DOWNLOAD PDF LABOUR LAW AND RELATIONS

Chapter 1 : What are Labor Relations? (with pictures)

The Department of Labor (DOL) administers and enforces more than federal laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and million workers.

Identification[edit] The first question to be asked, when seeking to resolve any labour law problem, is whether the parties are indeed "employees" and "employers" within the meaning of the applicable statute or the common law. This has long been a difficult task in South Africa, as it is not always immediately apparent whether the parties have entered into the locatio conductio operarum contract of employment or merely the locatio conductio operis contract of work. Distinguishing between these two kinds of contracts is critically important, as different legal consequences flow from the various forms of contract. Most important is that South African labour legislation applies only in respect of employees, who are entitled to social security benefits and have access to the statutory mechanisms if they wish to seek remedies for violations of their employment rights. Similarly, only employers are bound by the labour statutes, and are vicariously liable for the delicts of their employees. Common law[edit] The first source to be examined, when seeking to determine whether parties to a work relationship are employers and employees, is the contract into which they have entered. A contract of employment comes into existence when the parties conclude an agreement that conforms to the requirements of the locatio conductio operarum. Reported judgments have indicated that the task of distinguishing employees and employers from parties to other contractual relationships entailing the provision of work, or the rendering of services, is not a matter of definition; classification of such contracts is a "matter of substance, not merely of form. Statutory definitions do not resolve the problem. It is safe, however, to assume that even from the second part of the definition of an "employee," as it appears in the Labour Relations Act or the Basic Conditions of Employment Act, independent contractors are implicitly excluded. At the core of subsection a of both definitions lies a reference to the contract of employment: The basic idea behind subsection b of both definitions is that employees are those people who place their capacity to work at the disposal of others. This is the essence of employment. The case of Liberty Life Association of Africa v Niselow reiterates the law set out above and the interpretation of the definition of "employee. This means that it is necessary to look outside the legislation to determine the meaning of these terms, in order to distinguish between an employee and an independent contractor. The courts have formulated a number of tests for drawing the distinction. Control test[edit] The control test focuses on the element of "control" exercised by the employer over the employee. The power to control has traditionally been regarded as the hallmark of the employment contract. With the advent of highly skilled employees who are given free rein in performing their duties, the courts no longer insist on de facto control, as once they did, but recognise that a right to control is sufficient. The employer not choosing to exercise that right does not render the contract something other than one of employment. The application of the control test in isolation is entirely inadequate, as certain employees have a wide discretion as to how to perform their work. Such discretion does not alone render them independent contractors. The ultimate difference between an employee and an independent contractor is that the principal has no legal right to prescribe the manner in which the independent contractor brings about the desired result, but may prescribe methods by which the employee works. In Colonial Mutual Life Assurance Society v MacDonald , the court held that the employee was subject to the control of the employer in the sense that the latter had the right to prescribe not only what work had to be done, but also the manner in which that work had to be done. The independent contractor, on the other hand, could be directed only as to what work must be done, not how it was to be done. In any event, to define a contract in terms of one of its characteristics is tautological. It is based upon the assumption that whether or not one is an employee does not rest on submission to orders; it depends on whether the person is part and parcel of the organisation. In other words, one looks at the extent to which a person the worker is integrated into the organisation of the other person the employer , or whether the person is performing work inside the organisation of another. The work of an independent contractor, although done for the business, is not integrated into it; it is only accessory to it. One of the problems with this test is that it is not always possible to measure the extent of integration, or to determine what degree of integration is sufficient for someone to qualify as an employee. Multiple or dominant-impression test[edit] The deficiencies of the control and organisation tests led the courts to approach the question in the same way that they approach so many other problems: The relationship is viewed as a whole; a conclusion is drawn from the entire picture. In Ongevallekommissaris v Onderlinge Versekeringsgenootskap AV-BOB , although the court did not spell out exactly what may be included in the general picture, guidance may be derived from the English case of Ready Mixed Concrete v Minister of Pensions and National Insurance , in which the presiding officer set out three possible components: The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. The other provisions of the contract are consistent with its being a contract of service. When courts examine the "other provisions of the contract," they will consider all relevant aspects of the relationship. The dominant-impression test was followed in this case, and Smit was held to not be an employee of the insurance company. In Medical Association of SA v Minister of Health , several district surgeons challenged the decision of the provincial MEC for Health for the Free State to terminate their contracts summarily as part of the restructuring of the district health service. The multiple or dominant impression test was followed, and the court used the factors discussed in Smit to assist it in obtaining the dominant impression that part-time district surgeons were in fact employees of the State. The court held that the dominant-impression tests entails that one should have regard to all those considerations or indica which would contribute towards a determination of whether the contract is one of service or of work, and react to the impression one gets upon a consideration of all such indica. The Labour Court based its decision on the following factors: The doctors rendered "personal services. The employer was obliged to pay a "contractual salary" to the doctors even in the absence of any actual work being performed, as long as the doctors made themselves available to do the work. Even though the doctors were professionals, the provincial administration did have some control over the way in which services were rendered. The test has been subjected to severe criticism. Etienne Mureinik has said that it test offers no guidance in answering the legal question whether the facts are of such a nature that the individual may be held to be servant within the meaning of the common law in difficult penumbral cases. Indeed, it is no test at all. To say that an employment contract is a contract which looks like one of employment sheds no light whatsoever on the legal nature of the relationship. This criticism is based on the idea that it is not helpful to say a particular relationship exists because it looks like it does. Productive capacity test[edit] In other decisions, the courts appear to have resorted to what may be described as the "productive capacity" test. E]mployment is a relationship in which one person is obliged, by contract or otherwise, to place his or her capacity to work at the disposal of another [A]n employee is to be distinguished from an independent contractor, who undertakes to deliver, not his or her capacity to produce, but the product of that capacity, the completed work. Differences between employees and independent contractors[edit] In SA Broadcasting Corporation v McKenzie , the Labour Appeal Court summarised the main differences between the contract of employment proper and what is called the "contract of work" locatio conductio operis: In the first, the object is the rendering of personal services between employer and employee; in the second, the object is the production of a certain specified service or the production of a certain specified result. The employee renders the service at the behest of the employer; the independent contractor is not obliged to perform his work personally, unless otherwise agreed. The employer may decide whether it wishes to have employee render service; the independent contractor is bound to perform specified work or produce a specified result within a specified or reasonable time. The employee is obliged to obey lawful, reasonable instructions regarding work to be done, and the manner in which it is to be done; the independent contractor is not obliged to obey instructions regarding the manner in which a task is to be performed. A contract of employment proper is terminated by the death of the employee; the contract of work is not terminated by the death of the contractor. A contract of employment terminates on completion of the agreed period; the contract of work terminates on completion of the specified work, or on production of the specified result. Labour Relations Act s A[edit] There is very little work that cannot be outsourced. Outsourcing is generally not supported by trade unions, who represent employees. If work is outsourced, the worker is an independent contractor. Political pressure was placed on government to move away from outsourcing and more towards employment. In , accordingly, a new presumption was added to the Labour Relations Act , providing guidelines on when it has to be ascertained whether or not someone is an employee. This presumption was introduced as a part of significant amendments to the Labour Relations Act and the Basic Conditions of Employment Act in Many of the factors and issues discussed by the courts in the cases above resurface again: The legislative provision has been taken by some to be merely a restatement or summary of the principles laid down by the courts with the passing of time. Although this presumption is useful in determining whether a person is an employee or not, as it is closely linked to the principles and approaches developed by the courts, the Labour Court held, in Catlin v CCMA , that section A does not do away with the principle that the true nature of the relationship between the parties must be gathered from the contract between them. Section A is not the starting point, therefore; the court held that it is necessary to consider the provisions of the contract before applying the presumptions. Essentials[edit] The common-law concept of employment sets the scene for the interpretation of the Labour Relations Act The contract of employment is the foundation of the relationship between an employee and his employer. It links the two parties in an employment relationship, irrespective of the form the contract takes. The existence of an employment relationship is the starting point for the application of all labour law rules. Without an employment relationship between the parties, the rules of labour law do not apply. In terms of the common law, one does not have to have a written contract; therefore, not having the contract in written form is not a fatal flaw, as the contract can be verbal. There are, however, a number of statutes which require specific contracts of employment to be in writing. Section 29 of the Basic Conditions of Employment Act, for example, states that the employer must supply the employee with certain written particulars concerning specific things, like hours worked and remuneration. Like any contract, the locatio conductio operarum commences when the parties have agreed to its essential terms, unless both parties have agreed to suspend its operation for a particular period. Failure to do so, without good cause, constitutes a breach of contract at common law and a dismissal under the Labour Relations Act It is important, therefore, to determine what the essentials of the contract of employment are. Stripped to its essence, the contract of employment today may be defined as an agreement between two parties, in terms of which one party the employee works for another the employer in exchange for remuneration. Although this definition appears to be simple, it contains a number of important principles, aspects and implications. When they are taken into account below, the definition of the employment contract may be expanded as follows: Agreement[edit] Firstly, it must be noted that the employment contract is based on agreement; the parties must enter into it voluntarily. This idea finds expression in section 13 of the Constitution, which provides that "no one may be subjected to slavery, servitude or forced labour," and section 48 of the Basic Conditions of Employment Act, which states that "all forced labour is prohibited. If it does not comply with these requirements, it will not be regarded as binding and enforceable. Consensus between the parties means that both must have a serious intention to create mutual rights and duties to which they will be legally bound. They must have each been fully aware of the nature of the duties, and that the other had this intention. At common law, the parties are not required to observe any formalities. There is no requirement that the contract be in writing, but certain employment contracts are required by statute to be in writing, like those of merchant seamen and learners under the Skills Development Act. In addition, those of apprentices and candidate attorneys must also be registered with the appropriate authorities. Lastly, where parties wish to alter provisions of the Basic Conditions of Employment Act, this must be done in writing. Work[edit] Secondly, one of the pivotal concepts in the initial definition is that of work. This means that, when we work, we offer our services to another person, and agree that the other person will be able to tell us what to do, when to do it, how to do it and where to do it. Remuneration[edit] Remuneration normally takes the form of payment of money, or the provision of another benefit. According to the common law, payment may be made in kind. Payment may be made monthly, weekly, daily or even in irregular cash payments. The common law does not prescribe what form payment must take. The Labour Relations Act contains a statutory definition of remuneration in section

Chapter 2 : Labour Law and Employment Manual | Labour Guide

Labour law (also known as labor law or employment law) mediates the relationship between workers, employing entities, trade unions and the government. Collective labour law relates to the tripartite relationship between employee, employer and union.

History of labour law Labour law arose in parallel with the Industrial Revolution as the relationship between worker and employer changed from small-scale production studios to large-scale factories. Workers sought better conditions and the right to join or avoid joining a labour union , while employers sought a more predictable, flexible and less costly workforce. The state of labour law at any one time is therefore both the product of, and a component of struggles between various social forces. As England was the first country to industrialise, it was also the first to face the often appalling consequences of industrial revolution in a less regulated economic framework. Over the course of the late 18th and early to midth century the foundation for modern labour law was slowly laid, as some of the more egregious aspects of working conditions were steadily ameliorated through legislation. This was largely achieved through the concerted pressure from social reformers , notably Anthony Ashley-Cooper, 7th Earl of Shaftesbury , and others. Child labour[edit] A serious outbreak of fever in in cotton mills near Manchester drew widespread public opinion against the use of children in dangerous conditions. This was the first, albeit modest, step towards the protection of labour. The act limited working hours to twelve a day and abolished night work. It required the provision of a basic level of education for all apprentices, as well as adequate sleeping accommodation and clothing. The rapid industrialisation of manufacturing at the turn of the 19th century led to a rapid increase in child employment, and public opinion was steadily made aware of the terrible conditions these children were forced to endure. The Factory Act of was the outcome of the efforts of the industrialist Robert Owen and prohibited child labour under nine years of age and limited the working day to twelve. A great milestone in labour law was reached with the Factory Act of , which limited the employment of children under eighteen years of age, prohibited all night work and, crucially, provided for inspectors to enforce the law. Pivotal in the campaigning for and the securing of this legislation were Michael Sadler and the Earl of Shaftesbury. This act was an important step forward, in that it mandated skilled inspection of workplaces and a rigorous enforcement of the law by an independent governmental body. A lengthy campaign to limit the working day to ten hours was led by Shaftesbury, and included support from the Anglican Church. From the midth century, attention was first paid to the plight of working conditions for the workforce in general. In , systematic reporting of fatal accidents was made compulsory, and basic safeguards for health, life and limb in the mines were put in place from Further regulations, relating to ventilation, fencing of disused shafts, signalling standards, and proper gauges and valves for steam-boilers and related machinery were also set down. A series of further Acts, in and extended the legal provisions and strengthened safety provisions. Steady development of the coal industry, increasing association among miners, and increased scientific knowledge paved the way for the Coal Mines Act of , which extended the legislation to similar industries. The same Act included the first comprehensive code of regulation to govern legal safeguards for health, life and limb. The presence of a more certified and competent management and increased levels of inspection were also provided for. By the end of the century, a comprehensive set of regulations was in place in England that affected all industries. A similar system with certain national differences was implemented in other industrializing countries in the latter part of the 19th century and the early 20th century. Individual labour law[edit] Main articles: Employment contract and At-will employment The basic feature of labour law in almost every country is that the rights and obligations of the worker and the employer are mediated through a contract of employment between the two. This has been the case since the collapse of feudalism. Many contract terms and conditions are covered by legislation or common law. In the US for example, the majority of state laws allow for employment to be "at will" , meaning the employer can terminate an employee from a position for any reason, so long as the reason is not explicitly prohibited, [a] and, conversely, an employee may quit at any time, for any reason or for no reason , and is not required to give notice. One example of employment terms in many countries [5] is the duty to provide written particulars of employment with the essentialia negotii Latin for "essential terms" to an employee. This aims to allow the employee to know concretely what to expect and what is expected. It covers items including compensation , holiday and illness rights , notice in the event of dismissal and job description. The contract is subject to various legal provisions. An employer may not legally offer a contract that pays the worker less than a minimum wage. An employee may not agree to a contract that allows an employer to dismiss them for illegal reasons. Minimum wage Many jurisdictions define the minimum amount that a worker can be paid per hour. Each country sets its own minimum wage laws and regulations, and while a majority of industrialized countries has a minimum wage, many developing countries do not. Minimum wages are regulated and stipulated in some countries that lack explicit laws. In Sweden minimum wages are negotiated between the labour market parties unions and employer organizations through collective agreements that also cover non-union workers at workplaces with collective agreements. At workplaces without collective agreements there exist no minimum wages. Non-organized employers can sign substitute agreements directly with trade unions but far from all do. The Swedish case illustrates that in countries without statutory regulation will part of the labour market do not have regulated minimum wages, as self-regulation only applies to workplaces and employees covered by collective agreements in Sweden about 90 per cent of employees. Living wage The living wage is higher than the minimum wage and is designed that a full-time worker would be able to support themselves and a small family at that wage. Eight-hour day The maximum number of hours worked per day or other time interval are set by law in many countries. Such laws also control whether workers who work longer hours must be paid additional compensation. Before the Industrial Revolution, the workday varied between 11 and 14 hours. With the growth of industrialism and the introduction of machinery, longer hours became far more common, reaching as high as 16 hours per day. The eight-hour movement led to the first law on the length of a working day, passed in in England. It limited miners to 12 hours and children to 8 hours. The hour day was established in , and shorter hours with the same pay were gradually accepted thereafter. The Factory Act was the first labour law in the UK. In , Bismarck instituted a variety of anti-socialist measures, but despite this, socialists continued gaining seats in the Reichstag. To appease the working class, he enacted a variety of paternalistic social reforms, which became the first type of social security. In the Health Insurance Act was passed, which entitled workers to health insurance; the worker paid two-thirds and the employer one-third of the premiums. Accident insurance was provided in , while old age pensions and disability insurance followed in Other laws restricted the employment of women and children. In the Third Republic labour law was first effectively enforced, in particular after Waldeck-Rousseau law legalising trade unions. With the Matignon Accords , the Popular Front â€”38 enacted the laws mandating 12 days each year of paid vacations for workers and the law limiting the standard workweek to 40 hours. Health and safety[edit].

Chapter 3 : South African labour law - Wikipedia

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Back to top 6. How is the notice period determined? Employees have to be given notice of termination unless they are dismissed for misconduct or poor performance. The minimum notice period is as prescribed in the employment contract. For EA employees, the minimum notice period should be as prescribed in the employment contract or the EA, whichever is longer. The minimum notice period prescribed under the EA is as follows: Yes, garden leave is permissible. In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss? Employees have protection against unjust dismissal. Third-party consent is not required prior to dismissal. All employees are protected from unjust dismissal. Are employees entitled to compensation on dismissal and if so how is compensation calculated? An employer may be entitled to dismiss an employee for reasons related to the individual employee when the employee is guilty of misconduct that is inconsistent with continued employment or poor performance. Dismissals for business-related reasons are possible in the case of retrenchments or on closure or sale of business. Employees who are dismissed for business-related reasons are entitled to compensation. The EA prescribes the minimum termination benefits payable to EA employee as follows: For non-EA employees, there is no statutory obligation to pay termination benefits. However, case law dictates that if the financial position of the employer permits, and especially if the retrenchment exercise is carried out with the aim of increasing efficiency and profits, fair and reasonable benefits should be made available to all employees. Specific procedures are applicable for all types of dismissal and differ in accordance with the grounds for dismissal. What are the remedies for a successful claim? An employee who considers themselves to have been dismissed without just cause may make a representation for reinstatement under the IRA. Alternatively, an employee may bring a civil claim for breach of contract. Ordinarily, the remedy available is limited to damages that are equivalent to the salary that would have been paid during the termination notice period. An EA employee may also make a claim for termination benefits under the EA. Yes, but in the case of a representation for reinstatement under the IRA, any settlement that is achieved prior to a representation for reinstatement being conciliated upon in accordance with the provisions of the IRA may not always be binding on parties. Collective termination by way of retrenchment or upon closure of operations is subject to certain requirements in terms of compliance with both the legality of the termination and process. Employers enforce their rights in relation to mass dismissals in the same way as they would enforce their rights in the event of an individual dismissal. The remedies are also the same.

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employment and labour relations and conditions of work; and (g) generally to give effect to the core Conventions of the International Labour Organisation as well as other ratified.

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Congress enacted the National Labor Relations Act ("NLRA") in to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.

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