make a contract of employment in the eyes of the law.

Obligation to deduct union dues Art 12 (3)

- from the worker's regular wage, where the worker requests in writing of such deduction, and transfer the cash into the trade union's bank account

Obligation to respect the worker dignity. Art 12 (4)

- As one can reasonably expect, the employer has the duty to respect the workers' human dignity

Obligation to take OSH measures protecting workers Art 12 (5)

- relates to issues of safety and health of workers.
- the employer must take all necessary measures and respect the standards and directives given by the concerned authority
- the power to issue those standards and directives is vested with MoLSA Article 171
- failure to comply with this duty is a criminal act subjecting him to fine extending up to Birr 10000-60000 (Art. 185(2-a)).
- Up to closure of the undertaking

Obligation to cover the cost of medical examination Art 12(6)

- To cover the cost of medical examination of the worker whenever such medical examination is required by law or the appropriate authority;

Duty to give certificate of service Art 12(8)

- Upon **termination** of a contract of employment or whenever the **worker requests**, the employer has the duty to give certificate of work for the worker
- What the law demands the employer is to state only **quantitative /objective things**; the type of work he performed, the length of service and the **wage** she was earning
- This makes the letter of service different from the written notice under Article 27(2) which is also given up on termination

- Read Article 2588(2) of the Civil Code .
- Similarly ILO Recommendation No. 119, Article 8 “nothing unfavorable to the worker should be inserted in such certificate.”
- ☒ In the civil servant there is a precondition of clearance (art. 91 (2) of proc 1064/2017)
- ☒ A certificate of service to be issued to any civil servant shall indicate the **type** and **length of his service** as well as his **salary** Art 91(1) of proc 1064/2017)

Other positive obligations

- Moreover, employer is required **to observe the provisions** of the Labor Proclamation, directives and order, collective agreements and work rules that are issued in accordance with law. Art 12(9)
- Whenever an enterprise has a work rules it should arrange **awareness raising program** for the concerned workers. Art 12(12)
- **Obligation to keep a register/Documn Art 7 & 12(7, 10&11)**

⌘ Negative Obligations

- there are also certain acts which the employer is not allowed to commit. These are obligations not to do certain acts Article 14(1)
- Article 14(1) Labor Procl

“It shall be unlawful for an employer where any of the following acts are committed by **the employer** or a **managerial employee** to:

- a) **Restrain** the worker in any manner from **exercising his rights** or take any **retaliatory action** against him because he exercises his right;
- b) **Discriminate** against female workers, in matters of remuneration, on the ground of their sex orientation;
- c) **Terminate** a contract of employment contrary to the provisions of this Proclamation;

- d) **Coerce** or in any manner compel any worker to join or not to join a trade union; or to continue or cease membership of a trade union; or to require a worker to quit membership from one union and require him to join another union; or to require him to cast his vote to a certain candidate or not to be a candidate in elections for trade union offices;
- e) **Compel** any worker to execute any task which is hazardous to his life;
- f) **Discriminate** between workers on the basis of Nation, sex, religion, political outlook, HIV/AIDS disablement or disablement or any other grounds;
- g) **Unduly delay** a collective bargaining by withholding relevant information for the negotiation or perform any other act contrary to good faith;
- h) Commit sexual **harassment** or sexual **assault** at workplace;
- i) **Physically abuse** anyone in a work place;
- j) **Coerce** a worker in any manner to work or discharge an obligation.

- In addition to the resultant Civil Liability non obedience might bring about violation of any one of those obligations is punishable. Article 185(2-c). So such acts are criminal acts.

3.3.2 Obligations of the Worker

- positive & negative obligations of the worker

☒ **positive obligations: Art 13**

- With respect to the positive obligations, the worker is with the duty to:
 - 1/ To **personally perform** the work specified in his contract of employment;
 - 2/ To **follow instructions** given by the employer based on the terms of the contract and work rules;
 - 3/ To **handle with due care** all equipment and tools entrusted to him for work;
 - 4/ To report for duty always in **fit mental and physical conditions**;
 - 5/ To **give all proper aid** when an accident occurs or an imminent danger threatens life or property in a workplace without endangering his safety and health;
 - 6/ To **inform immediately** the employer any act which endangers himself or co-workers or which prejudice the interests of the Undertaking;
 - 7/ To **comply with the provisions** of this Proclamation, collective agreement, work rules and directives issued in accordance with the law

⌘ **Negative obligations:** Art 14(2)

It shall be unlawful for a worker to:

- a) Intentionally commit in the workplace any act which **endangers life or property**;
- b) **Take away property** from the work place without the express authorization of the employer;
- c) Making use of **falsified document** or an attempt thereof;
- d) To use drugs prohibited by law or use alcoholic beverages and have impaired physical and mental status at the work place;
- e) Except for HIV/AIDS test, refuse to submit himself for medical examination when required by law or by the employer for good cause;

- f) Refuse to observe safety and accident prevention rules and to take the necessary safety precautions;
- g) Conduct meeting during working hours in disregard to the time assigned by the collective agreement or without obtaining the permission of the employer;
- h) Commit sexual harassment or sexual violence at workplace;
- i) Physically abuse anyone in a work place.

- Failure to observe these obligation may subject the worker for dismissal without notice. Art. 27(1)i

3.4. Variation and Suspension of a Contract of Employment

- variation and suspension may or may not exist in a certain employment contract. Hence, permissive they are .

I. Variation of a Contract of Employment

- The employment relations are mainly related to **economic activities**.
- **dynamic nature** of economic activities in turn makes employment relations dynamic. This ultimately urges for flexibility
- It is vital as employment contract is for **long period** of time

⊠ **How?**

- Article 15 allows parties to modify the conditions of a contract of employment that are **not determined under[??]** the Proclamation through
 - ⊠ collective agreements, 15(1) **cum 134**
 - ⊠ work rules, 15(2) **cum 2(6)** or
 - ⊠ by **written** agreement of the worker and the employer. 15(3)**cum 4(5)** vs **Art 5**
- **Amalgamation, division or transfer** of ownership of the undertaking shall not entail modification of contract, art. 16

ii. Suspension of rights & obligations arising out of Contract of Employment: Art 17-22

- It is a **temporary interruption** of some of the obligations of the parties .
- the employer is free from the obligation to pay wage. At the same time the worker is not with the duty to give service.
- suspension and the resultant interruption of such obligations of the parties **doesn't bring about the interruption of the contract itself**. The contract remains alive.

⊠ **Grounds**

- six grounds of suspension recognized by Article 18, we can classify them in to 3 broader categories as:
- ⊠ suspension due to voluntary bilateral arrangement of the parties on the basis of Article 18 (1);
- ⊠ suspension for public interest concern Article 18(2&4); and
- ⊠ suspension when situation is beyond the control of the parties as recognized by Article 18(3,5&6)
- ⊠ Is the grounds under art. 18 exhaustive?
 - the wordings of the very provision
 - See arts. 27 (4), 85 & 86
- ⊠ **Procedures & requirements Art 19, 20, 21 &22.**

⊠ Prerequisites for suspension under arts 18 (5) & (6)

- The problems should last for more than 10 days Art 18 (5) & (6)
- Duty to inform, within 3 to Ministry or competent authority Art 19
- Should be decided within 3 days by MOLSA Art 20
- Cannot exceed 90 days Art 21

⊠ Upon expiry of the period; either reinstatement (art. 22) or termination (arts. 21, 85(2))

Article 20 Decisions of the Ministry or the Appropriate Authority

- 1/ the Ministry or the Appropriate authority shall determine the existence of a good cause for suspension with in three working days upon receipt of the written notice pursuant to Article 19 above. Where the Ministry or the appropriate authority does not notify its decision within three days, the organization shall be deemed allowed to suspend.
- 2/ where the Ministry or the appropriate authority finds that there is no good cause for suspension it shall order the resumption of the work and payment for the days on which workers were suspended
- 3/ the party who is aggrieved by the decision in accordance with Sub-Articles (1) or (2) of this Article may, within five working days, appeal to the competent labour court

Article 21 *Effect of confirmation or Authorization of Suspension*

- 1/ where the Ministry or the appropriate authority confirms or proves the existence of good causes for suspension, it shall fix the duration of the suspension; provided, however, that duration of the suspension shall not exceed 90 days.
- 2/ where the competent authority or the appropriate authority is convinced that the employer cannot resume its activities with in the period set under Sub-Article (1) of this Article, the contract of employment shall be put to an end and worker shall be entitled to the benefits specified under Articles 39 and 44 of this Proclamation.

3.5 Termination of Contract of Employment

- Termination is end of the employment relationship between the worker and the employer.
- As opposed to variation and suspension which may or may not exist during the parties duration of engagement, termination is an essential stage that happens to any contract of employment.
- The relationship doesn't stay forever. Whether one likes it or not, one day the contract will terminate /die.
- Art 23
- a contract of employment can be terminated **either lawfully or unlawfully**.
- we can classify them into 3 broad categories of legal grounds for termination. These are:
 - ⊠ termination by the **operation of the law** (Article 24);
 - ⊠ termination by the **agreement of the parties** (Article 25);
 - ⊠ termination upon the **initiation of either party** (Articles 26-33).

1. Termination by the Operation of the Law: Art 24

- results from the law itself without any act of the parties.
- enumerated under Article 24 in one of the following situations:

1/ on the completion of the work where the contract of employment is for a specified work;

2/ up on the death of the worker;

3/ up on the retirement of the worker in accordance with the relevant law;

4/ when the undertaking ceases operation permanently due to bankruptcy or for any other cause;

5/ when the worker is unable to work due to partial or **total** permanent in capacity.

A. termination on expiry

- on the completion of the work where the contract of employment is for a specified work; vs

a. on the expiry of the period of engagement or the completion of the work where the contract of employment is for a definite period or piece work,

- termination on the basis of such ground of Article 24(1) becomes true only on contracts that are concluded for a definite period or piece of work pursuant to Articles 9 and 10 of the Proclamation.
- if the work is completed, for a contract made for piece work termination follows. Here, for termination what matters is the completion of the work regardless of how long is the time the service takes.

B. upon the death of the worker

- Death of the worker is another ground for the contract of employment to terminate by operation of the law (Art. 24(2)). As employment service is a personal service
- it is personal right which cannot be transferred to the successors. Japanese culture of succession of employment opportunity

C. upon the retirement of the worker

- Retirement of the worker in accordance with the law is an additional ground for termination by law as per Article 24(3).
- **What is the retirement age in Ethiopia?**
- During Emperor's period, 60 & 50 yrs were retirement ages for male & female workers respectively.
- During the Derg regime 50 yrs of age was applicable as a retirement age for both male and female workers.
- Public Servants Retirement Procn No. **714/2011 Art 18.** prescribed 60 yrs as a retirement age for both male and female workers.
- Art 17 of "Private Organization Employees Pension Proclamation No. 715/2011".

The retirement age of an employee of a private organization shall be 60 years based on the date of birth registered when he was employed for the first time.

D. when the undertaking ceases operation permanently

- the employer's permanent cease of operation due to bankruptcy or for any other cause is an additional termination ground by operation of the law;
- other causes outside of bankruptcy that lead the enterprise to stop operation? As an illustration we can take the employer's change of purpose or activity.
- Vs Article 28(1)(d),

E. when the worker is unable to work

- *"When the worker is unable to work due to partial or total permanent incapacity"*
- Vs Article 28(1-b)

2. Termination by Agreement of the parties Art 25

- Parties are free to agree to terminate their contract, just like they are free to have their contract
- But, due to the special nature it has, the Labor proclamation has provided some safety valves.
- the law demands such agreements for termination to be made in writing. Art25 (2)
- In addition, any agreement for waiver of the worker's right shall be null and void. Art25(1)

3. Termination by the Initiation of Either Party

- As an exception unilateral termination of an employment relationship is allowed.

I. Unilateral Termination by Employer Arts 26, 27, 28, 29, 30, & 35

- termination by the initiation of the employer Art 27 & 28. also known as *dismissa* I.
- Art 27 allow the employer to dismiss the worker with no need to grant advance notice for the worker. Hence, called **summary dismissal**.
- Art 28 consist of causes for termination of a contract of employment by the initiation of the employer but by granting an advance notice for the worker. therefore, known as **ordinary dismissal**.

A. summary dismissal.

- Article 27(1) list of grounds for termination by the employer without notice.
- attributable to **unsuitable conducts of the employee** such as lack of diligence, faithfulness etc
- Hence, the entitlement for the employer is to terminate the contract without notice

- Art 27(1) Unless otherwise determined by a collective agreement, a contract of employment shall be terminated without prior notice only on the following grounds :

- a) Unless the reason for being late is justified by the collective agreement, work rule or contract of employment, being **late** for duty **eight times in six months period** while **being warned in writing** of such a problem;
- b) **Absence** from duty for a **total five days in six months period** while **being warned in writing** of such a problem; and where the absence cannot be classified in any of the leaves provided under the Proclamation;
- c) **Deceitful or fraudulent conduct** in carrying out his duties;

-v. 9, File no. 50009, የአዲስ አበባ ሂልተን ሆቴል እና አቶ ዮናስ ጥላሁን- the court puts a standard for “ gravity”

– በሰራተኞች ካፌቴሪያ የውጪ ሰው አስገብቶ መጋበዝ

FSCCDD V. 9 File no. 41676 የአዲስ አበባ ውሃና ፍሳሽ ባለስልጣን እና አቶ አድማስ ደምሳቸው አሰሪ በግልፅ ባልፈቀደበት ሁኔታ በሁለት ቦታ በተመሳሳይ ጊዜ መስራት ሠራተኛውን የማታለል ተግባር እንደፈፀመ የሚያስቆጥረው ስለመሆኑ

- V. 9, 42818, አቢሲኒያ ባንክ እና ወ/ር መለታ ገዳ

በትርፍ ሰዓት በሌላ መሥሪያ ቤት ሰርተሃል በሚል ሠራተኛን ያለማስጠንቀቂያ ለማሰናበት የሚያስችል የህግ ምክንያት የሌለ ስለመሆኑ

-V. 8 File no. 39543 የፍልውሃ አገልግሎት ድርጅት እና አቶ በረከት ተ/ማሪያም

በተጭበረበረ ማስረጃ ሥራ የተቀጠረ ሠራተኛ በሥራ ላይ እያለ የማጭበርበር ድርጊቱ የታወቀ/የተደረሰበት/ከሆነ ማጭበርበሩ የተከሰተው ሥራውን በማከናወን ላይ እንዳለ ተቆጥሮ ሊያስናብተው የሚችል ስለመሆኑ

- d) Misappropriation of the property or fund of the employer with **intent** to procure for himself or to a third person unlawful enrichment;

But what if he is found innocent by the criminal bench?

- Purpose of proceeding
- Standard of burden of proof
- Art. 2149 of the civil code
- Art. 69 (2), proc. 515/2007 and art. 71 (2) of the new proc
- e) Performance result of a worker, despite his potential, is persistently below the qualities and quantities stipulated in the collective agreement or determined by the agreement of the parties; vs **art. 28 (1)(a)?**
- f) Being responsible for brawls or quarrels at work, having regard to the gravity of the case;
- V. 13, File no. 79105, ወርልድ ቪዥን ኢትዮጵያ እና አቶ መዘምር መክብብ የሥራ ቦታ" የሚለው ሀረግ አሰራር (ተቋሙ) ለሥራና ለመኖሪያ በሚል ለሰራተኞች የሚሰጠውን ቦታ እንዲሁም ተፈፀመ የተባለውን የአምባገብ ድርጊት ከሥራ ሰዓት ሙጪ መሆኑንም ጭምር የሚያካትት ስለመሆኑ

- g) Conviction for an offence where such conviction renders him incompatible for the post which he holds; **vs art. 27 (1) (d)?**
- h) Being responsible for causing damage **intentionally or through gross negligence** to any property of the employer or to another property which is directly connected with the work of the Undertaking;
- i) Commission of any of the prohibited acts under Article 14 (2) of this Proclamation;
- j) Absence from work due to a court **sentence passed** against the worker for more than thirty days;
 - Is detention and arrest excluded?
- See v. 9, file no 114669, የኢትዮጵያ መንግሥት ኮንስትራክሽን ኮርፖሬሽን እና አቶ አስማረ ፈጠነ
 - አንድ ሠራተኛ በጊዜ ቀጠሮ ከ30 ቀን በላይ መታሰሩ እና ከሰራ ገበታው መቅረቱ ከ30 ቀናት የሚበልጥ እስራት እንደተወሰነበት ተቆጥሮ የሰራ ውሉን ያለማስጠንቀቂያ ማቋረጥ ተገቢ ስላለመሆኑ
- k) Commission of other violations stipulated in a collective agreement as grounds for terminating contract of employment without notice
- It makes the list under art. 27 non-exhaustive

- Art 27(2) vs its title
- as the very nature of the grounds is related to the worker's conduct which could be adjusted through time , the employer's tolerance for some time should make him lose his right for dismissal. Art 27(3)
 - ☒ When should it began to count; at the day of commission or after the decision by the discipline committee, see v. 9, File no. 53358 , የኢትዮጵያ ፖስታ አገልግሎት ድርጅት እና አቶ ጥላሁን ኩማ
- the notion of “suspension pending investigation” as enshrined under Article 27(4). Through collective agreement an employer may be entitled to a maximum of 30 days period so as to investigate the existence of a ground under Art. 27(1).

B. Ordinary / Normal / Dismissal (Article 28)

- only when the grounds given by the lawmaker are satisfied that an employer can unilaterally terminate the contract of employment of any worker.
- by giving an advance notice for the worker. This is intended for employment security matters.

- In order to terminate the contract by way of notice the employer has to first make sure that a ground for dismissal is available pursuant to Article 28.
- Then, if there is any ground he has to look into the years of service of the worker. The duration or years of service of the worker is important to calculate the period of notice the employer should give to the worker according to Article 35

Art 35. Period of Notice

1/ The period of notice given by the employer shall be as follows:

- a) One month, in the case of a worker who has completed his probation and has a period of service **not exceeding one year**;
- b) Two months, in the case of a worker who has a period of service **above one year and not exceeding nine years**;
- c) Three months, in the case of a worker who has a period of service of **more than nine years**;
- d) Two months, in the case of a worker who has completed his probation and whose contract of employment is to be terminated **due to reduction of work force**.

2/ Notwithstanding the provisions of sub-article (1) of this Article, the period of notice for a contract of employment **for a definite period or piece work** shall be as agreed upon by the parties to the contract.

3/ The period of notice fixed in this Proclamation shall run from the first working day following the date on which notice is duly given.

4/ The obligations of the parties arising from the contract of employment shall remain intact during the period of notice

grounds of ordinary dismissal Art28

- Due to loss of competence of the worker per Art. 28(1.a).

Vs Article 27(1.e)

- Due to the health or permanent disability of the worker that renders him unable to carry out his duties under the contract Art. 28(1.b).
- the law has put a mobility clause under its Article 28(1.C)
- See also Art 28(1)d
- Art 28(1) consist of situations **related to the worker** whose contract is to be terminated
- Art 28(2) stipulates for preconditions
- Grounds in Art 28(3) related with organizational & operational requirements of the undertaking.
- See Art 28(3)(a-c)

- the termination of the contract of substantial number of workers is called reduction of work force.
- reduction of work force is defined under Article 29 sub article 1 as
- *“reduction of the work force of an undertaking for any of the reasons provided for in sub-article (3) of Article 28 affecting a number of workers representing **at least ten percent** of the number of workers employed or, in the case of an undertaking where the number of employed is between twenty and fifty, a reduction of workers affecting at least **five employees** over a **continuous period of not less than ten days.**”*

- For the number of workers who are affected by termination due to reduction of work force is significant, this is believed to have social consequences. Thus, the employer is duty bound to pass through a rigorous procedure for its implementation. (Article 29(2 and 3).
- First of all the employer must consult the trade union or workers representatives about how should the reduction take place.
- Whenever a reduction of workforce takes place in accordance with Article 28 (3) of this Proclamation, the employer shall conduct consultation with a Trade Union or workers' representatives in order to retain workers having skills and higher rate of productivity in their posts. In case of comparable skill and rate of productivity, the workers to be affected first by the reduction shall be in the following order:
 - a) Those having the shortest length of service in the Undertaking;
 - b) Those having fewer dependents;
 - c) The reduction shall affected first workers except those that are listed under (d) up to (e) of this Sub-Article;
 - d) Those employees with disability;
 - e) Those who sustained employment injury in the Undertaking;
 - f) Workers' representatives; and
 - g) Expectant mothers and mothers within four months post-natal.
- Exceptions Art 30

II. Unilateral Termination by worker Arts 31, 32, 33,

- It is not only the employer who can unilaterally terminate contract of employment.
- The worker too has the right to unilaterally terminate the contract; i.e. he is at liberty to resign.
- he can do so without necessarily mentioning the cause. unlike the case of the employer, the law doesn't require having a predetermined ground for the worker's decision to resign.
- The only requirement imposed on the worker is to give notice of 30 days for his employer. Also called **ordinary resignation**
- See Art 31
- **Why notice?**
- **What if notice not given?**
- Proclamation No. 1064/2017 provides for a rule that requires the Civil Servant to render a month notice to his employer for a lawful resignation. Art 83(1)

- ***Art 83. Resignation***

- 1/ Any civil servant may, by giving a one month prior notice, resign at any time; provided, however, that the government institution may release him prior to the end of the notice period if it can easily replace him.
- 2/ Any civil servant, who has terminated his service without giving a one month prior notice referred to in sub-article (1) of this Article, shall have civil and criminal liability for any damages caused by such failure.
- 3/ Where the service of the civil servant is indispensable and he could not be replaced easily, his release may, in agreement with his future employer, be delayed for a period not exceeding three months counted from the date of application.

Extra-Ordinary Resignation (Art. 32)

- the termination may also be without notice, depending on the ground for termination.
- The resignation that could be held only with the grant of notice per Art.31 is what we call ordinary resignation as opposed to extra ordinary resignation that is automatically applied with no need of notice on the basis of Article 32.

- See Art 32(1)
- Art32(2)vs title
- Period of limitation Art 33

3.6 Legal Effects of Termination

☒ When termination is lawful?

- ☒ In times when the contract comes to an end by the operation of the law that the parties contract of employment ceases to operate in a lawful manner. Art 24
- ☒ In times when the parties freely agree to end their relationship or
- ☒ It times when a worker is dismissed by his employer upon lawful grounds and with the grant of an advance notice whenever necessary, that a contract of employment is deemed to be lawfully terminated. Arts 27, 28 & 29
- ☒ In times when a worker resigns by giving an advance notice / Art31/ or based on a lawful ground per Art. 32 that his resignation / termination becomes lawful.
- Other wise, any termination that is held on in violation of the law is **unlawful termination**.

- Unlawful termination refers to a termination that contravenes the provisions of the Labour Proclamation (Article 42).
- The most important provisions of the Labour Proclamation for the identification of the lawfulness or unlawfulness of termination of a contract of employment are Articles 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, and 35.
- A termination becomes unlawful if it contravenes the rules of at least one of the provisions of the mentioned Articles.
- A termination is regarded as lawful only when it is held on the basis of the above cited provisions.
- Accordingly, any termination that falls outside of the domain of lawful termination will automatically fall under the category of unlawful termination.

- The proc provide for rules on **either grounds** of termination or on the **duty to provide notice** or on both.
- The rules that demand for the presence of a lawful ground for termination are what we call **substantive requirements**; distinguished from the **procedural requirements** that solely refer to the parties' duty to grant a prior notice for termination.
- Based on this we can also make a dichotomy of types of unlawfulness in relation to termination, as substantive unlawfulness and procedural unlawfulness.
- **Substantive unlawfulness** refers to terminations which is held against the grounds of termination the law stipulates. In other words, a termination suffers from substantive unlawfulness whenever it is conducted without lawful grounds.

- On the other hand, **procedural unlawfulness** purely indicates one's non-compliance with the duty to give an advance notice whenever the law demands to do so.
- It doesn't have any relation with the existence or otherwise of a lawful ground for termination.
- It is rather about termination with lawful ground less the legally prescribed advance notice.
- Under such instances, the party has a lawful ground to bring the contract to an end i.e. to terminate, but he terminates the contract without rendering notice to the other party as the law orders. To conclude; in procedural unlawfulness what lacks is **the due process**.

A. Entitlements of Lawful Termination of a Contract of Employment

- However, the fact that the worker's contract is terminated lawfully doesn't mean that the worker goes empty handed.
- There are various entitlements accorded for workers upon termination depending on the circumstances of the case. Generally, the entitlements include:
 - ⊠ severance pay according to Articles 39 and 40
 - ⊠ compensation according to Article 41
 - ⊠ letter (certificate) of service per Article 12(8) and
 - ⊠ unutilized annual leave converted in to cash Art 77(4).

i. Severance Pay

- Severance pay is a payment which a worker is entitled to get from the employer when there is termination
- **When a worker is entitled for severance pay? Art 39**

- **Art 39 (1):** A worker who has completed his probation period and who is not eligible for pension shall have the right to receive severance pay from the employer where:
 - a) His contract of employment is terminated because of permanent cessation of operation of the Undertaking due to bankruptcy or for any other cause; **Art24(4)**
 - b) His contract of employment is terminated by the initiation of the employer in violation of the law; **Arts 14(1)C and 26(2)**
 - c) He is reduced as per the conditions prescribed under this Proclamation; **Art 29 & 30**
 - d) Where the worker resigned due to sexual harassment or sexual violence by the employer or managerial employee; or where such act was committed by a coworker and the incident was reported to the employer but the latter failed to take appropriate measure in due time; **Arts 14(1)h cum 32(1)b**

e) He has terminated his contract of employment because of the employer's maltreatment affecting his human dignity or morale or constituting a criminal offence under the Criminal Code; **Arts 12(4) cum 32(1)a**

f) He has resigned due to failure of the employer to take measures despite being informed of a threat to his safety or health; **Arts 12(5) cum 32(1)c**

g) His contract of employment is terminated because of his partial or total disability as certified by medical board; **Art 24(5)**

h) Where he has given service to the employer for a minimum of five years' service and his contract of employment is terminated because of **sickness** or **death** or **his contract of employment is terminated on his own initiative** provided that he has no contractual obligation relating to training to render service to the employer; **Art 28 (1)b**; **24(2)**; and **31 [what about 32?]**

i) His contract of employment is terminated on his own initiative because of HIV/AIDS. **Vs Art 32(1)a-d**

What if a worker dies before receiving severance pay?

- *Art 39(2.) Stipulates*

“Where a worker dies before receiving severance pay, it shall be paid to his dependents’ referred to in Article 110(2) of this Proclamation.”

- *Art 39 (3.)*

“The allocation of severance pay to dependents of the deceased shall be effected in the same manner as in Article 110 of this Proclamation”

- Once it is ascertained that a ground for severance payment is available, the next task would be to see its amount;

☒ **Article 40 Quantum of Severance Pay**

- thirty times the average daily wages of the last week of service for the first year of service; and for the service of less than one year, be calculated in proportion to the period of service.
- In the case of a worker who has served for more than a year, payment shall be increased by one-third of the amount referred to in SubArticle (1) of this Article for every additional year of service; provided, however, that the total amount shall not exceed twelve months’ wage of the worker.

For a simpler understanding of the calculation apply the following formula.

$S = 30x + [1/3 (30x) (y-1)] \leq 12 M$ Where **S = severance pay**

X = daily wage of the worker

Y = length of service in years

M= Monthly wage

- In addition to the total sum accorded for all workers who are entitled to severance pay according to Article 40(2)& (3), an additional benefit is granted for some workers whose contract is terminated on some lawful grounds. (Article 40 (4)).
- The grounds that allow for such an additional benefit are work force reduction & termination as a result permanent cessation of the activities of the employer due bankruptcy or for any other cause as per **Arts 29 & 24(4)** respectively.
- Under such special circumstances the amount of severance pay that is going to be paid for the worker, increases by his 60 days wage.
- So, the total sum the worker gets in the form of severance pay would become:

$$S = 30x + \frac{1}{3}(30x)(y-1) + 60x$$

Where S = severance pay

X = daily wage

Y = length of service in

years

ii. Compensation

- In the majority of cases compensation is paid for a worker only when the termination is an unlawful one.
- But, when we talk about compensation under the discussion at hand, compensation is awarded for a worker though the termination is based on a lawful ground.
- By virtue of Art 41, a worker who terminates his contract of employment as per Art 32(1) shall be entitled to compensation.
- Since the worker is forced to resign due to the **misdeeds of the employer**, the law entitles such a worker one additional benefit in the form of compensation amounting to his thirty days wage.
- Therefore, the total sum the worker gets in the form of severance pay per Art 40 (2) & in the form of compensation would become:

- $T = S + 30X$

Where T = total sum of money

$$S = \text{sev. pay ie } 30x + \frac{1}{3} (30x) (y-1) < 12(30x)$$

X = daily wage

Exception 41(2): $T = S + 90X$

iii. Letter (certificate) of service

- As an obligation the employer has to grant the worker with a letter (certificate) of service whenever the worker so requests; and upon termination of their contract as envisaged under Article 12(8) of the Proclamation. On the other side, it is also an entitlement for the worker, especially for one whose contract comes to an end.

iv. Unutilized Annual Leave Converted into Cash

- In principle, annual leave should be taken by the worker. Unless otherwise provided by the law, it is strictly prohibited to pay wages in lieu of annual leaves according to Art 76(2).
- But, as an exception sub-article 4 of Article 77 allows a worker to get payment of cash in lieu of the leave he has not taken upon termination of his contract.
- Sub-article 4 of Article 77 seems to encompass all workers whose contract is terminated. But, there is a frequently debated issue in this regard; particularly about termination due to death of the worker

Article 77(4)

“A worker whose contract of employment is terminated under this Proclamation is entitled to his pay for the leave he has not taken. “

B. Effects of Unlawful Termination of a Contract of Employment

i. Substantive Unlawfulness

- Article 43 provides the effects of substantive unlawfulness.

Article 43

1. *Where a contract of employment is terminated because of those grounds mentioned under sub-article (2) of Article 26, the employer shall be obliged to **reinstate** the worker; provided, however, that the worker shall be compensated **if he wishes to quit his employment*** See Article 26(2)

2. Without prejudice to Sub-Article (1) of this Article, where a contract of employment is terminated contrary to the provisions of Articles 24, 25, 27, 28 and 29 of this Proclamation, **the labour dispute settlement tribunal** may order the **reinstatement** of the worker or the **payment of compensation**.

- For a worker who is reinstated, the entitlement following his re-employment is **back-payment of wages**.
- If the court decides for the worker's dismissal with compensation, the amount is so huge. This same amount of benefit also goes to the worker who rejects as per Art 32

How can we determine the amount of compensation?

- The amount of compensation is also determined by Article 43 (4):
The compensation to be paid under SubArticle (1), (2) or (3) of this Article to a worker who is not reinstated shall, in addition to the severance pay referred to in Article 40 of this Proclamation, be:
 - a) In the case of a contract of employment for an indefinite period, 180 times the average daily wages and a sum equal to his wage for the appropriate notice period in accordance with Article 44 of this Proclamation;
 - b) In the case of a contract of employment for a definite period or for piecework, a sum equal to the wages which he would have obtained if the contract of employment has continued up to its date of expiry or completion of the work; provided, however, that such compensation shall not exceed 180 times his average daily wage. The provisions of sub-article (4) of this Article shall also be applicable to a worker covered by the relevant pension law.

- Generally, once a contract of employment is terminated unlawfully and the parties are separated, there are some entitlements accorded to the worker. Most of the entitlements are given to all workers while few others are attached with the ground of termination. There fore, the entitlements the worker gets would become:
 - ⊠ compensation according to Article 43(4),
 - ⊠ severance pay, on the ground under Article 43(4) cum 39 (b) its amount as determined by Article 40;
 - ⊠ unutilized annual leave as per Article 77((4) that we examined in detail before;
 - ⊠ Back-pay upto one year wage (on reinstatement) 43(5);
 - ⊠ payment of wage in leiu of notice period, if there is any procedural unlawfulness (Article 44 **vs 45**), and
 - ⊠ letter (certificate) of service according to Article 12(8).
 - ⊠ Criminal Sanctions Art 26(2) cum 185(2)d

ii. Procedural Unlawfulness

- Unlike substantive unlawfulness that exists only on the side of an employer, procedural unlawfulness may be committed by the worker or the employer
- procedural unlawfulness is less serious than substantive unlawfulness since the employer has still a ground for termination in the former situation.
- As a result, the remedy available for the worker when the employer fails to grant him an advance notice is only an entitlement of wages in lieu of the notice period in the form of compensation (Article 44). The law doesn't entitle the worker to reinstatement for the only reason that he doesn't get an advance notice from the employer.

- Similarly, in cases of procedural unlawfulness on the part of the worker, such minor procedural fault doesn't oblige him to work for the employer as this amounts to slavery. The only sanction imposed on the worker is just to make a payment of a one month's wage for the employer by way of compensation (Article 45).

“The worker is always entitled for severance pay irrespective of the lawfulness or otherwise of termination.”

Do you agree with this statement? Why/why not?

A blue scroll with a dark blue outline, tilted diagonally. The text "• I THANK YOU" is written in white, bold, sans-serif capital letters. The scroll has a small white dot at the start of the text. The scroll is unrolled, showing its thickness and the way it curves.

• I THANK YOU