



AMAN ASSEFA & ASSOCIATES

LEGAL UPDATE

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**COVID-19: IMPACT ON
EMPLOYMENT RELATIONS
– ETHIOPIA**



COVID-19: IMPACT ON EMPLOYMENT RELATIONS – ETHIOPIA

Since the advent of Corona-virus disease 2019-COVID-19 (the “Virus”) a couple of months ago, life as we know it has changed dramatically. Ethiopia confirmed its first case on March 13, 2020 and since then we have had nine confirmed cases. Schools are fully and courts partially closed for 15 days while large public gatherings have been discouraged.

The pandemic affects a wide range of businesses, investments and transactions. In this month’s legal update, we want to focus on the impact of the Virus on employment relations. This is to highlight the legal landscape and practical considerations for businesses in Ethiopia.

HEALTH AND SAFETY

An employer has a general obligation to keep its employees safe and is required to take all the necessary occupational and health measures according to standards and directives provided by an appropriate authority. The new labour proclamation 1156/2019 (the “Law”) also requires an employer to cover costs of medical examination whenever required by law or an appropriate authority. Testing for the Virus is however currently being provided solely by the government.

The World Health Organization (“WHO”), Ministry of Health (“FMoH”) and Ethiopian Public Health Institute (“EPHI”) have been issuing various guidelines to the wider public on how to prevent and control the spread of the pandemic. We have also gathered that the Ministry of Labour and Social Affairs (“MoLSA”) has given guidance to employers to take measures such as creating awareness about the pandemic and providing sanitary and safety related products to their workers.

In light of this, it is advisable if employers start implementing guidelines of the different international and local health authorities in the context of work place environment and take proactive precautionary measures. Workers have the legal obligation to observe such guidelines and take the necessary safety precaution as well.

The Law also requires employers to keep a register of the health condition of their workers except for HIV/AIDS. A reciprocal obligation is also imposed on workers. They cannot refuse to submit for medical examination required by the employer for good cause, except for HIV/AIDS. In line with these obligations, we advise employers to closely monitor workers for any signs and symptoms of the Virus as per the guidelines of WHO, FMoH and EPHI and inform the relevant health authority in case there is a suspicion.

It is worthwhile to note that a worker may resign if the employer fails to take timely action in the case of imminent danger threatening the worker's safety or health. Such an employee is entitled to payment of compensation (amount of compensation discussed below).

SUSPENSION

The pandemic has created a global havoc whereby the global supply-chain is frustrated creating a shortage of raw materials and a decline in demand for several products and services. Such decline in demand has also started to surface in the Ethiopian market.

The Law recognizes the possibility of temporary suspension of employment relationship due to different factors. Suspension may halt performance of work and the payment of salary as well as other benefits including different allowances. The Law imposes requirements, which need to be complied with before suspending workers.

Among the different grounds for suspension, the two relevant grounds are:

- Full or partial suspension, due to force majeure, of the activities of the employer for a period of not less than 10 consecutive days; and
- Financial problems, not attributable to the fault of the employer that requires the suspension of the activities of the employer for not less than 10 consecutive days.

The Law does not list events of force majeure. The contract law of Ethiopia provides a list of events that qualify as force majeure such natural catastrophe, official prohibitions, death or serious illness of debtor, war and unforeseeable act of a third party. Such events should also be unforeseeable and absolutely prevent the performance of an obligation.

Currently, the pandemic has not spread in the country to the extent of halting operation of businesses and factories. However, the current global supply-chain problem of shortage of raw material and decrease in demand is putting a financial strain on businesses and may potentially justify suspension as both a force majeure event and a financial problem, given the activity of the employer is curtailed for more than 10 days. However, note that a case-by-case evaluation of specific circumstances of each business is necessary before taking any measure.

Further, an employer is required to inform the occurrence of a ground for suspension to MoLSA or relevant Labour and Social Affairs Bureaus in writing. Such authority has to first confirm the existence of a good cause and fix the duration for suspension (the initial suspension period shall not exceed 90 days). If the authority, however, fails to notify its decision within three days, then the employer is deemed allowed to suspend. Hence, legally speaking an employer may suspend workers if it is unable to receive decision from the authority.

In the extreme case where the authority is convinced that the employer cannot resume its operation, the employer may terminate the contract of employment permanently with payment of compensation (amount of compensation discussed below).

TERMINATION-REDUCTION OF WORK FORCE

The Law permits an employer to terminate workers, by giving prior written notice, if:

- Any event which entails direct and permanent cessation of the worker's activities in part or in whole resulting in the necessity of terminating a contract of employment;
- Demand fall for the products or services of the employer resulting in the reduction of the volume of the work or profit of the undertaking.

If a termination based on the above two grounds affects at least 10% of workers employed or, where the number of workers is between 20-50 and termination affects at least five workers over a continuous period of not less than ten days, the Law designates such termination as reduction of work force. This is known as redundancy or lay-off in other jurisdictions.

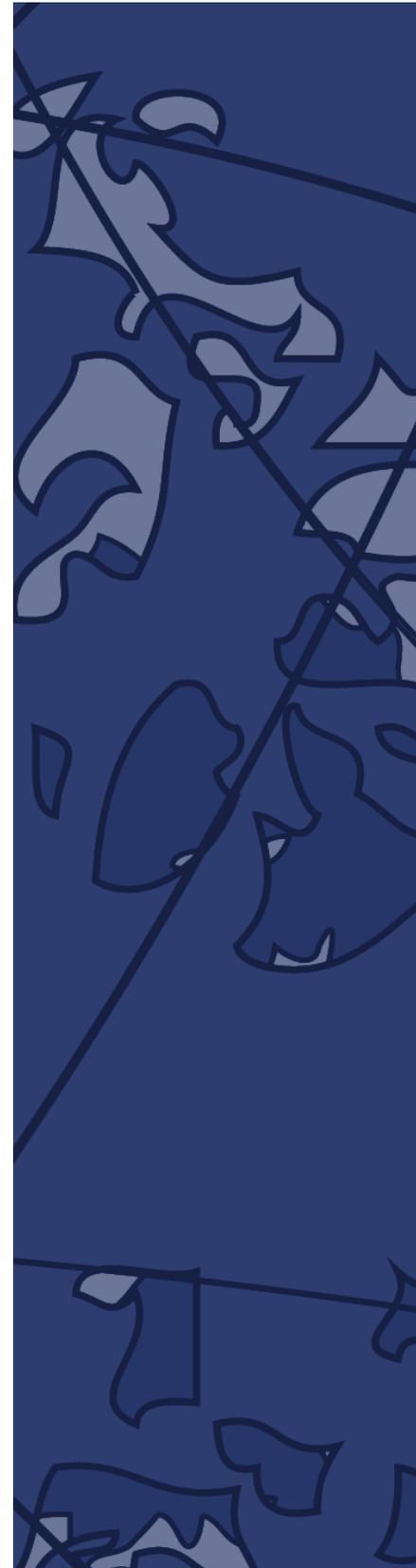
In implementing reduction, the employer should follow procedures laid down under the Law. It is required to conduct consultation with the trade union, if any, or workers' representatives in order to retain workers having skills and higher rate of productivity in their posts. In case of comparable skill and rate of productivity, vulnerable employees such as expectant and new mothers, workers representatives', employees with occupational injury, disabled employees and employees' with more dependents should be least affected by the reduction.

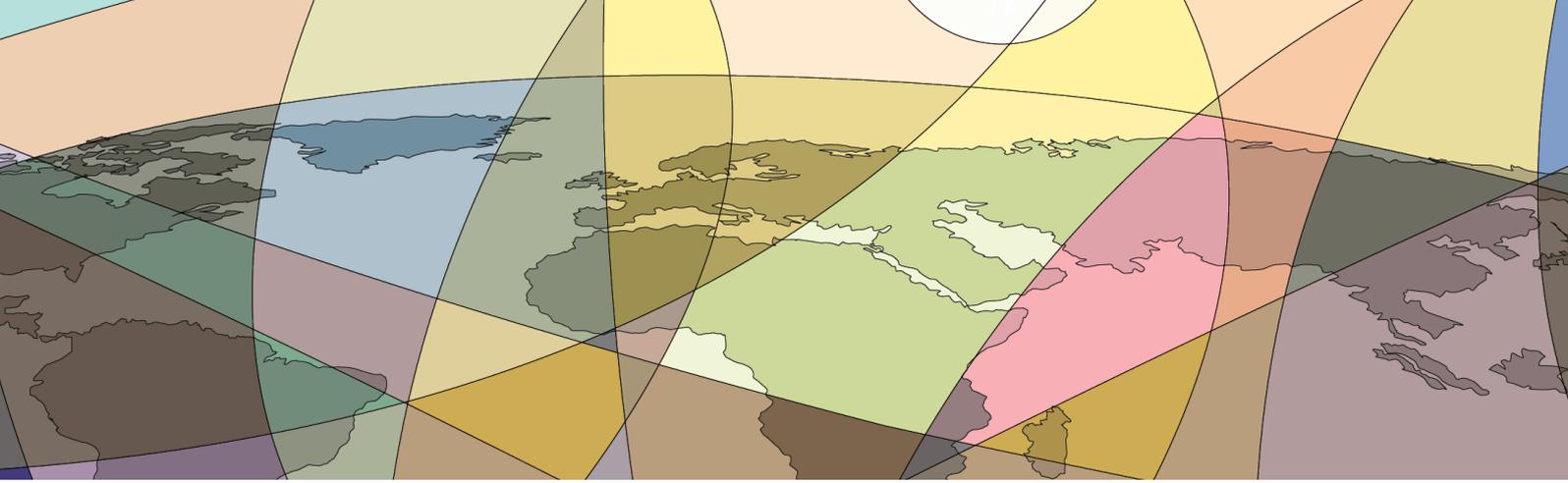
Consequently, the employer is required to pay:

- Severance pay (one month salary for one year of service plus 1/3 of a month's salary for each additional year of service with a maximum of twelve months' salary);
- Compensation for workers in an amount up to six months' salary;
- Notice period depending on year of service of the worker;
- Payment in lieu of annual leave;
- Any outstanding payments.

It is worth to note that such payments needs be made within 7 working days from the date of termination. In this unique and unprecedented global pandemic, however, strict reading of the Law by itself is not adequate. For example, retaining expectant mothers to work may be more disadvantageous as it may expose them to any potential infection of the Virus. Laying off such employees is also an equally debilitating outcome for the employees and the society at a larger scale.

Officials at MoLSA advises that suspension or termination should be taken as a last resort. Other mitigating actions should be explored before employees are suspended or terminated. Although, forced leave is not recognized under the Law, it is suggested for employers to arrange workers to take their accrued annual leaves in consultation with the employees.





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WAY FORWARD

Although the Law provides for various avenues to suspend and terminate employees in times of force majeure event, such measures have broader socio-economic implications. This unique global challenge requires the concerted action of the government, the broader public and all other stakeholders.

More so, in a country like Ethiopia where there is no streamlined and formal social security system, we foresee that the government will highly depend on businesses and other stakeholders to mitigate the effect of the pandemic on the economy as a whole and its impact of the work force in particular. The government should also take its part in easing the burden on business in general and taking measures to incentivize those businesses that retain the most work force.

Other countries are taking different measures in this regard. To the extent possible, some measures that may be considered by the Ethiopian government may be adoption of fiscal and monetary stimulus; tax breaks and exemption of certain governmental fees and expansion of market base of business, particularly of export-oriented business, to local markets. The government may also enhance existing online service platforms of the government offices to facilitate essential and time-sensitive matters and subsidizing essential sanitary and safety products.

RECOMMENDED EMPLOYERS' ACTION:

- Strict adherence to the health guidelines and following daily updates by different international and national institutes;
- Providing sanitary and safety products (the likes of soaps, water, alcohol, sanitizers, face masks and gloves) to employees in sufficient number;
- Conduct an ongoing awareness creation platforms about the pandemic among workers;
- To the extent possible to devise and implement an internal health protocol;
- To undertake social dialogue and consultation with workers to reach at an amicable and mutually beneficial arrangements;
- Keeping a frequent communication and consultation with the relevant Labour and Social Affairs bureau;
- Taking legal advice before taking any suspension and termination measures.

In conclusion, we recommend a case-by-case analysis of the context, nature and particular situation of a business before taking any measure.



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