

Study Session 7

Unit-7 Drafting an Employment Contract

Study Session Outline

- i. Employment
Contract drafting:
practicing sample
employment
contract format
- ii. Observing and
Contextualizing the
general contract
drafting steps
- iii. Suspension and
termination

Study Session Duration

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

Introduction:

The reduction and application of the existing labour laws is enforced through designing and drafting of an employment contract. The draft may be developed by the initiation and agreement of the parties or it can be a draft developed by the employer as a form of adhesive contract. It is a very tough process that requires checking the brevity on the use of terms, fulfillment of the legal requirements and conditions as a form of validity requirement, the construction and clarity of words, phrases and statements and implications on their legal effect. Drafting a contract is almost similar with drafting a law. The quality of the employment contract drafting may have negative and positive implications on the parties and outcome of the contract. Thus, the Unit addresses on the practicing of sample employment contract format, the requirement of observing and contextualizing into employment relations,

Learning Outcomes of Study Session 7

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

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- At the end of the unit, the student will be able to/be;
 - Appreciate on employment contract drafting.
 - Observe and contextualize the general contract legal form requirements.

- Understand on how a sample employment contract is drafted.
 - Aware on the grounds and procedures of suspension and termination.
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Unit-7- Drafting an Employment Contract

7.1 Employment Contract drafting: practicing sample employment contract formats

From the beginning, the form requirement of contracts may be attributed to both adhesive and non-adhesive contracts. Adhesive contracts require standard form of contract prepared by an employer. The candidate employees have the option of either accepting the contract or rejecting the contract due to a limitation on bargaining power. There is not opportunity to negotiate and cause variations. This form of contract is in most cases prepared by government agencies and it applies to civil servants. However, there are instances where private employers also prepare adhesive forms. This also gives a possibility for unconscionable contract that may produce as an output unfair contract due to many factors. This may also be considered as it is enforceable by formal courts.

In most cases, employment contracts fall under adhesive contracts that they fail to give the room for negotiation and they are signed on 'take-it or leave-it' basis. The take-it or leave-it approach is the most outdated and traditional approach and employment relations shall be concluded on negotiations and mutual trust. In addition to this, there is a wider opportunity where drafting or redrafting of an employment contract is possible while negotiating beyond employment contracts concluded with government agencies.

On the other verse, non-adhesive contracts are contracts that are written through the negotiation and agreement of the parties. The necessity of observing and enriching the knowledge and skill of drafting helps on this aspect.

7.2 Observing and Contextualizing the general contract drafting steps

An employment contract is a contract which is signed by the employer and the employee. It indicates the rights, responsibilities, working conditions of the employer and the employee. Any employment contract is expected to incorporate certain elements. The types of employees are full time employees who usually work for 40 hours on a permanent arrangement. The second may include workers who work on part-time basis often fewer than 40 hours in between 25-35 hours on a permanent basis. Third, the employment arrangement may be designed for fixed term and such types of employees are employed for a fixed period of time with an agreed-upon end date. This form of employment is different from independent contractors.

Dear learner, can you think of the contents and make exercise to draft an employment contract I line with the labour law o your country?

There are certain sections, elements or objects of the employment contract that shall be strictly observed while drafting employment contract. First, it is critical to identify the title of the employment contract and identify the corresponding parties of the contract. Second, the list of the terms and conditions has to be clearly indicated. Third, it shall indicate the job outline and responsibilities. Fourth, it is to set the details about compensation where there are unilateral and unlawful grounds of termination. Fifth, the contract shall indicate and use specific contractual terms and this shall include the use of dispute settlement clauses. As a critical assessment, it is significant to take the legal requirements in to account while identifying the terms and conditions. With specific requirements, the duration of the employment, salary of wages, benefits, work schedule, confidentiality, and other requirements has to be indicated clearly. It is common to experience disputes between an employer and employee and there shall be a dispute settlement clause. It is an option to put an arbitration clause and this is resorting to alternative dispute settlement mechanisms.

A sample employment contract shall observe the following clauses;

The employment agreements or the name of the employer and employee. Then, the employment duties and acceptance between the parties must be stated in clear words. The term of employment indicating when the contract begins and ends must be clearly indicated. The special clauses of the contract must indicate the compensation part if there is unlawful and unilateral termination of the contract. In support to this, the parties may put grounds of termination in the contract covering disability, death etc. The agreement may include specificities on the nature of the activities. There must be a clause that indicates the applicable law to the contract manifesting the choice of law by the parties. This avoids conflict of laws in terms of jurisdictions, choice of laws and enforcement of decisions. Finally, the contracting parties must put their names and the date of agreement. The name and address of witnesses from the sides of the agreeing parties must be stated in the contract. At the same time, signatures of the parties and witnesses are also mandatory.

7.3 Suspension and termination

The labor laws may indicate the grounds of suspension and termination. This is also reflected in the formal employment contracts. Suspension is different from termination where the employees stop providing service and the employer fails to provide wage and relevant benefits to employee while there is not any termination on the employment contract. However, there is a possibility for the termination of employment contract. The grounds to make suspension of a contract are not on the discretion of the employer. Labour laws shall indicate the legal grounds. Some of the grounds are attributed to force majeure that cannot be controlled by the employer. The other grounds may be attributed to public interest, voluntary agreement of the parties, and disciplinary grounds as examples (William R. Corbett, 2002).

Dear learner, Can an employer suspend or terminate an employee on his discretion without considering the legal conditions?

Unlike to suspension, the termination of contract of employment is the extinction of the employment contract and it stops to cause a legal effect through lawful procedure. The grounds of termination may be materializing by the agreement of both the employer and the employee. It can

also be a legal ground. It may also be attributed as to the initiation that it can be by the imitation of the employer or the employee. For example, the Ethiopian recent labour proclamation indicates that termination based on the desire of the employer can be without notice or summary disposal, with notice or ordinary dismissal, or a lay off causing a group termination. On the employee's side, he/she can initiate and resign with notice or without notice.

Summary

Employment relation supported by sustainable employment contract is important. An employment contract concluded with a government body or as a civil servant is in most cases concluded as an adhesive contract. There are instances where private employers also prepare adhesive forms. This also gives a possibility for unconscionable contract that may produce as an output unfair contract due to many factors. Due to the inherent less bargaining power of the employee, it is important to include and protect the interest and benefits of employees in both adhesive and non-adhesive contracts. The conclusion of employment contracts on take-it or leave-it basis is the most traditional approach. There is a wider opportunity where drafting or redrafting of an employment contract is possible while negotiating beyond employment contracts concluded with government agencies. An employment contract is a contract which is signed by the employer and the employee. It indicates the rights, responsibilities, working conditions of the employer and the employee. Any employment contract is expected to incorporate certain elements.

It is important to state the title of the employment contract, the terms and conditions, the job outline and responsibilities, the details about compensation where there are unilateral and unlawful grounds of termination; use specific contractual terms and this shall include the use of dispute settlement clauses. The consistence with labour laws on grounds of suspension and termination shall be clear. This is also reflected in the formal employment contracts. Suspension is different from termination where the employees stop providing service and the employer fails to provide wage and relevant benefits to employee while there is not any termination on the employment contract. Unlike to suspension, the termination of employment agreement is the extinction of the employment contract and it stops to cause a legal effect. It is important to consider the elements and object of the employment contract.

Quiz:

1. Does drafting an employment contract applies for adhesive contracts?
2. Is it mandatory to consider during drafting an employment contract the form requirement under the general and special laws?
3. Why the take-it or leave-it approach of employment is traditional? What are the implications to drafting an employment contract?
4. What is the difference between permanent and part-time employment arrangement and the implication to the terms of the employment contract?
5. What are the sections, elements or objects of a contract?
6. What does compensation part indicate in an employment contract?
7. What is the difference between suspension and termination of employment contract?
8. What are the grounds of termination in an employment contract?