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CONTRACT OF EMPLOYMENT IN THE AGRICULTURE INDUSTRY

INTRODUCTION

The contract of employment is the basis of the employer-employee relationship. Apart from identifying the parties, the employment contract, among other things, defines the nature of the relationship between the two parties by spelling out the job description or grade of the employee, the remuneration that the employee is entitled to, and the duration of the relationship.

It is also important to point out that in terms of the Labour Act (Chapter 28:01), section 12 (1), wherever one is employed by or working for any other person and receiving or entitled to receive any remuneration in respect of such employment, a contract of employment exists, even if it is not reduced in writing. Therefore, it is important to have the employment contract in writing.

ELEMENTS OF A CONTRACT OF EMPLOYMENT

The Labour Act in section 12 (2) requires that every contract of employment must have the following elements:

1. The name and address of the employee.
2. The duration, the terms of probation, if any.
3. The terms of any employment code.
4. Details regarding remuneration.
5. Particulars of benefits receivable in the event of sickness or pregnancy.
6. Working hours.
7. Particulars of any bonus scheme.
8. Particulars of vacation leave and pay, and particulars of any other benefits provided under the contract of employment.

Given the fact that the Labour Act regulates the contents of an employment contract, what mainly distinguishes one type of contract from another is the duration. The principal collective bargaining agreement for agriculture (Statutory Instrument 41 of 2022) provides for, and to some extent regulates, the main types of contracts applicable in the agriculture industry. These different types of contracts are indeed distinguishable by their duration.

TYPES OF CONTRACTS

The following are the main types of contracts in the agriculture industry;

CONTRACT WITHOUT LIMITATION OF TIME/ PERMANENT CONTRACT

This type of contract does not have a specific termination date. Normally, this contract is entered into with a worker whose services are required for an indefinite period. The contract is terminated not because a specified date has been reached, but probably due to other circumstances unforeseen at the time the parties signed the contract, such as the worker's misconduct, the closure of the enterprise or the death of the worker. An example is the farmhouse housekeeper whose services, all things being equal, may be required for an unspecified period.

FIXED-TERM CONTRACT

This specifies the duration of employment or a fixed specific expiry date. However, it can be renewed continuously if the employer still requires the services of the employee, but such continuous renewal is not supposed to exceed a certain number of times or years. Each sub-sector has capping regulations that regulate how many times or for how many years a fixed-term contract can be renewed. It is 4.5 years for the General Agriculture subsector (S.I 77 of 2017), and 3 years in the case of the Horticulture subsector (S.I 112 of 2020). Different capping regulations apply for each of the remaining subsectors, namely, Tea and Coffee (S.I 69 of 2017), Timber (S.I 113 of 2020), Agro (S.I 111 of 2020), Sugarcane (S.I 149 of 2020), and Kapenta (S.I 68 of 2017). If the caps are exceeded, by operation of the law, the employee automatically becomes a permanent employee when the cap is exceeded.

The issue of capping regulations will be covered in the next bulletin.

SEASONAL CONTRACT

The Labour Act defines this as relating to work that is, "owing to the nature of the industry, performed only at certain times of the year". The principal collective bargaining agreement restricts the duration to not exceed 180 days in 12 consecutive months, or else the worker is deemed a permanent worker. Seasonal work is short-term work that arises at certain times of the year, such as planting, suckering, or reaping of tobacco. The farmer may not be able to forecast when the task is going to be completed, so he may not be able to fix a termination date, which is what distinguishes seasonal contracts from fixed-term contracts. The most important thing to note is that the worker is disengaged as soon as the seasonal task is completed. It is therefore vital

that the nature of seasonal work be clearly defined in the contract so that there are no disputes when the seasonal work is completed.

CASUAL WORK CONTRACT

A casual worker contract shall not exceed a total of six weeks in any four consecutive months. If it exceeds this stipulated period, the employee shall be deemed to have become an employee on a contract of employment without limit of time. (See section 12 (3) of the Labour Act).

CONTRACT FOR THE PERFORMANCE OF A SPECIFIC TASK

The collective bargaining agreement calls an employee engaged under this type of contract a 'contract worker'. The worker is engaged to do a specific task, which is, however, not of a seasonal nature. An example is where a tobacco farmer engages a tractor driver to do ridges for a 20-hectare piece of land, probably because the farmer's substantive driver does not have the required skill or expertise to do the ridges in the manner required by the farmer. Unlike in the case of the other contracts discussed above, where the wage rate is as provided under the NEC collective bargaining agreement, the remuneration rates under this contract are negotiated between the parties; no money is remitted to the NEC as dues for this type of employee.

CONCLUSION

In conclusion, the contract of employment, being the cornerstone of the employer-employee relationship, must be crafted with due care and consideration of the farmer's circumstances. Where there is no guarantee of the availability of work beyond a certain period, there is no wisdom in entering into a contract without a time limit of time/permanent contract. The failure to grasp this principle has resulted in many farmers having to incur huge expenses in terminating the contracts of their unrequired farm workers.

N.B: Templates for contracts of employment can be found on the NEC website https://necagriculture.co.zw/downloads.html

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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