



LEGAL UPDATE

The Ethiopian Labor Proclamation No. 1156/2019

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I. Introduction

Revising the 2003 Proclamation has been on the table for nearly a decade. After long discussions, the Government recently announced revision of its 15 year old Labor Law. The revised Labor Proclamation is one of the key pieces of legislation that the Government has adopted in order to move forward in alignment with the Country's fast economic growth and evolving employment relations, and to comply with multiple International Labor Organization's ("ILO") Treaties and Commentaries.

The revised Proclamation No. 1156/2019 repeales the previous proclamation No. 377/2003 and Labour (Amendment) Proclamation No. 466/2005.

1. Sexual Violence and Harassment

One of the major additions in the revised Labour proclamation relates to Sexual violence and Harassment in the work place.

Definition

The old Proclamation did not define sexual violence and harassment; nor did it directly provide for the legal consequences from an employment law perspective.

The new Proclamation defines sexual harassment as an act of persuading or convincing another person through utterances, signs or any other manner, to submit for sexual favor without his/her consent

Sexual violence is defined as sexual harassment accompanied by force or an attempt thereof.

Legal Consequences for violation:

- The employee is entitled to terminate her/his employment contract without notice if she/he has been a victim of sexual harassment or sexual assault by the employer or a managerial employee;
- An employee who commits sexual harassment or sexual violence at a workplace may be dismissed without notice.
- An employee who resigned due to sexual harassment or sexual violence committed on him/her by the employer or managerial employee will be entitled to severance payment. Likewise, an employee who is a victim of sexual harassment or sexual violence committed by a co-worker will be entitled to severance payment upon her/his resignation if the incident was reported to the employer but the latter failed to take appropriate measure in due time.
- Victims of sexual harassment and violence who resign from their job will also be entitled to a compensation equaling their three months' salary.

2. Probation Period

The maximum duration of probation period which used to be 45 consecutive days has now been extended to 60 working days in order to give the employer sufficient time to appraise and better determine the suitability of the employee to a proposed role.

3. Reduction Of Employees

The previous proclamation provided that whenever a reduction of work force takes place, the employer shall, as much as possible, retain certain protected working groups during reduction of work force. The protected groups included:

- Those who are disabled by an employment injury in the undertaking;
- Workers' representatives;
- Expectant mothers

The Proclamation has now expanded the group to also include disabled persons (as opposed to the previous protection accorded to persons who suffered only employment injury or illness) and new mothers whose babies are under four months old

4. Termination Of Employees

4.1 Termination on the Ground of Absence and Tardiness

One of the pitfalls of the previous proclamation was that it did not provide any indicative guidelines and/or standards on what is generally considered repeated, unjustified tardiness. Termination of contract of employment without advance notice (summary dismissal) on the ground of repeated and unjustified tardiness has now been made clear by defining unjustifiable tardiness, and specifically setting out the number (eight times within six months period despite written warning).

Moreover, the Proclamation has made a change in relation to termination of contract of employment without notice on the ground of absence. The new Proclamation states that the employer is entitled to terminate an employee immediately if the employee is absent from work for five days (consecutive or otherwise) within six months period. The previous proclamation requires the employee to be absent from work without good cause for a period of five consecutive working days or ten working days in any period of one month or thirty working days in a year;

4.2 Termination on the Ground of Under Performance

Although the previous Proclamation incorporated under-performance by employees as one ground justifying termination with notice, it did not provide a standard to measure under-performance. The new Proclamation, however, clearly states that performance measurement should either be agreed by a collective agreement or that there should be a regular performance assessment of employees as well as periodic records of the same.

5. Overtime Work and Paymment

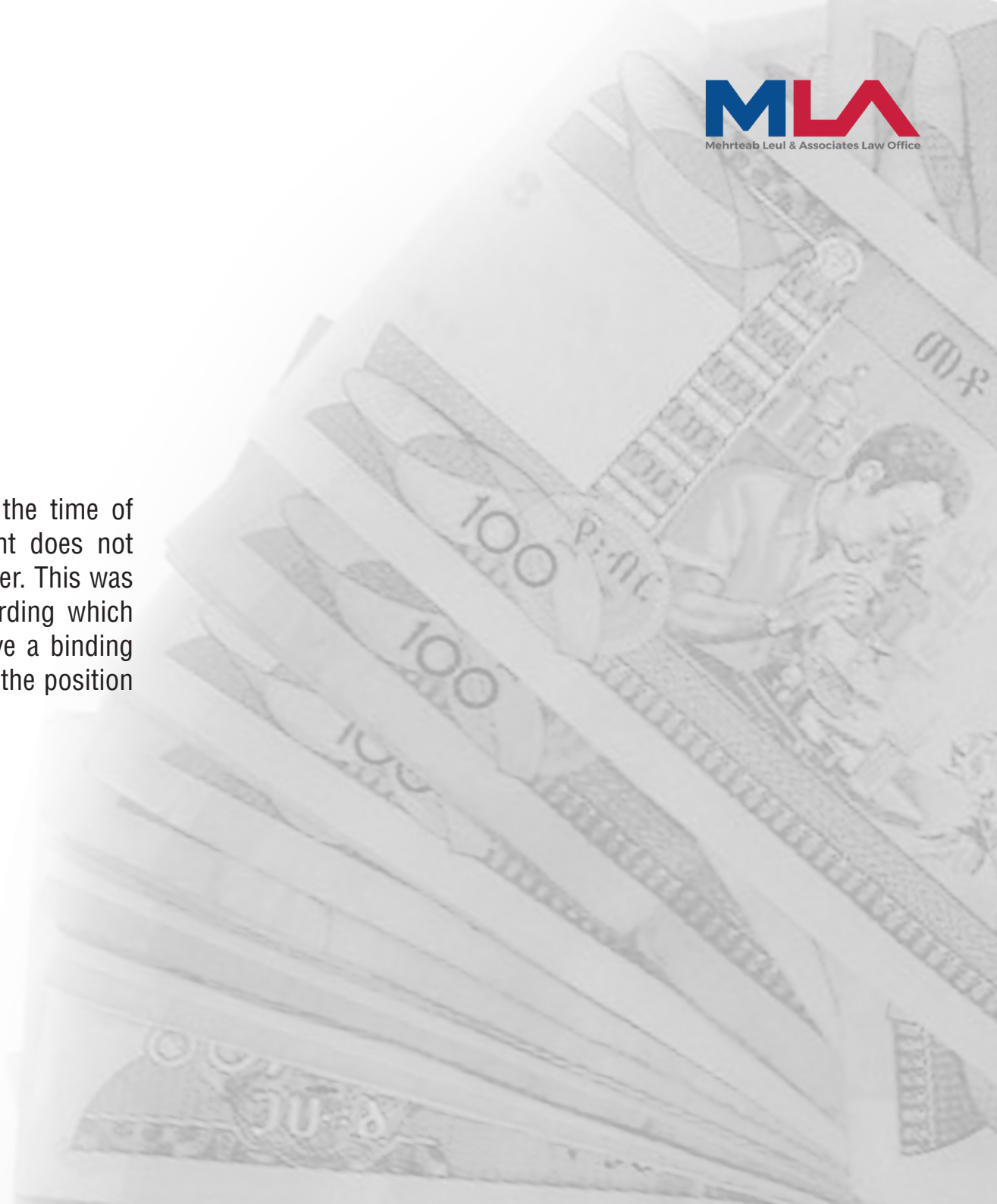
The normal hours of work of maximum 8 hours a day and 48 hours per week remain the same. The revised Proclamation, however has made some changes in relation to over time work. In the event of urgent work that needs to be taken care of, the law has permitted for a maximum of four hours a day overtime work (it was previously 2 hours a day) and 12 hours a week.

Overtime payment rate has also increased in some cases while the previous rate has been maintained for other cases:

- A. In the case of work done between 6:00 a.m. in the morning and 10:00 p.m. in the evening, the rate is $1\frac{1}{2}$ multiplied by the ordinary hourly rate (it used to be $1\frac{1}{4}$ times the ordinary hourly rate);
- B. In the case of night time work between 10 p.m. in the evening and 6 a.m. in the morning, the rate is $1\frac{3}{4}$ multiplied by the ordinary hourly rate(it used to be $1\frac{1}{2}$ times the ordinary hourly rate);
- C. In the case of work done on weekly rest day and in the case of work done on a public holiday, the previous rates, respectively, of twice the ordinary hourly rate and $2\frac{1}{2}$ multiplied by ordinary hourly have been maintained.

6. Severance Payment

Pursuant to the new Proclamation, a person who, at the time of termination/resignation, is eligible for pension payment does not have the right to receive severance pay from the employer. This was one of the most controversial issues in the past regarding which the Cassation Bench of the Federal Supreme Court gave a binding decision. The Proclamation has, therefore, incorporated the position of the Cassation Court on this subject.



7. Annual Leave

The 14 working days for the first year of service plus 1 working day for each additional year annual leave entitlement has now increased to 16 working days plus one working day every additional two years.

Additionally, under the previous law, an employee was entitled to interrupt his/her annual leave and instead use a sick leave if she/he fell sick during the course of the annual leave. The revised Proclamation provides for a stringent requirement of being hospitalized in order to benefit from such a right.

8. Parental Leave

The hitherto thirty days pre-natal and sixty days post-natal leave has been changed to thirty consecutive days pre-natal and ninety consecutive days post-natal leave.

Additionally, the revised Proclamation has introduced paternity leave of three working days with full pay. Paternity leave was not recognized under the previous proclamation.



9. Minimum wage

There have been recent media reports indicating that the government of Ethiopia is considering to introduce minimum wage. The revised Proclamation does not directly set a national minimum wage for employees of private organizations/companies. Instead, it gives mandate to the Council of Ministers to establish and determine the powers and responsibilities of a Wage Board which shall comprise representatives of the Government, employees and trade unions together with other stakeholders that will periodically revise minimum wages based on studies which take into account the country's economic development, labor market and other considerations.



II Additional Updates

1. Managerial Employees

The revised Proclamation slightly modifies the definition of “Managerial Employee” provided for under the old Proclamation. The phrase “an individual who is vested with the power to take disciplinary measures against employees...” which was previously considered as one point of distinction between managerial and non-managerial employees has been removed from the definition of managerial employee. Accordingly, employees with sole powers to take disciplinary actions will not be considered as managerial employees unless they possess other ‘managerial powers’ indicated by the law.

2. Additional obligations of Employers

The Proclamation has incorporated additional duties and responsibilities of employers, which include the duty to make the contents of work rules, manuals and other related internal working policies known to employees. Additionally, employers have the responsibility to facilitate the payment of workers’ monthly contributions to trade unions by deducting the contributions from a member employee’s salary and transfer it to trade union’s bank account when a written request to this effect has been submitted by an employee. This is believed to strengthen trade unions whilst positively affecting employment relations.

3. Unlawful Activities by the Employer/ Managerial Employee:

With the intention of clarifying the confusion on unlawful activities by the employer in the previous Proclamation, the revised Proclamation has made it clear that unlawful activities by managerial employees will be considered as unlawful activities by the employer. This means consequences attached to unlawful activities by employer will apply to similar wrongdoings committed by managerial employees.

4. Falsification of documents or an attempt thereof by employees:

The revised Proclamation has it clear that making use of falsified document or an attempt thereof is a ground for summary dismissal. This was previously implemented by interpretation of the law.

5. Affirmative Action:

Beyond restating that a women should not be discriminated against in all respects on the basis of their sex, the new Proclamation requires priority to be given to women if they score equal result with men when competing for employment, promotion or any other benefit.

Disclaimer

6. Minimum Working Age of Young Workers:

The minimum employment age of young worker which used to be 14 years age of has now been changed to 15 years of age. Thus, a “Young Worker” means a person who has attained the age of 15 but is below the age of 18 years.

Reflections on the Revised Proclamation:

- As you may all know, the previous Labour proclamation has many Pitfalls, and particularly, there were many employment areas that were not directly regulated by the Proclamation. These were left to the court's interpretation. Although not exhaustively, the revised Proclamation has tried to address some areas which were not previously regulated; such as sexual harassment
- The Revised Proclamation is not a comprehensive revision of the Ethiopian Labour laws- majority still remains the same. However, it has somehow clarified certain ambiguous areas; such as termination on the ground of tardiness. The new proclamation has now set a clear parameter to measure tardiness.
- Similar to the old proclamation, the revised proclamation is still generic and is not sector specific.

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THANK YOU!