

Study Session 6

Unit-6 General Principles of Employment Contract

Study Session Outline

- i. General Principles of Employment Contract
- ii. Legal minimum working conditions
- iii. Sensitizing ILO standards
- iv. Protections in collective bargaining and agreement
- v. Rights and duties of employee and employer

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

Introduction:

The analytical and theoretical foundations of almost all thoughts are supported by foundational theories, assumptions and principles. As a special category of contractual and legal relations, it is critical to appreciate the main future of employment contracts. The failure to observe and internalize the main features of the contract may result in the loss of rights and they may cause unnecessary costs and compensation to be paid by the one who is defaulted. Therefore, the recognition and understanding of the main contract law and the special contract law helps to promote sustainable and win-win employment relations. This is also promoting efficiency and productivity.

Learning Outcomes of Study Session 6

Upon completion of this study unit, you should be able to

- Sensitize the formation of a general contract and employment contract
- Discuss the legal minimum working conditions
- Appreciate the ILO standards
- Understand the legal protection in collective bargaining
- Analyze the rights and duties of employees and employers

Unit-6-Main Features and General Principles of Employment Contract

6.1 Formation

An employment contract is concluded as any form of contract between the employee and the employer once the offer and acceptance is concluded between the parties. It is mandatory to consider the legal and form requirements put in the general contract law by contextualizing it in to the contexts of employment relations as a special law. The employer can be a capable legal or physical person but the employee is expected to be a physical person. A legal person is a business or any other entity which is registered and licensed to perform certain acts. Once the contract including the terms and conditions of agreement is exhausted and agreed by the parties an employment relation is established. It is also must to satisfy the minimum labor standards. It is not always necessary to have a written form but there are also instances where a written form employment contract is a standard for legal implications.

6.2 Legal minimum working conditions

As it is underlined above, the first condition in an employment contract is to ensure employment security that deters unjustified dismissal. An employee has also the right to get a rest day in time of sickness and the employer has also a duty to cover medical costs incurred while in post. The employee has also a right to get compensation if he/she incurred a temporary or permanent disability.

Dear learner. What are the rationales behind incorporating legal minimum working conditions?

The labor laws may also require a minimum wage protecting the interests of the employees. It is mandatory to regulate the minimum labour market and the need to avoid over-exploitation of the laborers and put a back-up on the bargaining power of the employees. The existing ILO standards and the existing legal frameworks aspire to balance equity and adaptability in all spheres of employment relations. This is enabled by designing a framework that reconciles the multiple interests and reach into mutual consensuses.

6.3 Sensitizing ILO standards

Primarily, the national employment laws must sensitize and accommodate the ILO standards. The international legal principles must be ratified and incorporated in national laws. There are basic and minimum rights of employees that are directly linked with the human rights of the employees. There is an international UN organ that works to protect the interests of employees and works and that is the ILO. The ILO sets fundamental principles and minimum requirements for employees and state parties to the different conventions. The stipulations in the various conventions can be used as a grand and gap filling provisions where there is lack of adequate substantive provisions in employment laws. The ILO includes different conventions adopted from its establishment as one UN organization. It indicates and guides member states to the treaty on the conclusion, handling, association, termination of employment contracts.

6.4 Protections in collective bargaining and agreement

The freedom of association is one of the civil and political rights under the general spheres of democratic rights. Collective bargaining is the negotiation of working conditions, benefits and incentives between employers and associations representing the interests of workers and employees. This is also one of the core and critical rights to employees and employers. It helps to accommodate a collective voice and provide a justice and the required remedy on specific problem (Edwin Robert, 2000).

Dear learner, how a collective bargaining is win-win and what are the merits of establishing labour and trade unions?

The ILO Constitution has also addressed the specific right of forming labour unions or associations as a means to protect collective bargaining as win-win and equitable agreements. This was unlike the previous developments that it was considered as a conspiracy or there was a wrong attitude to such forms of associations. The formation of associations and other entities are bilateral and they do not require the interference of a third body or government bodies in the formation of

associations or unions. Both the employees and employers are entitled to establish labour unions and trade unions. This helps to establish a very cohesive and sustainable collective bargaining so that the better incentives and benefits are secured to the employees. The collective bargaining helps to assure benefits to the employees better than what is stated in the labour standards. It is critical to foster up unionization to accommodate dynamicity in the terms of conditions, incentives and benefits. The unionization is supported by actual and defaulted registration to perform all juridical acts (Guido et al, 2000).

6.5 Rights and duties of employee and employer

Dear learner, why labour laws in most cases protect the interests of employees?

a. Minimum wage

The necessity of minimum wage is critical but the necessity and incorporation of minimum wage subject to contentious arguments. Some of them argue that it is not necessary to put minimum wage since labour shall be seen in terms of the free market idea. However, it is a common precedent that states have a put a threshold on wage with the purpose to protect the interests of employees. The most common practice is known for putting minimum amount of money that will be paid per hour.

b. Working conditions which are Safe and healthy

Employers are in a duty to offer safe and healthy conditions of working. The nature of work may be risky and the employer is required to set safety standards of occupation. The provision of protective equipment must be supplemented with an adequate awareness on how to use the equipment, tools and safety guidelines especially if the working condition is subject to hazards and dangerous conditions. Employees must be well acquainted on safety issues especially in industrial activities since the workers are prone to risky conditions.

It is justifiable and economical to let the employer responsible for any injury sustained by the employees. There can be different arguments on the reasons and conditions at which the employer may not be responsible. However, for whatever reason, it is mandatory to make the employer responsible even there is a contributory negligence from the employee.

Employers are mandated to take preventive measures by creating safe and healthy environment, supplying necessary equipment and by creating aware and informed employees. The other measure is to take a remedial measure after damage or problem is sustained by the employee. The employment injury or damage can be an occupational accident or disease and both are also valid grounds to claim for remedial measures. This includes paying compensation, covering medical and other necessary costs.

c. Working hours and overtime payments

The need of setting working hours in labor standards is subject to an argument. It is a long-rooted practice that the employer and employee bargain and set working hours. However, this is found skeptic whether working hours are set in favor of the employee. The labour standards aim at protecting the employees because it is assumed that the bargaining power of employees is in most cases very limited. The 1919 decision of ILO was a breakthrough and eight hours per a day was put as mandatory working hour. Therefore, the employer and employees can agree to work for paid extra time beyond the minimum working hours. The necessity of putting minimum working hours in the laws is rationalized with the purpose to avoid labour exploitation and give a protection to the employee. The overtime payments are made for excessive hours or days. But, the wage is more excessive if employees are engaged in public holidays. There are also instances where annual leaves and other forms of leaves may be paid if it is made on the discretion of the employer.

Summary

Under this Unit, it is discussed that employment contract has its own main feature and there are certain legal principles to be observed. The formation of employment contract is reinforced once an offer and acceptance is concluded between the employer and the employee. This may depend on the labour market but it is mandatory to observe the legal requirements and ensure that the employment contract is lawful, valid and tenable in law. Any state that has ratified and adopted the ILO standards has also a duty to accommodate and contextualize the ILO standards in to domestic labour laws. The basic and minimum standards are non-derogable and they have to be enforced properly. In most cases, employment laws are pro laborers and they support by providing minimum requirements as a safety valve to curb challenges arising from weak bargaining power. The rights and duties are formulated in extension to these requirements and they have to take

measures to create safe and healthy environment. They have to put the minimum working hours without violating the existing universal minimum standard.

Unit Quiz:

1. How is an employment contract formed between an employee and employer?
2. What is the difference between a legal and physical person?
3. Is written form of employment contract a requirement?
4. What are the legal minimum working conditions?
5. What is a minimum wage and is it possible to set minimum wage?
6. Why it is important to sensitize the labour standards of the ILO?
7. What is a collective bargaining and which fundamental right is manifested by it?
8. What are the fundamental rights and duties of an employer and an employee?
9. What is meant by safe and healthy working conditions?
10. If an employee incurs an employment injury or damage, who will be responsible to cover medical costs and compensation?
11. How many hours are the minimum working hours of employees set out by the ILO and taken as customary practice by many of the states in the world?