

One Key Aspect of Employment Law: Probation Period

Description

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Introduction

Probation period is a fixed period of time that employees are exempt from certain rights. Most importantly, the absence of notice period required for termination of contract and payment of compensation as well as severance payment after termination. From the employer point of view, probationary period is used to evaluate the workers performance, skill, abilities, and personality. Also whether the employee can engage with the existing organizational culture. And from an employee's point of view, probationary periods are there to see if the employee enjoys working for the employer and whether the employee is a suitable match for their skills and abilities required for the job. Generally the probationary period allows both employee and employer to see if they are a good fit and to make things easier if they need to terminate the contract. We will see in this article the probation period from the employer as well as employee point of view as envisaged under the Labour Proclamation of Ethiopia Proclamation No 1156/2019.

Importance of Probationary Period

From the employers perspective, probation periods are important as they help employers to be sure they have made the right recruiting decision and to take action more quickly if they feel the new employee is not suitable for the role. These reduce the expenses of keeping employing someone who is unsuitable for the job. Probation enables the employer to replace the unsuitable employee more swiftly.

Probation Period under the Ethiopian Labor Proclamation

The previous Labor Proclamation no.377/96 was replaced in 2019 by the new Labor Proclamation No.1156/2019 (hereinafter the Labor Proclamation).

Few changes are introduced regarding the probation period under the new proclamation. These include one the length of probation period was extended from 45 consecutive days to 60 working days and two the new Labour Proclamation specifies the beginning date of probation period under Article 11(3) which is the first date of employment while the previous proclamation was silent about this.

Agreement of Probation Period

Probation period is not a mandatory procedure. It is made when the parties agree to have a probation period. Silence about it doesn't amount to presumption of probation period. According to Article 11(3) of the Labor Proclamation, if the parties agree to have a probation period, the agreement shall be made in writing. And the length of the probationary period shall not exceed 60 working days starting from the first date of employment. The length of the probationary period is limited in that the probation

period cannot be extended by agreement beyond 60 days.

Reemployment by the Same Employer

According to Article 11(2) of the Labour Proclamation, a worker re-employed by the same employer for the same job shall not be subjected to probation. In this case a worker who is reinstated to a position in the same organization in the same area doesn't have to serve a probationary period.

Rights and Obligations of Probationary Workers

During probation period, probationary workers shall have the same rights and obligations that a worker who has completed his probation period possesses unless the law or work rules or collective agreement provides otherwise.

Termination of Probation Period

According to Article 11(5) of the Labour Proclamation, if the worker during his probation period proves to be unfit for the post, the employer can terminate the contract of employment without notice. In this case the law is silent on the grounds to evaluate the fitness of the worker to the post. So it seems it is left for the employer to decide. Evaluation of fitness goes beyond competence and may include personal characteristics of the employee. In making the evaluation, the employer may use subjective as well as objective criteria to determine the workers fitness to the post. If the worker proves to be unfit for the post, the employer may terminate the contract of employment without notice. Unlike termination of a normal contract of employment, the employer is not obliged to pay severance payment or compensation while terminating the contract of employment during the probation period.

The worker may also terminate the contract of employment without notice during his probation period.

Unlawful termination

One case in which termination of contract of employment during probation period may be unlawful is termination based on the grounds listed under Article 26(2) (d) of the Labour Proclamation. This includes termination of contract of employment based on the workers nation, sex, religion, political outlook, marital status, race, color, family responsibility, pregnancy, disablement or social status. If termination is made based on these grounds, the termination will be unlawful.

End of Probation Period

Length of probation is fixed as it is stipulated under Article 11(3) of the Labour Proclamation. So according to Article 11(7) of the Labour Proclamation, if a worker continues to work after the expiry of the fixed period, a contract of employment for the intended period or type of work shall be deemed to have been concluded from the beginning of the probation period.

Conclusion

Generally the probation period is a fixed period which allows both employee and employer to see if they are a good fit for the job. During the probation period, both employee and employer can terminate their contract of employment without giving notice. And the employer is not expected to pay severance payment or compensation.

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Date Created

December 12, 2021

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