

Study Session5

Unit-5 Employment Relations/contract

Study Session Outline

- i. Defining employment contract
- ii. Nature of employment contract
- iii. General and special categories of employees
- iv. Purpose of employment relationship

Study Session Duration

This Study Session requires a 2 hours of formal study time.

Introduction:

Employment is inevitable in all economic transactions and relations. It is impossible for a single proprietor to carry out all activities. Employment relations may have differences from their nature of establishment. The general contractual arrangements and the special nature of employment contract helps to promote and maintain balanced and peaceful industrial and other context specific relations. Hence, it is critical to appreciate the nature of employment and employment contract and corresponding relations as a student since it is inevitable to be an employee or an employer. This unit defines employment contract, nature of employment contract and the categorization in the types of employees.

Learning Outcomes of Study Session 5

Completing this study unit is expected to enable students to

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- Define employment contract
 - Sensitize the nature of employment contract
 - Differentiate the general and special categories of employees
 - Appreciate the purpose of employment relationship
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Unit-5- Employment Relations/contract

5.1 Defining employment contract

The definition given to employment varies based on the contexts and purposes it is aimed to serve among legal systems. However, it is possible to derive the common elements and the elements can be used to define employment or labour law. Employment law is reduced into a written or oral contract between both an employer and employee that indicates the terms and conditions of the employment which is a legally enforceable agreement between both parties. The contract specifically indicates the defining elements such as the rendering of the service under the direction of the employer against a payment of fixed and agreed remuneration. (Leslie L., 2000)

Dear learners, what are the details to be agreed in an employment contract? Do you have any experience of observing or participation in employment contract?

A contract of employment may include the employee's date where he/she starts, salary and benefits, and a listing of the rights, expectations and obligations of both the employer and the employee. Furthermore, it may also include provisions related with promotions, incentives and terminations, a non-competition agreement, duties, a confidentiality clause, and stipulations for termination.

After the contractual agreement, an employment relation is established between the employer and the employee. "It is implemented into action except in a time of probation period immediately after both contracting parties agree directly or indirectly for a certain position either for definite or indefinite period of time. It is a juridical act having its own legal effect concluded with pecuniary reciprocities for mutual benefits of the employer and the employee." (Rothstein et al., 1994)

5.2 Nature of employment contract

Employment relations govern public and private spheres. There are instances where the employer is a government and public body and this regulates the relation of civil servants. On the other verse,

in most cases, employment laws regulate the private sphere where the employer is a private physical or legal person. The underlying governing legal instruments are different in both cases. The sources of laws are public and private ones. The reciprocal rights and obligation are created and well established between the employer and the employee. The scope of the contract is limited between an employer and employee working under direct supervision independent from other third parties. It doesn't include agency contracts, independent contractors and other forms of sub-contractual arrangements.

5.3 General and special categories of employees

Employment contracts are concluded between employers and employees. The laws are accommodating governing principles as to the general employment relations. However, the laws may put special categories of legal frameworks with the purpose to govern and accommodate the special nature of employees.

Dear Learner, why labour laws indicate special categories of employees?

The special categories of employees are different in character and such regulatory frameworks are arranged with the purpose to accommodate dynamic employment arrangements. The form of employment must be accommodating the contexts in the changes of the organizational arrangement in a flexible way. The diversified nature of employment arrangements happens due to certain realities such as capacity limitation of the employee, a need to promote efficiency, to use the labour efficiently, to promote convenience, to add flexibility and avoid unnecessary disputes and legal effects. The following include some of the special categories of employees. First, the list includes probationary employees and civil servants, apprentices and other forms of externship and internship. Second, it includes the disable and female employees as special categories because they have to be treated in a differential and preferential arrangement for an affirmative action. This helps to avoid the intersectional problem and pressures arising from social and cultural settings. Employment laws are used to enforce reasonable and inclusive accommodation of such forms of

employees. Third, the other categorization may be made based on age and young employees below the age of eighteen are considered as young employees in most legal systems. Fourth, there are also instances where foreigner employees or expatriates may be working as employees of a certain employer.

5.4 Purpose of employment relationship

Balancing the interests of employees and employers through contractual and legal arrangements is among the critical purposes of employment law. In most cases, the existing employment laws try to protect the interests and rights of employees arising because they have a diminished bargaining power with employers. In relation to this, employment law tries to protect job security of employees by limiting the power of hiring and firing as a culture exercised by employers.

The second factor is to promote efficiency and productivity by establishing continued and sustainable relation between the employer and the employee. The other purpose of employment is to assure certainty among contracting parties without neglecting flexibility on the arrangements in line with the standards stated under the laws. It also helps to avoid the potential disputes that can exist between the employer and employee. The effort exerted to avoid dispute helps to maintain industrial peace. At the end, any form of employment relationship aspires to to promote equity and adaptability of the employment contracts through clear, coherent and operational legal standards.

Summary

Employment relations are preceded and established by employment contract. Employment relation is established through a contract of employment and the relationship is assumed to have been formed when the employee agrees, directly or indirectly, to perform work for and under the authority of another (the employer) for a definite or indefinite period or piece work in return for wages. The requirements of the general contract law are required to be observed and the requirements of the employment law of each country's legal system are also mandatory to be observed as a form of special law. The terms and conditions stated that are stated in the contract determine the nature and effect of the employment contract. There shall be a need to consider the nature of the employment contract and the types of the employees since each element will determine the nature and extent of the legal effect. This requires for a careful understanding and recognition of the nature of employment to consider the scope of the applicable and governing

provisions. The subsequent governing provisions, standards, legal conditions etc are determined based on the nature and details of the contract. However, it must be clear that an employment contract shall be concluded in consistent with the legal frameworks and governing clauses.

Unit Quiz:

1. Discuss about employment contract and Employment relationship?
2. What is the nature of an employment contract? Why certain types of work relations are excluded from an employment relation?
3. What are the reasons or rationales put to differentiate the general and special categories of employees?
4. What are the lists of special categories of employees?
5. Why an employment contract and relation is needed? What are the purposes of employment relations?