

A-TYPICAL EMPLOYMENT RELATIONSHIPS

In the next two instalments, variations on the employment contract and, more specifically, the distinction between so-called “permanent” and temporary employees are discussed.

Enterprises who need services delivered have a choice w.r.t. the contractual vehicle they use to have these services delivered. Instead of employing staff, they may prefer to use independent contractors. These two types of relationships each has its own repercussions. For one, labour legislation applies only to employees and not to persons rendering services as independent contractors. (The distinction between employees and independent contractors is discussed in a later instalment.)

Enterprises may also decide to use temporary employment bureaus (“labour brokers”), i.e. to contract an independent person to provide labour at an agreed fee to be paid by the client to the bureau – and not to the employees directly. In this case, the employees are regarded as employees of the bureau and not of the client. The client must however ensure that the bureau meets the relevant labour laws and norms and may be co-accountable if the bureau should fail to do so.

If a person is employed as an employee, the relationship may be structured either as a “permanent” or temporary one. Both these relationships may be either full-time or part-time. The employment relationship that occurs most frequently, is the so-called “permanent”, full-time employment relationship. This merely means that the relationship will continue for an unspecified period before it is terminated (e.g. by notice by the employee, or dismissal by the employer). The “full-time” status of the relationship may mean that the employee works full daily and weekly hours normally worked in the enterprise.

In the case of a temporary employment relationship, the employee works only for a part of the daily and weekly hours normally worked. For example, if I ask my gardener to work every second Saturday, without entering into an agreement with him that the relationship will be valid for a fixed period, he is a permanent part-time employee.

If however, we agree that he would work every second Saturday for a period of six months only, for example, his status is that of a part-time *temporary* worker. Temporary employees are therefore persons whose employment relationship with their employer is linked to a specified period of time, or the occurrence of a specified event (e.g. completion of the job). The relationship thus lasts for a fixed or definable term. As in the case of permanent employees, temporary employees may also be employed full-time or part-time.

In law, there is no distinction between permanent and temporary employees as regards the application of labour law principles and labour legislation. The same applies to full-time and part-time employees: subject to one or two exceptions that are mentioned below, the principles of labour law, including labour legislation, apply equally to all. It is therefore incorrect to argue that temporary or part-time employees enjoy less protection than permanent employees. (Due to the fact that they work less hours or for shorter periods, it may well happen that they do not receive the same contractual benefits as permanent full-time employees.)

The exceptions referred to above have reference to the relevancy of certain provisions of the Basic Conditions of Employment Act (BCEA) and the rules i.r.o. termination of service. Most of the provisions of the BCEA with respect to working hours, leave and notice periods do *not* apply to persons who work less than 24 hours per month for the same person. Such person's conditions of employment are consequently mainly determined by the verbal or written employment contract between the employer and the employee concerned. Such persons are also not entitled to deductions for unemployment or accident insurance. Other than that, they are protected in full. This means among other things that they may not be unfairly discriminated against and that they may not be unfairly dismissed. They are also entitled to belong to trade unions, to strike and to complain about unfair labour practices.

The distinction between temporary and permanent employees is also of significance in the context of termination of service. This aspect will be discussed in the next instalment.