



# FROM RECRUITMENT TO RETIREMENT

ETHIOPIA



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## PREFACE

Welcome to the 2016 edition of our Employment Law Guide- ‘From Recruitment to Retirement – Ethiopia.’

This Guide is concerned primarily at providing general information for parties wishing to understand how private employment relationships are governed under Ethiopian laws. The Guide, among others, discusses formation and nature of employment contracts, minimum terms and conditions, termination grounds and procedures as well as labor relations and trade unions. It also touches up on employment taxation, restrictive covenants, retirement and social security.

This Guide will not completely answer detailed questions which clients may have. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues, and should not be used as a substitute for professional advice. If questions arise in relation to its contents, they may be addressed to our Law Office (MLA) using the contact information provided at the end of the Guide.

## About MLA

Mehrteab Leul & Associates Law Office (MLA) was founded by Mr. Mehrteab Leul Kokeb in 1997. MLA, a full-service Law Office, provides first class legal advisory and representation services on a wide range of matters including employment & immigration, investment, corporate, taxation, company registration, merger and acquisition, intellectual property, aviation, mining and energy, arbitration, hospitality and leisure and non-profit organizations.

MLA’s Employment and Immigration team regularly advises clients on labour and immigration laws of Ethiopia. The services that we provide in this regard include, drafting or localizing employment contracts and staff policy handbooks, advising on recruitment, employee transfers, retrenchment & redundancy, dismissal, health and safety, labor relations and trade unions as well as assisting clients in obtaining visas, work and residence permits. In recognition of its commitment to quality and professionalism, MLA has continuously received impressive rankings by international directories. MLA was recognized as ‘leaders in their practice’ in 2014 and 2015 in a row and is now ranked as ‘Band 1’ business law office in Ethiopia for 2016 by Chambers and Partners. MLA is also recognized as ‘IP Practitioner of the Year Ethiopia 2016 by Acquisition International and its Energy and Infrastructure practice has been ranked as ‘Tier 2’ by IFLR1000.

We hope that you will find our Employment Law Guide helpful and look forward to working with you!



## RECRUITMENT

### Selection for Recruitment

Under Ethiopian law, the decision of who to hire rests with the employer, however, employers may not act in a discriminatory manner when making this decision.

Discrimination based on a prohibited ground, being an applicant for employment's race, pregnancy, marital status, family responsibility, ethnic or social origin, age, religion, HIV status, conscience, belief, political opinion, culture and language is strictly prohibited. It is possible however to take appropriate affirmative action measures in the form of extending favorable treatment to women and persons with disabilities.

### Distinction between Managerial and Non-managerial Employees

In Ethiopia, the two acts that regulate private employment relations are the Ethiopian Labour Proclamation (Proclamation No. 377/2003) (the "Proclamation") and Title XVI of the Ethiopian Civil Code ("Civil Code"). The Proclamation applies to employment relations based on a contract of employment that exists between a worker and an employer. This Proclamation, however, does not apply to managerial employees (defined as employees vested with a power to lay down and execute management policies, to hire, transfer, suspend, assign or take disciplinary measure against other employees). Relevant provisions of the Civil Code apply to managerial employees. The law assumes that non-managerial

employees have less bargaining power when compared to managerial employees and consequently offers greater protection to the first category of employees by laying down the minimum conditions that should always be complied with from the employer's side.

### An Employment Contract

A contract of employment is deemed to be concluded where a person agrees to perform work for and under the authority of an employer. Thus, an employment relationship starts even before the applicant has to report for work, when the employer's offer is accepted by the employee. Both the offer and the acceptance can be made directly or indirectly (e.g., through employment agencies). A withdrawal from the agreement by the employer during this period may constitute an unlawful termination of contract of employment.

Employees falling under the purview of the Labour Proclamation may be employed on a trial basis to evaluate suitability for the position (probation period). It is however mandatory that such a probation period must be agreed in writing, and that it cannot exceed forty five (45) consecutive days. If, during the probation period, the worker proves to be unsuitable for the position, the employer can terminate the contract of employment without notice and without being obliged to pay severance pay or compensation. Similarly, the labour law gives a probationary worker the right to terminate the contract of employment without notice. Neither

the employer nor the worker may challenge the fairness or unlawfulness of the decision to terminate the contract of employment during the probation period.

The Civil Code also provides that an employer may engage a managerial employee on a trial basis. During that period, both the employer and the employee may terminate the employment relationship without the need to compensate the other party. However, if the trial period is fixed for a minimum period, they cannot terminate the contract before the lapse of that period. In contrast with the Labour Proclamation, the Civil Code does not specify a maximum probation period.

### Restrictive covenants

No legal obligations are imposed on employers to ensure that there are no post-employment restrictive covenants relating to a prospective employee. The basis for restrictive covenants under Ethiopian law is the contract between an employer and the worker, and as such may be enforced against the worker who has violated the covenant, but is not enforceable against third party employer. In practice, many employers require new recruits to produce evidence of good behavior and sometimes a release from the previous employer. Where a new recruit fails to produce evidence of good behavior or where the prospective employer discovers that the worker is subject to a restrictive covenant, the employer may use that evidence for declining the employment of the worker.





## Form of an Employment Contract

It is not mandatory to prepare employment contracts in a written form. However, when it is reduced to writing, it must specify: personal information of the employer and the employee; type of employment (position); place of work; rate and manner of calculation of wages; interval of payment and duration of the contract. Where the contract of employment is not reduced to written form, the employer has the obligation to give the worker, within 15 days from the conclusion of the contract, a written and signed statement containing the information specified above.

## Independent Contractors

Independent contractors fall outside of the definition of employee, and the employment protections of the Proclamation are accordingly not available to such independent contractors. The Ethiopian Civil Code governs the relationship between independent contractors and their clients. Independent contractors are distinguished from employees by the existence or otherwise of “direction and control.” Employees provide services under the direction and control of the employer while independent contractors undertake to produce a given result under their own direction and control. Please note that independent contractors are responsible to pay their own income taxes and they are not enrolled in the social security scheme.

## Immigration and Citizenship

According to Investment Proclamation Number 270/2012, any investor can employ duly qualified expatriate experts required for the operation of its business. A foreign investor can employ expatriates for top management (executive) positions without any restriction, however, the right to employ expatriates for all other

positions is limited by the availability of the concerned expertise in the local market. In addition, the law requires that foreign investors should replace, within a limited period (the visa period), such expatriate personnel with Ethiopians, by way of skill transfers to Ethiopians.

An expatriate may further only be employed in Ethiopia if a work permit was issued to him/her by the Ministry of Labor and Social Affairs (MOLSA). This is so irrespective of the position to be filled. To apply for a work permit, the expatriate employee should possess a valid business visa and should also produce his/her contract of employment as well as his/her proof of qualifications to the Ministry. A work permit is issued for three years but renewable every year. The issuer has the discretion to extend the period of the work permit based on its own assessment of whether the expatriate has transferred skills to Ethiopians working under him. The issuer may also cancel the work permit prior to the expiry of the first three-year period where the issuer decides that the foreigner is not required for the work anymore.

Ethiopian citizenship may be acquired by descent or by law. Nationality is acquired by descent where both or one of the parents are Ethiopian. A person could also acquire Ethiopian Citizenship by marriage or by applying to Ethiopian nationality after living in Ethiopia at least for four years and fulfilling other conditions stipulated by the Ethiopian Nationality Proclamation.

## TERMS AND CONDITIONS OF EMPLOYMENT

### Types of Employment

For non-managerial employees, the Proclamation provides that, except for a contract of employment concluded for a definite period or piecework,

all other types of employment contracts are deemed to have been concluded for an indefinite period. The Proclamation prescribes an exhaustive list of instances where a contract of employment can be concluded for a definite period or piecework. These instances are: the performance of specified piece work; the replacement of a worker who is temporarily absent from work due to leave or sickness or other causes; to resolve abnormal work pressure; the performance of urgent work to prevent damage or disaster to life or property, to repair defects or break downs in works, materials, buildings or plant of the undertaking; irregular work, which relates to the permanent employer operations, but which work must be performed in irregular intervals; seasonal work, which relates to the permanent employer operations, but which work is only performed for a specified period of the year, and is repeated annually; occasional work which does not form part of the permanent employer operations, but which is done intermittently; the temporary replacement of a permanent worker who has suddenly and permanently vacated his/her post; and the temporary placement of a worker to fill a vacant position in the period between the planning of an organizational structure and its implementation.

It is imperative to note that the written agreement between the parties cannot make an employment relationship temporary, if the real nature of the employment does not fall into one of the above enumerated categories of employment for a definite period.

Managerial employees may, however, be employed for a definite period, without these restrictions. The nature of the engagement is left for the parties' agreement.



## Benefits and entitlements

The Proclamation provides for a range of benefits and entitlements to employees governed by it. Independent contractors and managerial employees are governed by the Civil Code, in which the minimum benefits and entitlements are not as extensive as that in the Proclamation.

### Annual Leave

Employees' entitlement to annual leave (on full pay) is based on their length of service. In the first year of service, the employee is entitled to 14 working days' annual leave. Thereafter the annual leave increases by 1 working day's annual leave for every year worked for the same employer. This minimum benefit may be increased by a collective agreement. No payment in lieu of annual leave may be made, except on termination of the contract. Annual leave may be extended for up to 2 years. An agreement by a worker to waive his right to annual leave is null and void.

Managerial employees, whose employment relationship is governed by the Civil Code, are entitled to 10 consecutive days of annual leave if they have served for 1 to 5 years; 15 consecutive days if they have served for more than 5 but less than 15 years; and 20 days if they have served for more than 15 years. However, please note that parties are at liberty to agree on better and extended leave period.

### Statutory/Public Holidays

There are currently 13 statutory holidays recognized in Ethiopia and all employees (including managerial employees) are entitled to paid leave on statutory holidays.

Since statutory holidays in principle

are paid non-working days, if work is done on public holidays in the form of overtime, a non-managerial employee will be entitled to his hourly wages multiplied by 2 1/2 for each hour of work. For managerial employees, the overtime payment is to be calculated by giving regard to the employees wage and other circumstances of the case.

### Sick leave

For non-managerial employees, the law provides for a maximum of six months' sick leave in a period of twelve months. The first month of sick leave must be fully paid, the next two months must be on half pay and the last three months can be taken but without pay. A worker is generally required to produce valid proof of illness. A worker who is absent for a long period due to illness may be dismissed with notice where the illness results in the worker's manifest loss of capacity to perform the work.

A managerial employee, who has served for at least three months, is entitled to 2 weeks' sick leave if his period of service is less than 1 year, and 1 month's sick leave if his period of service is more than 1 year. The payment during such sick leave is half of the managerial employee's wages.

### Rest periods

Every non-managerial employee is entitled to a minimum of 24 hours' paid uninterrupted rest in the course of every 7 days. And, unless otherwise determined by a collective agreement, the weekly rest period is required to fall on a Sunday. Similarly, the Civil Code provides that an employee should be granted rest days.

If work is done on regular working hours on such rest days, a non-managerial employee is entitled to get his hourly wages multiplied by 2.

### Maternity leave

A woman is entitled to ninety days' paid maternity leave. This leave consists of a period of 30 consecutive days of leave with pay preceding the presumed date of her confinement and a period of 60 consecutive days' leave after her confinement.

A managerial employee is entitled to 1 month's maternity leave with half pay.

### Family responsibility leave

A non-managerial employee is entitled to three days paid leave if he or she concludes a marriage, or in the event of the death of a close relative. Employees are further entitled to five days unpaid leave in cases of exceptional and serious events. The various afore-stated allowed periods of leave applies separately for each occasion.

### Remuneration

There are currently no formal legal requirements with regards to minimum wages.

### Bonuses

It is not a legal requirement to pay bonuses. However, if a bonus scheme has been agreed upon in an employment contract or collective agreement, the employer bears the duty to pay bonuses as stipulated in the agreement.

### Retirement benefits

Proclamation no. 715/2011 mandates pension fund membership for all employees (including managerial employees), and further specifies the date from which the employees will be entitled to start drawing down pension benefits. Employees must belong to the Private Organization Employees Social Security Agency established by Government (the State Fund). Private



retirement funds cannot replace the obligation to belong to this State Fund. An employee with at least 10 years of service, and who retires on attaining the retirement age of 60 years, is thereafter entitled to receive a pension for life from the State Fund. An employee with at least 20 years of service will benefit from pension for life, even if he/she has voluntarily resigned from service upon attaining the retirement age of 60. An employee with at least 25 years of service and who voluntarily resigned from his job will be entitled to pension upon attaining the age of 55. All years of service during which pension contributions are made by both the employer and the employee count as years of service for purposes of pension entitlement.

An employee who has not completed 10 years of service, and retires on attaining the retirement age is entitled to a retirement gratuity (125% of the salary earned in the final month preceding retirement, multiplied by the number of years of service).

During employment, the employer is required to contribute 11% of the salary of the employee and an employee is required to contribute 7% of her salary towards the State Fund. Although it is not yet put in practice, a similar contribution (both by the employer and the employee) is required by the Social Health Insurance Proclamation (Proc. No. 690/2010) to a scheme.

### **Compensation for injuries**

The employer is obliged to cover the medical expenses of an employee in case of employment injuries. Furthermore, the employee is entitled to periodic payment in case of temporary disablement as a result of employment injuries, disablement payment in case of permanent disablement or dependants' benefits if the employee dies in consequence of such injuries.

An employer may buy workers' compensation insurance to cover these liabilities under the Proclamation, however, cannot compel employee participation in a medical aid scheme to avoid such liability.

Managerial employees are entitled to compensation for injuries arising from employment, the details of which are provided for in the Civil Code.

### **Taxation**

Under Ethiopian Tax Law, employers are bound to withhold employment income tax on a monthly basis. The employment income tax rates range from 0% to 35% and the top income bracket is 10,900 Ethiopian Birr.

### **Varying terms and conditions by Collective Agreement**

For non-managerial employees, conditions of the employment contract can be varied by collective agreement, work rules and written agreement of both parties to an employment contract. But, such modifications should not affect the minimum labor condition stipulated by the Proclamation.

### **Essential public services undertakings**

The law gives workers and employers the rights to strike and lock out, respectively, in the manner prescribed by it. These rights, however, are not given to workers and employers of undertakings that provide essential public services. Essential public services are services rendered by undertakings to the general public and include air transport services, electric power supply, water supply and carrying out city cleaning and sanitation services, urban bus services, hospitals, clinics, dispensaries and pharmacies, fire brigade services, and telecommunication services.

### **Occupational health and safety**

Employers are obliged to take necessary measures to adequately safeguard the health and safety of workers. Among others, employers are expected to: comply with occupational health and safety requirements; provide workers with protective equipment and instruct them on its use; register employee accidents and occupational diseases and ensure that the work place and premises do not cause danger to the health and safety of workers.

### **Data Privacy**

The Constitution of Ethiopia accords protection to the privacy of every person, which includes employers and employees. However, there are no laws specifically regulating the right to privacy of employees in the work place.

### **Records**

Employers are required to keep employment records, annual leave records, sick leave records and maternity leave records. The employer is also obliged to keep a register of payments made to employees specifying the gross pay and method of calculation of wages, other remuneration paid, the amount and type of deductions, the net pay and other relevant particulars. There are no rules on how long these records should be kept by employers.

### **Employees as interested parties in the business of the Employer**

No statute guarantees employees a right to be or become interested parties in their employer's business, whether as a shareholder or interest holder in distressed business proceedings. It is possible for employers to establish employee share ownership schemes which allow the employees to participate in the business of the company to a limited extent.

## TERMINATION

### Non-Managerial Employees

#### Introduction

According to the Labour Proclamation, a contract of employment may be terminated for any of the following three reasons: on the initiative of either the employer or worker based on contract law principles; in accordance with the provisions of the law (see below); by mutual agreement of the two parties; or pursuant to a collective agreement.

#### Notice requirements

The Proclamation includes an exhaustive list of circumstances where contracts of employment may be terminated without notice. The contract of employment may be terminated by the employer without notice if one of the following grounds is fulfilled:

- repeated and unjustified tardiness despite warning to that effect;
- absence from work without good cause for a period of 5 consecutive working days or 10 working days in any period of 1 month or 30 working days in a year;
- deceitful or fraudulent conduct in carrying out his duties having regard to the gravity of the case;
- misappropriation of the property or funds of the employer with intent to procure for himself or to a third person undue enrichment;
- returning output which, despite the potential of the worker, is persistently below the qualities and quantities stipulated in the collective agreement or determined by the agreement of the two parties;
- responsibility for brawls or quarrels at the work place

having regard to the gravity of the case;

- conviction for an offence where such conviction renders him incapable for the post which he holds;
- responsibility 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;
- intentionally commit in the place of work any act which endangers life and property;
- removal of property from the work place without the express authorization of the employer;
- report for work in a state of intoxication;
- except for HIV /AIDS test, refusal to submit himself for medical examination when required by law or by the employer for good cause;
- refusal to observe safety and accident prevention rules and to take the necessary safety precautions,
- absence from work due to a sentence of imprisonment passed against the worker for more than 30 days; and
- commission of other offences stipulated in a collective agreement as grounds for terminating a contract of employment without notice.

A contract of employment may also be terminated by the employer by giving notice if one of the following grounds exists -

- the worker's manifest loss of capacity to perform the work to which he has been assigned; or his lack of skill to continue his work as a result of his refusal to take the opportunity of training prepared by the employer to upgrade his skill or

after having been trained, his inability to acquire the necessary skill;

- the worker is for reasons of health or disability, permanently unable to carry out his obligations under the contract of employment;
- the worker's unwillingness to move to a locality to which the undertaking moves;
- the post of the worker is cancelled for good cause and the worker cannot be transferred to another post;
- any event which entails direct and permanent cessation of the worker's activities in part or in whole resulting in the necessity of a reduction of the work force;
- fall in demand for the products or services of the employer resulting in the reduction of the volume of the work and profit of the undertaking and thereby resulting in the necessity of the reduction of the work force; and
- a decision to alter work methods or introduce new technology with a view to raise productivity resulting in the reduction of the work force.

The period of notice ranges from 1 to 3 months based on the period of service of the worker. The notice must specify the reasons for the termination of the contract and the date on which the termination shall take effect.

For employees who have completed their probation period, but have not yet been employed for a year, 1 month's notice must be given. For employees who have served more than a year, up to 9 years, 2 months' notice is required. Three months' notice must be given to employees who have worked for more than nine years.

A worker may terminate the contract of employment by giving 30 days'





prior notice to the employer. But the worker can also terminate the contract of employment without having to give a prior notice if one of the following grounds are fulfilled:

- if the employer has committed against the worker any act contrary to his human dignity and morals or other acts punishable under the Penal Code;
- if, in the case of imminent danger threatening the worker's safety or health, the employer, having been made aware of such danger, failed to act within the time limit in accordance with the early warning given by the competent authority or appropriate trade union or the worker himself to avert the danger; and
- if the employer has repeatedly failed to fulfill his basic obligations towards the worker as prescribed under this Proclamation, collective agreements, work rules or other relevant laws.

### Procedural requirements

Provided that the employer has given the correct notice (for a justifiable reason, in accordance with the list of reasons contained in the Proclamation), no additional procedural requirements are imposed.

### Termination Payments

Upon the termination of the contract of employment, the employee will be entitled to get severance payment when the contract is terminated based on the following grounds:

- a contract of employment is terminated because the undertaking ceases operation permanently due to bankruptcy or for any other reason;
- a contract is terminated as per

the conditions described under the Proclamation;

- where an employee terminates his contract –
  - o as a result of employer conduct in breach of the employee's human dignity or morals, or which conduct is punishable as an offence under the Penal Code; or
  - o because the employer, being informed of the danger that threatens the security and health of the worker, did not take corrective measures;
- where an employee's contract of employment is terminated because of reason of partial or total disability and is certified by medical board;
- where an employee's has no entitlement to a provident fund or pension right and his contract of employment is terminated upon attainment of retirement age stipulated in the pension law;
- where an employee's has given service to the employer or a minimum of five years and his contract of employment is terminated because of his 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 serve more with the employer; and
- in the event of a termination of a contract of employment on the employee's own initiative because of HIV I AIDS.

In addition to the above grounds, a worker whose employment is unlawfully terminated will also be entitled to a severance pay

If an employer terminates a contract of employment unlawfully, it would ultimately be up to the Labour Division

Court or Labor Relations Board to decide on the appropriate remedy. The available remedies for unlawful termination of employment are either reinstatement or compensation. No statutory requirements are imposed that an employer initiated termination of employment must be fair, in addition to being lawful.

In deciding on the appropriate remedy, the Labour Division Court will take into account whether the continuation of the particular employment relationship, by its nature, is likely to give rise to serious difficulties. If the Court decides to award compensation for the termination, the compensation to be paid will be calculated as follows:

- in case of unlawful termination of a contract of employment entered into for an indefinite period 180 times the average daily wages of the worker; and
- in case of unlawful termination of a contract of employment entered for a definite (fixed) period, a sum equal to his wages which the worker would have been paid if the contract of employment lasted up to its date of expiry or completion provided, however, that such compensation shall not exceed 180 times the average daily wages of the worker.

It is important to note that in addition to compensation, a worker whose employment is unlawfully terminated will be entitled to a severance pay.

Moreover, if an employer who unlawfully terminated an employment contract did not give notice of termination to its worker as required by law, it will be obliged to pay wages in lieu of the notice period that it failed to comply with.



## Managerial Employees

In the case of managerial employees, a contract for a fixed term will come to an end upon the expiry of the agreed term. Similarly, if the contract is for a definite piece work, the contract will be terminated when the agreed work has been accomplished.

On the other hand, when a contract is concluded for an indefinite term, either party may terminate it after giving the required notice. The employer should, however, have a good cause to terminate an employee, and absence of which may lead to compensation payment. The required notice period is two months where the employment relationship lasts for more than a year, and at least seven days in advance in other cases.

Further, when there is a 'good cause' within the meaning of the Civil Code, both an employer and an employee may cancel the employment contract without having the need to give prior notice of termination.

## Protected Employment

The employer is prohibited from terminating the contract of employment of a woman during her pregnancy and until 4 months after her confinement, except by mutual consent; or where the employee commits any of the forms of misconduct justifying termination without notice; or the order of reduction of work force falls on the pregnant employee.

## Confidential Information/Post Termination Restrictive Covenants

Employers may agree on post-termination covenants with employees. This is possible where the work given to an employee enables him to meet the clients of an employer or gain knowledge of the

employer's trade secrets. However, such covenants may not be considered valid unless they are necessary for the protection of the legitimate interests of the employer and do not impede, in an inequitable manner, the economic future of an employee. The party seeking to rely on a restraint bears the onus to prove enforceability thereof.

## Reference

An employer is obliged to provide an employee at any time and free of charge a certificate stating the type of work performed, length of service and wage earned.

## Dispute Resolution

The labour division of regional first instance courts have first instance jurisdiction to settle individual labor disputes. The decisions of these courts are appealable to labor divisions of regional appellate courts. In case of unlawful termination, the labor dispute settlement tribunal has jurisdiction to provide a remedy.

## Transfer of Contracts of Employment

The Labour Proclamation provides that amalgamation or division or transfer of ownership of an undertaking shall not have the effect of terminating a contract of employment.

Variations of contracts of employment of transferred employees may only be effected by agreement. The Proclamation does not contain detailed provisions relating to matters commonly legislated on, relating to transfers of businesses, in other jurisdictions. For instance, the Proclamation is silent on the effect of a transfer on pre-existing rights or the determination of which employees will be transferred. There are also no provisions specifying any consultation

or notification obligations for employers involved in the transfer. An employer who fails to fulfil its obligations under the Proclamation will be liable to pay a fine from 500-1200 ETB.

## RETIREMENT

The statutory retirement age is 60 years in Ethiopia, but the Council of Ministers in exceptional circumstances may set a retirement age either greater than or below 60 years.

One of the grounds of termination of employment relationships provided by the labor law is attainment of retirement age. Consequently, the employer can legally terminate the employment of a worker who has reached retirement age.



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