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Civil Liability for Breach of Employment Contract

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ABSTRACT

It's important to remember that the obligation of the employer to provide the employee a copy of the employment contract and the rules of carrying out disciplinary responsibility is a necessary and mandatory factor for the proper conclusion of the employment contract. Despite the fact that it was the employer who violated the procedure for notifying the employee, the labor law sets an administrative penalty for the employer in the event of a violation of this procedure for the employment of employees. The employer has the obligation to provide the newly attracted employee with all necessary information about the labor conditions and rules.

What are the risks that an employer faces if it fails to carry out obligations under an employment contract or violates the rights of an employee established by labor laws? Failure to properly fulfill obligations under an employment contract, as well as violation of the rights of an employee established by labor laws, can serve as a basis for bringing the employer to civil, administrative, or even criminal liability. Violation by the employer of the terms of the employment contract must be justified and, if the employer is to avoid liability for non-fulfillment or improper fulfillment of its obligations under the employment contracts with the employees, the latter must be familiarized with all labor legal regulations.

1. Elements of an Employment Contract

The second element of a contract is the so-called consideration. The essence of this requirement is that the parties must give one another something in return for what the other party has agreed to give. The contract of employment, however, is anomalous inasmuch as it may be given effect ex nudopacto. Even where the employment contract is not supported by consideration – as, for example, where it provides for payment of wages regularly without guaranteeing any particular services – and for this reason, relies on the principle of pactionemdutemservanda or, as it is put in Roman-Dutch law, the faith of promises. Employment contracts can thus be expressly created or altered orally, or tacitly varied. Various exceptions to the general rule requiring agreement supported by some consideration find application in labor law. If an employee is already employed by the company by means of a previous contract, that employment clarification of the terms of the employment is enforceable. Even where he is presently unemployed, such a clarification will be effective if the payment of compensation actually anticipates the intended obligation, functioning as consideration.[i]

An employment contract contains the same elements found in any other contract. The first of these is the "consensus ad idem", the agreement as to the subject matter of the contract. Naturally, this must involve the employer and the employee, but a further factor is required, namely that of capacity. A person who is mentally incapacitated may conclude a contract of employment, but in such a case, his curator assumes many of his powers and the principles of agency apply. A prohibited immigrant lacks contractual capacity, hence his service-inducing promises are void ab initio. Another aspect to the consensus ad idem, or meeting of minds, is that the employee must intend the employer to act on his statement and believe it to be true. A man may thus tell his secretary she is dismissed and then change his mind. If he says simply, "My secretary is dismissed", there is an expression of intention but it is a unilateral one and is not addressed to the secretary. She is not dismissed as a result of this statement and has no claim against the employer. Indeed, an employer cannot terminate a contract by giving notice in terms of the general law if in the specific contract he has bound himself to provide greater protection to the employee.[ii]

1.1. Offer and Acceptance

The offer can be written in the form of an employment contract. If the employment contract is prepared by an employer, the onus will be on the employer to see that terms and conditions that favor the employer do not disadvantage the employee. Similarly, if an employment contract is drawn up by the employee, it is the employee who must see that unfair terms are not included, as the nature of the contract must be employment and the benefit must be for the employer in an employment agreement. When a person applies, verbally or in writing, for a position that is known to be open, the application is considered as the offer.[iii]

An employment contract - like any other contract - comes into existence when there has been an offer by one person and acceptance of the offer by another. The terms must be free of uncertainty and must be comprehensive, so that there is consensus among the parties. It is important to note that in terms of common law, a contract of employment can be entered into both orally and in writing; however, it is better to reduce misunderstanding, where possible, to commit the employment agreement to writing in a document.[iv]

1.2. Consideration

The doctrine of promissory estoppel—in which a person can force another to perform a promise, even if there is no consideration—has also been influential. Some employment home protection statutes affect the ability of the parties to form a contract. The law can imply terms into an employment agreement to fill any gap. While the parties still negotiate the express terms of their agreement, these additional obligations provide a basis for enforcing some of the more critical responsibilities arising out of the work relationship. Employment contracts can also be implied when parties do not clearly articulate their promises to each other.

'Consideration' in contract law refers to the benefit received by both parties for entering into an agreement, as opposed to the bargained-for exchange that forms the basis of the contract. Without consideration, there is no enforceable contract. The mirror image rule requires the acceptance of an offer to be the mirror image of its terms. Acceptance different in any way constitutes a rejection of the offer and is a new offer. An employment agreement must consist of an offer and acceptance that reflect mutual agreement about the terms of service and must take place before the commencement of work. In the employment context, when an employee's obligations are not explicitly stated, courts will infer those requirements to give effect to the stated consideration.[v]

1.3. Legal Capacity

The historical development of both forms of the organization of the work-process helps in describing this phenomenon, instead of which the various forms have different appearance in an increased joint-stock company. Due to outsourcing, it is possible for a certain company service to get outside the enterprise. Although this type of employment seems to be "intra-company", the enterprise is not responsible for the employed individual because it has no subordination rights.[vi]

In both Anglo-Common Law and Continental Law countries, natural and artificial persons may have employment relations. This interpretation is underlined by the very meaning of the phrase "to be employed." In Hungarian practice, it is not greatly contested that both a budget-funded institution and an individual employed by that institution have an employment legal relation. It is a unique question to the present state of knowledge whether or not members of corporations registered under the company code can or cannot enter into the same kind of employment relations as a worker can. Note that the "outsourcing", "lease-out", and "contractor" work forms make it more difficult to understand the meaning of working relationship.

1.4. Legal Purpose

A special part of the civil liability for breach of labor obligations of the parties is the responsibility for not only actual but also potential harm, i.e. compensation is made not only for sustained injuries, but also for the loss which was going to occur in the absence of timely and proper performance of a duty. That is, it is the mechanism for the protection of labor rights and interests, the preventive function of liability rules and enforcement of labor. A system of adequate legal consequences of harmful acts and omissions of the parties in the employment relationship is the primary clear indicator of the effectiveness of the labor law.[vii]

The legal purpose for breach of employment contract is to balance the rights and obligations of the parties to the employment relationship. The laws, regulations, and employment contracts contain certain clauses intended to protect the rights of workers and employers, health and life of employees, social and labor rights. Regulatory control and liability of the parties is an important tool to improve the maintenance of labor and management duties. Non-compliance with those lead to legal liability consequences. Satisfactory measures on breach of employment contracts contribute to the creation of the factors that reduce potential conflicts and have sustainable balance and development of employment relationships.

2. Types of Breach in Employment Contracts

Selwyn Brown began employment with Warner-Lambert as a medical representative in 1968. In 1988, following a heart attack and bypass surgery, he enjoyed good health until 7 March 1992, when he suffered a further heart attack. In January 1992, before his second heart attack, he became entitled to Lloyd's benefits. However, he made no claim on his Lloyd's policy. He signed a compromise agreement with his employer in relation to his future employment-related heart attacks - should he suffer a future employment-related heart attack, his only remedy would be in Lloyd's.[viii]

There are numerous ways in which pecuniary terms and benefits can be breached, and this cause of action generates a significant body of case law. Issues of causation, remoteness, and quantification are complex. However, if benefits and a retained salary payable by the employer are linked, the same principles of causation and remoteness apply to benefits as to salary. So, the section will look at one case which considered an employee's entitlement to benefits in terms of causation and remoteness. This case was a decision of the High Court, Brown v Warner-Lambert.

Pecuniary terms and benefits

Employment contracts can be breached in several ways, including breaches in relation to pecuniary terms and benefits, health and safety, vicarious liability, work allocation, and express or implied terms. This article will briefly discuss the causation and remoteness aspects of one breach in relation to each type, before exploring issues of limitation, mitigation, and the losses recoverable for the breaches.

2.1. Material Breach

To be characterized as such, conduct must be considerably more serious than simple or relative breach of obligation. Conduct in breach of job security is a strong indication of flagrant bad faith by the delinquent party which will therefore be responsible towards the innocent party for all damages arising therefrom. As a rule, employers cause material breach of employment contracts to be carried out by means of unjust and discriminatory sanctions, given that few are the possibilities of workers acting in the opposite manner. This is another reason that entitles workers that terminate the contract to indemnification.

In cases of material breach of employment contracts, employees are entitled to terminate the contract. The jurisprudence does not admit employee's reinstatement or suspension of the contract. Employers are only entitled to such measures when employees are the breaching party. No entitlement to compensation is attached to the exercising of this right. However, this noncompliance with the principle of compensation is so trivial that a simply declaratory action is adequate for employers to collect the damages owed. At the maximum, compensation shall be paid by the delinquent party. It is a typical case of non-monetary liability.[ix]

2.2. Anticipatory Breach

When an employee fails to show up for work, the issue as to what and when an employer can do with such a missing employee is an important practical concern. Legal advice should not be delayed. The first thing the employer should do to prevent a potentially lingering employment relation is to send a registered letter to the worker with the information that the worker is in breach of his or her obligations under the contract of employment because the worker remained absent from work, and to require the employee to get in touch and account for his or her absence within a declared time. Such a letter does not constitute a dismissal of the worker, but it does provide crucial evidence that the employer tried to get the employee to perform the obligations under the employment contract, given that the employee decides to bring the case seeking the salary outright. If the employee decides to resign after receipt of the letter, then the employer at least has fixed that the employee had indeed the power to decide not to present herself to work but that the employee of her own free decision chose to resign in the end. In contrast, if no such letter has been sent, the employee in principle can still be entitled to receive her or his salary to the end of the notice period, if the employer is unable to prove that the employee in the relevant time was effectively hindered in performing the work.[x]

3. Damages for Breach of Employment Contract

Also, employers who commit breaches of employment contracts are at least as likely to be spanked under the law of damages as under the injunction or specific performance remedies. Unless remedies of some kind were forthcoming, a breach of employment contract would attract no legal consequence with legal prohibition or enforcement and general principles not specific to employment inadequate solutions. There is likely to be much more law on any general doctrine that more frequently encounters similar problems and to have workable rules that use general principles, instead of refusing to touch workplace disputes with the municipal waste tongs used for paper bonfires.

Most of the same principles governing an award of damages in contract and tort, from which the law of employment takes its generally applicable principles, are equally applicable in employment cases. However, the award of damages, like the remedies of injunction and specific performance, is in practice likely to be more prominent in an employment case. By common definition, a contract of employment places the employee in contract, as well as in tort, with his employer. Without some remedy, the breach of contract would render the contract onerous only one way, putting on employees in this respect the saddle but not the bridle of an agreement.

3.1. Compensatory Damages

Nonetheless, the employee as plaintiff in a lawsuit for breach of the employment contract, invoking his own special interest, is entitled to use his right to any compensatory payments to which he is entitled in order to prevent the other contracting party, who is making illegal use of a wage expense reduction brought about by improper termination of the employment contract, from withholding the compensatory payment, thus aggravating the damage. Compensation damages, however, can only be based on breaches that are provided in the law. The party for whom the obligation is performed is subject to its requirements. He is the legitimate debtor.[xi]

Either an employee or a manager is entitled to seek compensatory damages from a defaulting employer. Whether the employee or the manager sues on his own behalf or on behalf of the company is something for the parties themselves to settle. If both the company and the individual sue and a judgment is given in favor of both, a rule of practical convenience might make it unnecessary to sue others which is only available to and befits the employer, such as suit for specific performance, an injunction, rescission, or a declaration. But the Civil Code does not prevent the individual from asking also for these forms of relief, for whose conformity more is necessary than the wording of the statute alone, that is to say the connection between the purpose of

the law and the special relationship of an employee to the contracting company. Any proceedings in this matter must be carried out within the company, since the protection of the company's interests and the protection of the employees' rights are inseparably bound up with each other.

3.2. Liquidated Damages

Parol evidence is inadmissible to show that the employee agreed to purchase $10,000 worth of merchandise in the event he does not work the full term when the written agreement provides for a commission to be retained out of his sales. But the written memorandum may be explained to show that it provides for a monthly allowance for the employee's use to $6,000 per month and that, if the employer learns the employee has left the premises, he is to inform the employer and move immediately as the employer will decide whether or not he will be charged with the full amount.

Liquidated damages. The contract of employment may contain an express agreement providing for liquidated damages in the event of non-fulfillment of any of its terms. If the contract stipulates that the employee shall pay a specified sum in the event he leaves before the expiration of the term contracted for, or shall pay for "apparatus" furnished him such as a uniform or medical or dental services if he leaves before the end of a certain period, such a stipulation is not contrary to public policy or void because it would tend to keep him in his employment state against his desire to migrate to another state. However, if the amount stipulated is so high as to be penal, rather than compensation for the employer's damage, the employee will not be held to its terms.[xii]

3.3. Punitive Damages

Punitive damages are awarded only when the defendant is found guilty of committing a wrongful act with malicious and wanton disregard for the rights of others. An individual is guilty of such an act if he/she acts with an evil motive without justification. Furthermore, the defendant must have intentionally committed the act resulting in overriding factors. The courts are often reluctant to assess punitive damages because they can economically devastate the pocketbooks of prudent individuals and can rarely serve their purpose of punishment if they are paid not by the wrongdoer but by the insurer of the wrongdoer.

Civil wrongs usually result in civil liabilities. Damages are awarded to compensate for the loss of wrongful acts in the eyes of the law. When damages awarded are paid by the wrongdoer to the plaintiff, they are called compensatory damages. Damages awarded as punishment to the wrongdoer, quite irrelevant to the plaintiff's loss, have been traditionally unknown in the common law world. Such punitive damages, which basically negate the roots of compensating wrongs, are ordinarily available only by statute to the plaintiff who is looking for personal injury. In contrast, punitive damages for breach of employment are quite rare and are usually limited to the breach of collective labor agreements or other wrongful acts such as racial or sexual discrimination.[xiii]

4. Defenses to Breach of Employment Contract

If the act necessary and essential for the performance of a contract of employment is illegal, no suit for breach of the contract will lie. For example, a contract for the firing of a machine will not be enforced when it is illegal for the employee to work in the state in a capacity of operation. The employer cannot be required to furnish work that would tend to injure the employee's health or that of another. Similarly, when the employee has been refused work for which he was hired, he must show that under the conditions existing at the time of his hiring, the work for which he was hired could not possibly be performed.

Impossibility of Performance

Where an employer offers to the employee the consideration to which the employee is already entitled under an employment contract, and the contract is discharged by the act of presenting and accepting the same, such act is a complete defense to a suit for wages earned under the contract. If an employer, by fraud or misrepresentation, induces an employee to leave another job, the defense of a release is not available to the employer. However, if the fact that an employer is using "scabs" in violation of an existing labor dispute is disclosed to employees, a release signed by the employee at that employment may be held valid.[xiv]

Defense of Release

4.1. Impossibility of Performance

It would seem, however, that the employer will still be entitled to demand from the employee such duty as he can perform. It would also seem that the employee is denied any action for wrongful dismissal, the contract for service being regarded as suspended during the period of the illegality. It should be carefully noted that, where an employer is subject to a statutory disability in respect of wage payment, positive words are required to justify the interpretation that a reasonable opportunity of performing the contract was intended. Thus, s 5(2) of the Wages Act 414 would seem to impose absolute liability upon a contractor for wages as from the date when the contractor should have paid them, whereas a section intended to provide for the suspension of a manufacturer's contract under which machinery was to be manufactured would have to be expressly worded to the effect that the delay is to be at the contractor's risk.[xv]

Employers often carry on their business in premises which have to be constructed, and employees who are engaged in such work frequently have their services terminated before the construction has been completed. In such situations, it is usually held that the contract of service contains an implied undertaking by the employer that the workman will have a reasonable opportunity of earning wages during the period for which it is contemplated that he will be employed; and, in general, it is considered that such a breach of contract by the employer has the effect of discharging the employee from any further performance of the contract. Whenever, in fact, wages cannot be earned, the employee is entitled to consider himself as released from the burden of service.[xvi]

4.2. Statute of Limitations

If the employee fails to file a timely action, the employee's right to sue is barred, and the filing of a lawsuit after the expiration of the limitations period does not affect the argument of the employee. If the employee does not file a lawsuit within five years, as of the date when the limitations period commences, both the employer's and employee's rights, concerns, and expectations are established in accordance with the facts and circumstances of the employment relationship in existence when the limitations period begins.[xvii]

An employee's action against an employer to recover damages for breach of the employment contract must be filed within five years of the date of accrual. The limitations period begins on the date of the employer's alleged wrongful conduct. Although a different limitations period may be established if Congress enacts workers' compensation coverage legislation, no such federal legislation exists at present.

4.3. Waiver

The Law of the Republic of Belarus does not contain the definition of waiver. Waiver shall be kept beyond the limits of the labor law, which explains the absence of the notion of labor law. The law of 1999 concerning the Agreement and Call of a Strike in the Republic of Belarus in Article 2 provides for the possibility of a waiver of the right by natural persons to be subject to such a procedure, and in Article 6 of this law, there are restrictions concerning the possibility of a waiver.[xviii]

Waiver: The problem concerning the availability of the employer may be easily solved if it is established that the availability of the employer, in essence, represents an employer's agreement with the employee concerning the possibility of recovery of the employer's damages together with the termination of the employment relationship in order to terminate the latter without recovery of the employer's damages. If the economic relations of the dismissed employee and the dismissed employer were reflected by the positions shown in relation to the commutation notice, this notice is a manifestation to the employer by waiver. The notion of waiver is narrowed in the law practice. Until 1980, the prevailing trend in the legal assessment of the commutation notice was meant to be in agreement with the commutation notice theory. Its essence was that on the expiry of the notice period, the employment contract is terminated by a waiver when the economic penalty provided by Part 1, Article 82 of the Labor Code of the RSFSR is paid to the dismissed employee as a compromise payment. Currently, the legal literature is dominated by the idea that a dismissed employee who sues for his reinstatement at the enterprise raises a question by the labor court about the employee's real intent to waive the demand of reinstatement. S.C. Mkrtchyan: "The employee benefits are the goal of the Law of the Republic of Belarus, the provisions of which cannot be used as a waiver of the realization of the employee's demand of reinstatement".

5. Agency and Vicarious Liability in Employment Contracts

The problem of vicarious responsibility in the case of acts violating labor laws is complicated in different legal manners. The Polish labor law respects vicarious responsibility rules applied by the civil law for actions of a physically (patrimonially) dependent nature. This was a considerable issue in the time when the Employee and the Employer were regulated by two separate legal systems. The evidence of this is the regulation, which was found in art. [xix]311 of the Commercial Companies Law. This was also regulated in the Labor Code in the context of the protection promised for unjust dismissal. The governmental change is nowadays the reason for the fact that there is no regulation of this issue concerning collective claims, which include the protection granted for actions in protection labor laws. It was true that the law of 23 June 2003 looked at this issue from the perspective of the property civil law, but from labor law's point of view, the regulation which was contained there did not annie anything: it states that the provision regulated the issue of liability for violating Labor Code conditions, but it had no effect on the implementation of these provisions.[xx]

6. Comparative Analysis of Civil Liability in Different Jurisdictions

We examine the elements of the relevant rules governing tortious liability of the parties to an employment contract, trying to compare the solutions in terms of the conditions of imputation (what injury and against what subjects), the restrictions to such imputation (exceptions for injuries considered non-compensable), the rules for the computation of civil liability (limitations, reductions proportionate to the negligences or the faults of the victim) as well as the damages (including compensation) reparable. The notional conventional indemnity, the accused or the indemnity of real evidence, the equivalence between work payable and price paid for the respective performances mark divergences and approximations between the two legal systems.[xxi]

The analysis of responses from the law questionnaire is part of the overall comparative analysis within the confines of the OPTOOL, and the findings are provided below. For the purposes of the OPTOOL, the number of employment contracts which were underwritten is relevant when that is known at

the time of recruitment, and the type of underwriting is of interest. Only one respondent did not initially underwrite this contract. Most liabilities for breaches of employment contracts are based on the principles of tort or contract. Despite the fact that the law of contract still determines the nature of the liability in each case, except in a few situations, the law of tort dictates the reasonable steps that an employer must take to meet his duty when fulfilling.[xxii]

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7. Conclusion and Future Trends in Civil Liability for Employment Contracts

The applicable legislation is quite clear that the civil claim for pecuniary damage is an exceptional means to provide damage, and if there are other effective measures for the protection of infringed rights, the employee should use these first. Because there is no one-way street in the branch of labor and employment law, which only protects employees. This is the reason why the Estonian Employment Contracts Act, for example, imposes upon the employee the obligation to continue his or her job when the employer does not fulfill his promises. The only obligation on the employer when the employee does not fulfill his promises is to end the employment relationship immediately and discharge the wages for the absent days. This is not a real choice. On the other hand, the Employment Contracts Act withdraws the possibility to hold the previous employee civilly liable for breach of the employment contract after the employer has withdrawn the piece of paper that he had mistakenly or fraudulently issued to the employee as the permission to carry out his/her duties. The new precept gives a false sense of security that our Code completely regulates the issue, whereas real human resources work starts actually after the mandatory notice is given. A notice and a termination of employment relationship is a matter that is prone to sideways.[xxiii]

It is undoubted that it is not the civil but the employment law, which could solve most of the issues related to employment. [xxiv]The employment law is the direct and immediate instrument for solutions to the problems stated in this course book in the chapter "mere". It is not the civil claim for pecuniary damage that is important for the employer, but it is the fact that the employment relationship was good and remained good until the last day before the notice had been unjustifiably given. It is not the compensation claim for unjustified notice period termination that is important for the employee; for the employer, it is important that the employee should do his job, not only for the sake of the company but for the employee's own good.[xxv]

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