A Guide to

THE EMPLOYMENT ACT

and Its Practical Applications

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To my wonderful family. Their support for me has been impeccable. They stood by me when I was deliberating if entrepreneurship would be my cup of tea. Despite a risk of not knowing what sort of income I would be getting, they placed all their faith in me. Today I can look back with pride and satisfaction, having built a vibrant HR community and viable training institute. There is not a day that goes by in which I am not thankful for my family's support and dedicated love.

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1. Introduction

What is law and why are laws written? I often ask this question to all my participants during my training sessions. Some responses I got were that it was a sense of right from wrong. Many had different perceptions of what was right from wrong. I attribute this to differences in childhood conditioning. The way we think and our views matter. It depends on how we were conditioned while growing up. People's moral values are conditioned by the way their parents raise them as well as by their religions and cultures.

All my workshop participants agreed that murder was wrong, and there was a consensus amongst all of us, that the laws of Singapore were right to put murderers away so as to protect society. When we got to abortion though, there was no consensus. Some argued in favour while others related it to murder. The question is, do our laws make it perfectly legal for an adult female to seek abortion and not be held accountable by the morality of others? The answer is yes. And abortion is legal if one is of a certain age. Therefore law does not equate to one's moral values as we differ in the moral values we hold. In my view, laws are written for the purpose of social engineering, for society to function as best as it could. If abortion were to be criminalised, the next generation may see a higher

proportion of juvenile delinquencies; children with only one parent or those given up for adoption and sent to shelter homes are often at risk of developing behavioural problems. The government works in anticipation of what could be and what is undesirable for that ideal society, and thus writes their laws in accordance to that thinking. Therefore, laws do not equate to our moral values. It is a system in place for social engineering, and some of the written laws may not be in agreement with our moral values. I made this point to Human Resource (HR) practitioners during one of my seminars, as many of them tended to interpret the various sections of the Employment Act (EA) in accordance to their personal sense of right and wrong. This is especially evident when it came to termination or dismissal of an employment contract. While it is not wrong to feel guilty when terminating someone (albeit for good reasons), as we are all humans, and humans are made with feelings, it is imperative that as HR professionals, we have to act in a professional manner and inform our superiors with respect to what the written law says. Tell your boss what the EA says with respect to termination or dismissal. Let him make an informed choice with all the details at his disposal. That's being a professional. If you feel that some form of sympathy should be forthwith as the employee deserves better, go ahead and put forward the reasons, but you must distinguish between what the EA says and what you are feeling at that point in time.

Our values may not resonate with written laws, and there are times when we feel aggrieved. We also have to note that not all laws are 'just'. In the 18th – 19th century, slavery was law in the United States. Today we look at it in disgust, but it was nevertheless their law, and all African Americans during that time were subjected to atrocious treatment, and were even the 'property' of white men. Another example closer to home was a story reported by the Straits Times. The case involved a pregnant administrative worker at Faith Community Baptist Church (FCBC) who was sacked sometime in 2012 after committing adultery.[1] She complained to the Ministry of Manpower (MOM) in September 2012. In August of 2013, Acting Manpower Minister Tan Chuan-Jin decided she was "dismissed without sufficient cause". He ordered the church to compensate the woman her salary and maternity benefits of S$7,000. The church made it known that it planned to file papers to seek a High Court judicial review of Mr Tan Chuan-Jin's decision. This is an example of how the execution of written law comes into conflict with the values of a religious organisation. I believe the church saw adultery as wrong, and had to act in its interest as a church. The state didn't see it the same way. Although Singapore is a secular society where laws are put in place to protect individuals, the religious organisations here may not be in sync with the values of the state. Thus it is imperative that HR professionals understand this, so that

[1] *The Straits Times, 22 Aug, 2013.*

they would be able to discharge their duties in an unbiased manner by understanding what written laws and what one's own values are. Written laws have no moral compass, and neither do they have feelings.

What is the EA? It specifies the **minimum terms and conditions of employment, and the rights and responsibilities of employers and employees under a contract of service**. Anything less than what has been prescribed by the act would be considered illegal, null and void (*Sec 8*). The objective of the act is to protect the so called 'working class' who are less educated than their peers who hold managerial positions.

2. The Scope of Coverage

- *Persons under the contract of service*
- *Includes workmen and foreign workers (however, it excludes domestic maids)*

The Act covers all employees (white collar) and workmen (blue collar) under the contract of service.

In my experience, foreign workers are a difficult group to administer. Organisations need to be culturally sensitive and help them adapt, while at the same time, management are unable to take at face value, documents submitted by them. On some occasions, their educational credentials are difficult to ascertain. Fake educational certificates are rampant, and at times, it may be their agents who have a hand in adding 'value' to their curriculum vitae. Foreign workers from the 'Third World' can obtain doctored documents rather easily. Peddlers roam the streets of their native countries selling such certificates, offering guarantees that the certficates' authenticities will never be questioned. Such information only comes to light after the MOM have exposed their misdemeanours. It is only then that I get the opportunity to speak to these employees. Most of the time, they flatly deny being involved in such unscrupulous methods, but

at times, I do get confessions. Most of these documents are submitted to organisations by workers who want to increase their attractiveness as potential employees, and also to pull the wool over the eyes of the MOM, the authority that issues work permits and employment passes, etc. Submissions of doctored or false certificates are sometimes exposed by the Ministry. At the end of the day, it's the employer that loses out financially as they bear the cost of arrangements in bringing the foreign worker to Singapore.

The EA does not cover;

- *Managerial & Executive for part IV of the EA*
  (Managers and executives earning a basic monthly salary of up to S$4,500 will be covered under the general provisions of the EA, including redress against unfair dismissal. They will not be covered under the working hours-related provisions in Part IV of the Act).
- *Seafarer*
- *Domestic servant/maid*
- *Personnel employed by statutory board and/or the Government Ministries & employees of essential services (army, firemen, etc.)* – See *Sec 2* of the EA, definition of employee.

Managers & Executives

The term Manager or Executive has to be in its true sense. They must have executive powers before being excluded from Part IV of the EA which governs work hours. I have had corporate clients who simply bestowed the title of Manager or Executive on their employees, and verbally told them that the EA does not protect them as they are Managers. These titles are, in reality, bogus. The nature of their jobs do not reflect that of an Executive. What are missing from their portfolio are;

1. The powers to command and control.
2. The powers to hire or fire.
3. Performing evaluation (appraisal).
4. Making decisions with respect to rewards, promotion etc.
5. Ability to influence management.

These are the ingredients that determine if one is a Manager/ Executive, not the mere title. Although Managers and Executives are excluded from the coverage of the EA, some sections of the Act do give Managers and Executives limited coverage. These are known as Junior Managers or Executives whose salaries are not more than S$4,500 in basic pay per month. The limited coverage applies only to issues that pertain to termination of employment

contract, dismissal, matters pertaining to wages and other general provisions. They are however excluded from Part IV of the EA, which mainly governs the hours of work and overtime (OT) payment. For termination or dismissal, the employee would have to be in employment for at least one year before he is able to seek redress from the MOM.

Seafarer

Seafarers who work on vessels are also excluded from the EA. Why is that so? For practical reasons, I suppose. It is not possible for the MOM to be purchasing and maintaining shipping vessels to pursue other ships for the sake of conducting raids, inspections and investigations. Ships sail to far flung destinations and all corners of the world. Does it make sense for the authorities to chase ships to all sorts of locations? I'm therefore speculating that seafarers are left out for practical and convenient reasons.

Domestic Servant/Maid

Another group that is left out are domestic servants. The EA determines hours of work, rest days, public holidays, OT payment, etc. Is it possible for a domestic maid to be working based on such terms and conditions? Imagine a crying baby at 3am in the morning, and the employer asks her maid to assist by preparing milk. What would the response be? The maid may say "Ma'am, it's 3am in the morning and after my work hours, if you need me to work, you need

to consider OT payment at 1.5 times the basic rate." Or it could be a public holiday, or she happened to be on leave that particular day and so on. I think you get the picture. A domestic servant is a live-in employee, and its nature of work is very different from those on structured work hours. As such, domestic servants too are being left out as a mere convenience. It is not possible to enforce structured work hours or days on domestic servants due to the nature of their work. As caregivers, their work may be required at any given time, as the need of a family is, so to speak, 24/7. Having said that, employers of domestic servants should also exercise reasonable discretionary decisions in allowing maids ample time to rest, and not take advantage of inadequate legislation that is unable to extend its reach into the homes of employers.

Personnel Employed by Statutory Boards and/or The Government Ministries & Employees of Essential Services (Army, Firemen, etc.)

The above groups of personnel are also excluded from the EA coverage. The reasons explained earlier with respect to domestic servants are somewhat similar to these groups of personnel. Basically, the army, firemen, security personnel and other similar vocations that provide essential services cannot be on a structured work pattern of hours or days, as there are instances whereby these services have to function even beyond the maximum work hours (per day or days) as expressed in the EA. An ambulance driver will

have to drive a patient to the emergency ward even if his work hours have exceeded the prescribed (by the EA) maximum of 12 work hours per day. It would be ludicrous if he stopped driving and said that he was conforming to the law. Therefore the essential services are not within the ambit of the EA. These services cannot be hindered by structured terms and conditions. These very structured terms and conditions are meant to prevent unscrupulous employers from exploiting the working class segment of the workforce. Most of these people are known to be of lower educational status, as compared to the Managers or Executives. There is an assumption that the Executive class, being of a higher educated workforce, are able to better protect themselves, and are also able to bargain better terms and conditions in their employment contracts.

Any person employed in a managerial or an executive position who is in receipt of a salary not exceeding $4,500 a month (excluding OT payments, bonus payments, Annual Wage Supplements (AWS), productivity incentive payments and any allowance however described), or such other amount as may be prescribed by the Minister, shall be regarded as an employee…(Sec 2)

The EA also protects Managers and Junior Executives on a limited coverage. This gives Junior Executives an alternative other than to seek legal redress from lawyers whose exorbitant charges may defeat the purpose of recovering unsubstantial amount of monies. It makes no sense to recover a maximum of S$4,500 in

wages, only to see it being handed as fees over to lawyers. From 1st April 2014, Managers and Executives earning a basic monthly salary of up to S$4,500 are covered under the general provisions of the EA including redress against unfair dismissal. Managers and Executives earning a basic monthly salary of up to S$4,500 will need to have served with the same employer for at least one continuous year to be eligible to seek redress against unfair dismissal. However they will not be covered under Part IV, which governs the working hours-related provisions.

The Employment Act Covers All Workmen Including White Collar Workers.

The EA covers both blue collar workers as well as white collar workers. Blue collar workers are also known as workmen. Part IV of the EA extends greater coverage to workmen and white collar workers whose basic salaries do not exceed $2,500. The additional protection that these two categories of personnel receive from Part IV of the EA will be discussed in greater detail in the next few chapters ahead.

3. Contract of Service

Any agreement whether in writing or oral, express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship.

The EA only protects employees who are engaged in a contract of service. The above statement, taken from the EA, states "an agreement whether in writing or oral, express or implied". I asked myself, why is an oral agreement taken to be binding? Isn't it difficult to prove an oral contract? A written contract is much more reliable if disputes were to arise, as compared to an oral contract, but the EA allows it. Well, I suppose it is to accommodate employees who are illiterate. Yes, believe it or not, in modern Singapore, there are still many who are unable to read or write. There are also quite a substantial number of foreign workers on work permits who are also illiterate, or do not speak or write in English. My advice to my clients is always to keep contracts written, but to ensure that there is an interpreter to read out what is written in the contract to the employee. The interpreter will also act as a witness should the need arise.

Contract for Service

Contracts for Service are not within the ambit of the EA. There is no employer/employee relationship in a contract for service. Basically, in a contract for service, what is being evaluated is the result, or the output. Jobs are contracted out to other companies. Companies that engage third-party contractors would only be concerned about the result, which would be the basis of their agreement.

I have had several cases whereby the employers used a contract for service in order to reduce cost. They did this so as not to be liable for Central Provident Fund (CPF) contributions (pension fund contributions in Singapore). The benefits that are usually accorded to those on a contract of service are also not provided to those on a contract for service. They used the term 'contract for service', thinking that just because the term was used, the contract would be as such. They were indeed mistaken. The determining factors that differentiates a contract of service from a contract for service is the relationship that is being exhibited between the two parties that go into the contract. It does not matter what term they choose to use.

In a contract for service, the work is usually being tendered out. A fixed sum would be paid for a specific work to be done. Its outcome would be evaluated, and a fee would be paid for that particular

outcome (project). There is therefore no employer vis-à-vis employee relationship. Those companies felt that they could enjoy substantial savings from reduction in labour costs if they changed the contract to a contract for service. They were indeed mistaken. What determines whether a contract is one that is for service or one that is of service would be the established relationship. What determines an employer/ employee relationship? These are;

- Strong command and control one party wields over the other. Usually employer to employee.
- Structured control over time usage, i.e., reporting time, lunch time, etc.
- A comprehensive job description.
- All tools and equipment have been supplied by one party to the other.

If the above were present in the relationship, it would most likely be a contract of service and not contract for service. Companies are therefore liable for CPF contributions and all benefits should be accorded as per the EA (if applicable).

4. Employment Contract

- *Contract cannot be less favorable than the Employment Act.*
- *Contracts that are less favorable are illegal and shall be null and void (Sec 8).*
- *The application of statutes comes into play when drafting a contract of service.*

A HR professional must be well versed in the EA before he is able to pen a contract of service. In my introduction, I described that the EA offers the minimum terms and conditions of employment. Therefore, whatever a HR professional drafts must be on par with what is provided by the EA or better. The contract that he drafts should not contain terms and conditions that are less than what the EA offers. Anything that is less favourable is illegal and shall be null and void.

This brings me to a case I shall always remember. A Managing Director (MD) in an Information Technology (IT) firm had the habit of 'correcting' and rewriting clauses in a contract. In one particular incident, when the organisation was recruiting a certain IT personnel, he decided to add a clause. The clause stated;

"You have to serve the company for at least 6 months before you may resign"

The clause does sound unreasonable, but let's not focus on that, as the issue that arose was of a different nature. The MD felt that it was difficult hiring employees in that particular vocation, so he decided to include that clause so that he would have ample time to 'milk the cow', so to speak. The issue that surfaced was the resignation date. The employee joined the company on 1st February. He tendered his resignation letter on 1st July. His notice period was one month. When he gave his letter, the MD pointed out the clause he had drafted and told him that he had to serve at least six months before he could resign. The staff explained to the MD that from 1st February to end of June, he had already served five months. His notice period, which was from 1st July till end of July, would be another month. The five months and his one month notice period would make a total of six months, thus fulfilling the six months of service he had to provide as was the agreement in his letter of employment. The MD did not see it that way. According to the MD's interpretation, he had to serve six months before he had the 'right' to submit his resignation letter. Thereafter, he would still have to serve the one month notice.

It was obvious that the MD perceived resignation as when one submits his letter of resignation. Most of us have a very 'loose' understanding of resignation. Whenever an employee or colleague submits the resignation letter, talk at the water coolant corner would almost always go this way: "Hey, have you heard, so and so has already resigned". In reality, the staff that submitted his or her resignation letter has not yet resigned, but rather has indicated his intention to resign and has started to serve the notice period required as per the agreement in the letter of employment. He will be in service and earning his usual salary with all benefits accorded as per the agreement in the employment contract. A letter submitted does not constitute resignation. Resignation will only take place a month later (assuming he will not pay in-lieu of notice for his remaining notice period). Reference to *Sec 10(1)* of the EA clearly states:

Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

Note the key words, *notice of his intention to terminate*. The letter merely carries his intention to resign and the start date of his notice when he submits it. It was somewhat puzzling that the MD, someone who was of senior management status,

could not express what he was thinking in writing. What he thought and what he wrote were different. Therefore the staff who resigned was in the right, when he stated that he had fulfilled the agreement that he served six months before resigning, and resigning as we know, means vacating office and *not* submission of the resignation letter.

5. Termination of Contract (Sec 9)

Sec 9(1) - A contract of service for a specified piece of work or for a specified period of time shall, unless otherwise terminated in accordance with the provision of this part, terminate when the work specified in the contract is completed or the period of time for which the contract was made has expired.

Most of us have come to understand the word termination as something bad. We associate it with being unwanted by a company due to bad performance or undesirable behaviour, both of which do not contribute to the organisation and leaves a stain on our record. Sometimes we forget that when we resign, we are also terminating the employment contract. Termination is not a bad word. It simply means that the employment contract has ended. Anything that starts must end at some point in time. *Sec 9(1)* shows the various ways an employment contract can be terminated.

A contract can be terminated for a specified piece of work. When the work has been completed, the contract ends.

For the HR professional, he may not be familiar with the contents of the job unlike the Operations Manager. The tricky part about terminating such contracts is the poor understanding of the job

scope. If you are using this clause to terminate a contract, you have to have a comprehensive grasp of the operational aspects of the job or at least have the Operations Manager be involved to determine if the specified piece of work has been well and truly completed. The employee who wants to prolong his employment may not be honest about the completion of the project and could cook up reasons why more work need to be done. This is prevalent when the employee does not have another job to move on to. On the flip side of the coin, the employee may prematurely try to end the contract by declaring that the specified piece of work (project) has been completed, when in actual fact it is far from completion. This usually happens when there is an attractive job offer that just cannot wait. The HR practitioner needs to have a proper evaluation system that involves Operations where such contracts are concerned. This is especially for jobs in which completions are more difficult to ascertain. On the other hand, there are projects that are easier to determine their completion, for example, road shows. The employee's contract commences when the road show begins and it is terminated when the road show comes to an end. The objective of the start and end of the project is much clearer where such jobs are concerned.

A contract can be terminated for a specified period of time. For example, a contract of service can be from 1 Jan – 31 December. The contract of service will be terminated, at the end of 31 December.

In today's business world, the time span of a product life cycle is getting shorter. Just look at the smart phone industry. A smart phone could become obsolete just one year after its launch. Therefore it makes sense for businesses to engage contract staff for a specified period of time. Companies won't know what comes after one year and prefer to have the flexibility of renewing employment contracts based on current needs for labour and current information pertaining to the business climate. In other words, it is now harder for a company to know if they would have sustainable orders for their products after six months or one year. The staff they employ today could become redundant or underworked a year later. In such situations, the company would then have to retrench their employees. The business world today is much more unpredictable today than 20 years ago. Offering employment contracts for one year, or even a shorter period of time, gives them the flexibility of renewing or terminating such contracts based on current business needs. A Chief Executive Officer (CEO) of an organisation who focuses on profit and loss would usually focus on hiring based on needs, and would want the flexibility of terminating the employee if the business is less profitable.

In contrast, a HR professional would find it much more challenging to recruit experienced staff with the required skills who are only willing to offer their services for a specified period of time.

Most employees don't like such contracts as it offers little security in the long term. There are no long term goals and HR professionals find it difficult to chart a proper long term career for employees on contracts that will expire. Employees are also not committed to the organisation as they see the company only as a stepping stone. In summary, employees that are given a contract on a term basis may:

- Work with less commitment & conviction
- Poorly motivated
- Be less satisfied
- Have a constant feeling of job insecurity

Don't be surprised if you see them browsing job sites in search of employment, even during work hours. They are looking for long term security. It is also very likely that their output is of lower quality. These are the pros and cons of employing experienced employees on a term contract for a specified period of time.

The Transitional Workers

Very often, the potential employees who are available for a specified period of time contract are usually students waiting to enter universities, polytechnics or waiting to serve their National Service. However, one should note that they lack experience and proper training (depending on the nature of the job). The other group could be retirees who may want to work part-time (35 work hours per

week or less), or try out new things to gain new experiences. These are not the ideal workers for highly skilled jobs that require lots of experience. Most of these workers find themselves in the labour intensive service industry and not the knowledge based industry.

The last method is one we are most familiar with. We submit a resignation letter and serve out a notice period as agreed in our employment contract. This is the same scenario as discussed in the earlier case study with regard to the MD who imposed a condition as to when his staff could resign. This is expressed in *Sec 10(1)* of the EA.

Sec 10(1) – Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

The majority of contracts of service use *Sec 10(1)* to terminate a contract.

Sec 10(2) - The length of such notice shall be the same for both employer and employee and shall be determined by any provision made for the notice in the terms of the contract of service, or in the absence of such provision shall be in accordance with subsection (3).

Sec 10(3) - Only if there is no notice period in the contract, the following shall apply;

- ***1 Day notice if service is less than 26 weeks.***
- ***1 Week notice if service is more than 26 weeks but less than 2 years.***
- ***2 Weeks notice if service is more than 2 years but less than 5 years.***
- ***4 Weeks notice if service is more than 5 years.***

The EA allows employers (with acceptance by the incumbent employee) to determine the termination notice period in *Sec 10(2)*. It is advisable that employers take this opportunity to determine what is an adequate period for a transition of personnel, whereby one employee is leaving while another is taking over his duties. Many of my clients have asked me, what is the adequate period of time for this handing and taking over? Well, it depends on the complexity of the job. For Senior Management like head of departments, the notice period is usually longer compared to junior positions. What is important to note is that the day in which the letter is given will be counted as one day, regardless of the time the letter is handed in. Therefore, if the notice period is one day, a staff can hand over the resignation letter at 4.55 pm (assuming, official hours ends at 5 pm), and that one day will still be counted as one day's notice, when in actuality, the notice period given is only five minutes. And we all know that, in one day, it is almost impossible to do a proper handing and taking over of job duties from the outgoing staff to someone

who would be covering his duties. This is why I usually advise my clients not to have a one day's notice period. The least should be two days (for unskilled jobs), as most employees prefer to resign at the end of the day when the notice period is one day only.

Where notice period is concerned, it is always best to state the notice period, as the EA allows an agreement to indicate the notice period. It's best to make full use of what is given.

Notice period or notice-in-lieu shall also be the same for both the employer and employee. It is nevertheless a double edged sword. Having a longer notice period would also mean having to pay a higher sum if one wants to pay notice-in-lieu. This could also result in discomfort whenever the contract is being terminated due to a strained working relationship between the parties who still have to work together during the notice period. In such instances, I usually urge that the notice period be waived. This is because, after all, the contract belongs to both the employer and employee, and any variation of the contract can be concluded if both sides are agreeable. I recommend such a move as the output of the staff who is serving notice could be counterproductive as the commitment is no longer there.

If the contract of service remains silent pertaining to the notice period, the EA shall take precedence as per follows;

Sec 10(3) – Only if there is no notice period in the contract, the following shall apply;

- ***1 Day notice if service is less than 26 weeks.***
- ***1 Week notice if service is more than 26 weeks but less than 2 years.***
- ***2 Weeks notice if service is more than 2 years but less than 5 years.***
- ***4 Weeks notice if service is more than 5 years.***

Sec 10(5) – Notice shall be in writing and may be given at any time and the day on which the notice is given shall be included in the period of the notice.

Looking at the above, *Sec 10(5)*, I would like to highlight a certain contradiction in the EA. In *Sec 2(1)* it states;

"Contract of service" means any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract or agreement;

In *Sec 10(5)*, it states clearly that when a termination of contract is being delivered, and notice is being served, it has to be in writing. It is evident that a resignation letter served to the employer or vice-versa (termination of an employee), has to be in writing. If that be the case, then why is it, a contract of service, if and when there is an offer and acceptance, can be verbal as described in *Sec 2(1)*?

The EA was enacted in 1968, a time when the level of literacy was lower than what it is today. Although I'm speculating, I believe that the EA, which is basically to protect worker rights, had to enable the less educated to secure jobs regardless of their literacy level. Hence, a verbal employment agreement would be accepted by law. This is enforced in *Sec 2(1)* of the EA. If the objectives that I have described were true, then insisting that a resignation letter be written would be inconsistent with those objectives.

Termination of contract without notice (Sec 11) – Either party to a contract of service may terminate the contract of service without notice or, if notice has already been given in accordance with section 10, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay which would have accrued to the employee during the period of the notice and in the case of a monthly-rated employee where the period of the notice is less than a month, the amount payable for any one day shall be the gross rate of pay for one day's work.

The above clearly indicates that an employee who is serving notice can terminate his employment contract before the expiry date of the notice period by paying notice-in-lieu. This is a sum of monies which is equivalent to what he would have earned, if he were serving his notice.

An example: An employee submits his resignation letter and is serving the one month notice. By initiating the termination of contract, he has the prerogative whether to serve or pay in lieu of notice. He can either serve the full month (by working for one month) or, somewhere along the month, if he changes his mind and decides to leave immediately, he can pay in lieu of notice, monies equivalent to whatever period is left in his notice period. He can also leave immediately if he pays in lieu of notice to his employer, monies equivalent to his full month's salary. The above are his prerogative. When relationships are cordial and parting ways are amicable, the employer usually allows the employee to serve out his notice period. On the other hand, when relationships are tense and the employer is worried that since the employee has submitted his resignation and may no longer be committed, the employer may decide to pay in lieu of notice, so as not to allow the employee to serve his notice. Sometimes it could be for security reasons or because the employer has sensed that the output during the notice period of the employee is counterproductive to the organisational goals and thus prefers that he leaves early.

6. Breach of Contract – Employer (Sec13)

Breach of Contract by Employer

There will be instances when the employer or employee breach their contract. Not all employers, regardless of the fact that they have the financial means and resources to gather information, are knowledgeable in employment law, and from time to time may breach their contract without realising it, albeit it is their responsibility to ensure they conform to employment regulations by hiring or training their HR personnel, Senior Management and even their CEO. One of the most common breach of contract by the employer is paying the staff salary late, not paying salary at all, not paying OT or calculating salary using the wrong methods. The EA describes an employer breaching the contract with the following;

6.1. Time of Payment (Sec 21)

1. Salary earned by an employee under a contract of service, other than additional payments for overtime work, shall be paid before the expiry of the 7th day after the last day of the salary period in respect of which the salary is payable.