



Provisions governing the formation of an individual employment contract in light of Palestinian law: Analytical study

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Abstract

To assign rights and responsibilities between the worker and the employer, the employment contract depends on the concept of authority, where the worker agrees to accept the authority, control and supervision of the employer, and in return the employer agrees to pay a specific wage to the worker, and this contract has elements, stages and types, and this study highlighted the legal provisions governing the formation of the employment contract, because of the importance of these provisions to have a valid employment contract, and for this purpose it has been Follow the descriptive and analytical approach to the rules of the Palestinian Labor Law No. 3 of 2000. From this standpoint, the researcher followed in this study the descriptive and analytical approach in explaining the provisions governing the formation of the individual employment contract, in accordance with the rules of the Palestinian Labor Law No. 3 of 2000 and the Ottoman Judicial Judgments Code, which is still in force until the moment, through exposure to the nature of electronic arbitration, and the legal system of the electronic arbitration agreement, up to the most important results and recommendations related to the subject of the study.

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Introduction

For centuries ago, the contract for work between the employee and the employer was only a regulation of the relationship that arises between the parties to the contract, and the employment contract remained for many years locked in the provisions that regulate the lease contract until the beginning of this century to separate and independence by itself, the various legislations, including the Palestinian legislation, have allocated special provisions for the employment contract, and made it independent to preserve this contract its nature and privacy and to facilitate the task of controlling it (Epstein, 2013) ^[1].

The Palestinian project regulates the individual employment contract under the Palestinian Labor Law No. 7 of 2000, and clarifies what is meant by this contract in Article 24 thereof, which states: "An individual employment contract is a written or oral agreement, express or implicit, concluded between the employer and a worker for a specified or indefinite period or for the completion of a specific work, under which the worker is obligated to perform work for the benefit of the employer and under his management and supervision, and the employer is obligated to pay the agreed wage to the worker." (Sa'ar, 2017, P.59) ^[2].

The importance of research: This research will be limited to studying the composition of the individual employment contract because of the importance of this stage lies as the basis on which the parties to the contract will rely when they are required to implement the obligations stated in the contract, and the contract and the provisions governing it will be the separator in deciding the extent of the parties' breach in the implementation of their obligations arising from the contract.

The problem of research: This research aims to clarify the stage of forming an individual employment contract in some detail in order to answer several questions, including:

1. Is the individual employment contract always concluded in a final and binding manner for its parties or is it permissible to start on the condition of experimentation?
2. If there is a probation clause in the individual employment contract, what is the legal qualification of this contract?
3. Is the formation of an individual employment contract subject to the general rules that apply to all other contracts, or has the Palestinian legislator departed from the general rules regarding the employment contract?
4. If there is a departure from the general rules, what is his citizen? What is the wisdom of that?
5. Is it required to conclude an employment contract following a certain form? Does the Palestinian legislator differentiate the right to prove the contract between the worker and the employer?

Research Methodology: For the purposes of identifying the legal provisions for the formation of an individual employment contract in the light of the Palestinian Labor Law, the researcher will adopt the analytical approach to the provisions of the Palestinian Labor Law No. (7) For the year (2000).

Research Plan: This research will be divided into three sections, led by a preliminary section devoted to the preliminary stages of the individual employment contract, either the first section deals with the elements of the individual employment contract, the second section deals with the validity of the individual employment contract, and the third section deals with the form of the individual employment contract and its proof.

Introductory topic

Preliminary stages of an individual employment contract

An individual employment contract may be preceded by preliminary stages, as in the case of a vocational training contract aimed at preparing the worker in a precise professional manner (Gordon & Schultz, 2020) ^[3]. The employment contract may not be definitive but preceded by a trial period, and therefore these stages, which may precede the conclusion of the individual employment contract, will be briefly discussed through two requirements: the first is allocated to the vocational training contract, and the second to the probationary employment contract (Whitcomb *et al.*, 2018) ^[4].

First Requirement

What is meant by the vocational training contract?

Vocational training is an important tool in the development and rehabilitation of the workforce as one of the pillars of economic and social development, as work methods are sophisticated and changing in light of the rapid technological development, and in order for workers to keep pace with this development, they must receive appropriate training in order to introduce them to new work methods and improve their performance (Kovalchuk *et al.*, 2023) ^[5].

The Palestinian Labor Law defines vocational training in Article (2/18) as "... Activities aimed at providing the development needs of trained workers, enabling them to acquire the necessary skills and abilities and develop them continuously." (Alfoqahaa, 2015, P.33) ^[6]

The provisions of the vocational training contract are regulated by the Palestinian Council of Ministers Resolution No. 169 of 2004 concerning the vocational guidance and

training system, and this system specifies in its second article the conditions of the trainee, "which are that he must be at least fifteen years old, be fit in health, and that his educational or vocational achievement or experience is consistent with the conditions of the training program." (Salahat, 2023) ^[7].

The aforementioned system specified the conditions of the training contract, which are to be in writing, and to include the following: the employer's undertaking to train the trainee, the duration of the training, the monthly wage to be paid to the trainee, the trainee's pledge not to finish his training with the employer until after reviewing and approving the Ministry of Labor (Nelms *et al.*, 2017) ^[8].

Accordingly, a vocational training contract can be defined as a written agreement concluded between the employer and the trainee, under which the employer undertakes to train the trainee in a profession or craft, in return for the trainee's obligation to work for the employer and on the agreed terms and period (Mason, 2020) ^[9].

Through this definition, it becomes clear to us that the main purpose of this contract is to achieve a degree of knowledge and knowledge of the origins and controls of a particular profession or craft, without the wage having that importance that it occupies in the employment contract, and this contract is not an employment contract, but a training contract, it does not bind the employer to the obligations arising from the employment contract, but rather is committed to the obligations under the contract concluded between him and the trainee, in addition to his commitment to the regulations and instructions governing the training issued by Ministry of Labor (Langfred & Rockmann, 2016) ^[10].

Second Requirement

What is meant by a work contract under trial?

The Palestinian legislator granted both the worker and the employer the right before concluding the employment contract definitively to get to know each other, through the probationary employment contract (probationary clause in the employment contract), the employer needs an opportunity to prove the seriousness, ability and efficiency of the worker in performing his work, and in return the worker needs an opportunity to get to know the work he does, and the extent of its compatibility with his abilities (Rabie, 2021) ^[11].

The Palestinian Labor Law referred to the probationary employment contract in Article (29) thereof, which states: "The employment contract may begin with a trial period of three months, and it may not be repeated for more than once with the same employer." (Qafisheh, 2016, P.66) ^[12]

By extrapolating this text, it becomes clear to us that the legislator did not explicitly refer to the text on a specific form to agree on the condition of experiment, and from it the parties to the contract may agree on the condition of experiment in the fixed-term employment contract and the indefinite employment contract, the original is the absence of the trial condition in the employment contract and the exception is its existence, based on the fact that the legislator has referred to the permissibility of starting the employment contract with a trial period, and for this it should not always be stipulated The probationary period is not mandatory by law but optional, the purpose of which is to verify the worker's ability to carry out his work (Hinkle, 2015) ^[13].

With regard to the duration of the experiment, it is according to what was referred to in the previous text, it is for three months and may not be repeated once, and here so that some do not go to the duration of the experiment only three months

and may not be repeated and others go to the duration of the experiment is three months and can be repeated only once, ie the total six months, and in the interpretation of this text the researcher believes that this text is interpreted in favor of the worker, which is the general trend of the labor law The Palestinian, that the duration of the trial reaches six months and may not be coerced, in order to achieve the interest of the worker, and this works to stabilize rights and transactions. Therefore, it is preferable that the aforementioned text be worded as follows: "The employment contract may commence with a probationary period not exceeding three months, and it may be repeated only once with the same employer." (Grothey *et al.*, 2018) ^[14].

It should be noted that during the probationary period, both parties may terminate the employment contract, as Article 3/35 of the Palestinian Labor Law stipulates that: "The individual employment contract shall be terminated in any of the following cases.... at the desire of one of the parties during the duration of the experiment." In this case, the party whose contract has terminated is not required to notify the other party, since the law does not require this, and because both parties expect in advance that the other party will terminate the contract during the trial period, the termination is not abrupt to him. The party terminating the contract is also not required to express Reasons for termination, because during the trial period there are no restrictions on his freedom and there is no authority over him, during the trial period the parties to the contract are immune (Farah & Abdallah, 2019) ^[15].

If the probationary period expires without either party exercising his right to terminate the employment contract, his right to terminate without notice and without giving reasons shall terminate, and the contract shall become final and binding on its parties.

The legal nature of the probationary employment contract sparked a jurisprudential controversy and multiple opinions, some of them argued that the probationary work contract is a preliminary contract that precedes the conclusion of the final contract, falls within the unnamed contracts and its goal is to estimate the terms of the contract during the probation period, and this opinion is criticized because it subjects the worker to two consecutive contracts, but when the probation period is successfully passed, the parties do not conclude a contract. Some of them went to measure the employment contract under probation on the sale contract on the condition of experience, considering this contract a contract pending on a standing condition represented in the success of the experiment, but this opinion is criticized because the contract pending on the condition of the endowment does not produce its effects as long as the condition has not been met, but the work contract under trial produces all its effects as if it were a contract that has become from the beginning, and if we take the idea of the standing condition, this prevents the obligations of the parties until the condition is achieved (George, 2023) ^[16].

However, the most correct opinion is that the work contract under probation is considered a contract pending on a resolute condition, which is dissatisfaction with the experience, it is a contract arranged raised but suspended on a resolute condition, because it is threatened with extinction if the repudiatory condition is met (Geldenhuys, 2017) ^[17].

The first topic

Elements of the individual employment contract

The elements of the contract - as a general rule and as defined by the Ottoman Code of Judicial Judgments - are consent, place and reason, so this section will be divided into two requirements, the first for consent in the individual employment contract and the second to determine the place and reason for this contract (Temel, 2020) ^[18].

First Requirement

Consent in the individual employment contract and its disadvantages

In order for the consent to be the origin of the employment contract, it must respond to the essential elements of the employment contract, which are: wage, work, and duration, and to be free from defects that affect it, and therefore this requirement will be divided into two branches, the first is consent on the nature of the contract, and the second is the defects of consent (Savelyev, 2017) ^[19].

Section I

Consent to the nature of the contract

Consent is the agreement of the will of the contracting parties (offer and acceptance), to bring about the legitimate legal effect intended by the contract, which is the establishment of the individual employment contract (O'Sullivan, 2020) ^[20].

Article 168 of the Ottoman Code of Judicial Judgments, which is in force in Palestine, defines offer and acceptance as all the two words used customarily to create the contract, and the word that is issued first is an offer and the second is acceptance. The offer and acceptance in the individual employment contract are issued by the employer and the worker, and in order for the offer to be considered positive, it must be conclusive and include all the essential elements in the employment contract, which are wage, work and duration, but if the offer does not include these essential elements, then it is not a positive but an invitation to negotiation (Shmueli, 2024) ^[21].

When the offer is issued, including all the essential elements of the contract, it must be addressed to the other contracting party to obtain his acceptance of the elements contained in the offer for the conclusion of the individual employment contract. Because consent in the individual employment contract applies to the same rules as other contracts, the study in this section will be limited to the essential elements of the individual employment contract (Dalton, 2017) ^[22].

Consent must be made on the nature of the contract, so that the will of the contracting parties is directed to conclude an employment contract, i.e., a dependent work in return for a wage. The employment contract often does not include all the issues that must be focused on the agreement at the time of concluding the contract due to their abundance, so the contract is limited to mentioning the essential elements, and then referred on the agreement on the detailed matters to the regulation of the organization of work that must be included in the agreement when concluding the contract (Mik, 2017) ^[23].

Hence, the main elements of the employment contract are work, wage, and contract duration.

First: Work: It is all the mental effort made by the worker or physical in return for a wage.

Consent to work is through the agreement of the worker and the employer to determine the type and place of work that the worker must do, and if it is not specified, it must be appointable in a way that negates, such as that appointment is carried out by the regulations in force in the establishment that show the content of the work, and to oblige the worker to this regulation, the worker must have seen it or had a duty to see it before the contract and was given an opportunity to see, as These regulations, in addition to the provisions of the contract, interpret the will of the parties to the contract, and if they conflict with the provisions of the contract, the provisions of the contract take precedence over them because the provisions of the contract are closer to what has been agreed upon. If there is no regulation, reference is made to the custom of the profession, as the customary persons are known as the conditional condition (Todolí-Signes, 2017) ^[24]. If the work is specific or appointable, the contract shall be considered valid if the other conditions of the convening are met, but if it is not specified and not appointable according to the regulations in force in the establishment or custom, the contract shall be considered in this case null and void for outrageous ignorance.

Second: Consent to Wage

The first article of the Palestinian Labor Law defines wage as: "... The same article defines what is meant by the basic wage where "the agreed monetary or in-kind consideration paid by the employer to the worker in return for his work, and bonuses and allowances are not included in that."

Therefore, the wage is what the worker receives from the employer for the work he does, and this wage may be in cash and in kind at the same time and may be in cash only or in kind only. However, the draft stipulates in 82 of the same law that the wage be paid to the worker in cash in legal circulation, which contradicts the definition of wage provided by the legislator in the first article, in which it is permissible for the wage to be in kind. It is preferable to amend the definition contained in the first article to make the wage a monetary consideration only, because the interest of the worker requires obliging the employer to pay the wage to the worker in cash, it is unreasonable for the worker to spend nine hours at work and then go to spend another time to dispose of the wage in kind paid by the employer (Glickman, 2017) ^[25]. In any case, the will of the worker and the employer must be compatible when contracting to determine the wage of its type and amount, but if the determination of the wage is omitted, it is determined on the basis of the wage of the same according to custom, and if there is no custom, the courts shall estimate it in accordance with the requirements of justice (Bonhomme, 2019) ^[26].

Third: Consent for the period

The duration is an essential element of the employment contract, according to which the amount of work and the amount of wage are determined, and therefore the employment contract is considered a contract of duration because sooner or later it will expire. If this is the case, it is not legally required to specify it, and then the employment contract shall be for a fixed period, and it may not be specified. The contract is then indefinite, as indicated in Article 24. of the Palestinian Labor Law when defining the individual employment contract, where it stipulates that "the individual employment contract is an agreement. It is concluded between an employer and a worker for a specified

or indefinite period.... "

In light of this, we deal with the two types of employment contracts as follows:

A - Fixed-term employment contract: The fixed-term contract shall be in the following cases:

1. When the parties agree on a certain period in which the contract ends, such as specifying the duration of the contract by seven months, or that the parties specify a specific date in which the contract expires, such as specifying 22/12/2023 as the date for the end of the contract.
2. If the contract by its nature ends with a certain period, such as working in seasonal work such as olive harvesting.
3. If a contract is made to complete a specific work, such as an agreement to build a specific house, and here, even if the expiry date of the contract is not strictly specified, it is considered determinable, as the date of completion of the work is considered the end of the contract.
4. 4. If a temporary worker is employed in place of another worker during his illness or performance of military service.

Therefore, a fixed-term contract is either a contract for a specific period or a specific work is completed. Noting that the duration of the fixed-term employment contract may not exceed two years, including cases of renewal, and in the concept of violation, the employment contract that exceeds two years is considered an indefinite employment contract

B- Indefinite Employment Contract:

It is the most widespread type of contract, and the contract is indefinite in the following cases:

1. When a specific date for its expiry or a specific period for its validity is not specified.
2. When the contract is for a fixed period, but it includes a clause that entitles both parties to terminate it with notice before the expiry of its term.
3. When the parties continue to implement the fixed-term contract after the expiry of its term.
4. If the contract is linked to a specific work, such as that it is agreed that the worker works for the employer in the field of construction without showing, for example, that to build a garden fence, as the phrase in the field of construction, although it specifies the type of work, but it does not link the duration of the contract to the completion of a specific construction In this regard, it must be noted that the importance of distinguishing between a fixed-term contract and an indefinite contract lies in the permissibility of terminating the contract by will. Individually, as in the indefinite contract, the contract may be terminated by the unilateral will of one of the parties, provided that the other party is notified in writing of his desire to terminate the contract at least one month in advance, but in the fixed-term contract, it may not be terminated before the expiry of its term except by agreement of the parties.

Section II

Disadvantages of satisfaction

The employment contract remains valid unless it resembles any defect of consent: coercion, error, and deception with outrageous injustice. The Palestinian Labour Law does not

contain special provisions for defects of consent, and therefore reference must be made to the general rules in this regard.

First: Coercion

Article 984 of the Code of Judicial Judgments defines coercion as "coercion is forcing a person to do an unlawful act without his consent to the fear..."

Coercion is either a refuge or not, as it is stated in Article 949 of the Ottoman Code of Judicial Judgments that coercion is a refuge if it is a threat of grave danger to the body or property, and it is not a refuge if it is a threat without that.

Refuge coercion leads to lack of satisfaction and spoils the choice, while non-refuge coercion does not lead to dissatisfaction, so consent remains present, but it spoils the choice according to what is stated in the article to lack of consent and spoils the choice, while non-refuge coercion does not lead to dissatisfaction, so consent remains present, but it spoils the choice according to Article 949 of the Ottoman Code of Judicial Judgments.

Both types of coercion lead to the same effect, as Article 1009 of the Ottoman Code of Judicial Judgments stipulates that whoever coerces one of the two types of coercion to conclude a contract, his contract is not executed, but if the coercion or his heirs are permitted after the disappearance of the coercion explicitly or indicative of the transfer is valid, the effect of coercion is considered suspended, does not have an effect unless the coercion allows it after the disappearance of the coercion.

Coercion is required to be unlawful, and the lesson in coercion is the purpose and not the means. If the purpose is legitimate and the means are illegal, there is no coercion, and the coercion requires that the coercion be able to inflict a threat, and coercion requires that it inspire fear in the same contractor.

Accordingly, if the employer or worker falls under duress, the contract shall be suspended, and the coercion may authorize the contract after the cessation of the coercion, and if he permits it, the contract shall be deemed valid and its effects shall be arranged. An example of coercion was threatening members of a musical band with a sudden strike just before the concert, or threatening an actor to refrain from playing a key role before the start of the play in order to demand an increase in wages, here there is an imminent danger that generates fear in the employer that pushes him to contract, then the contract is suspended.

Second: Mistake

A mistake is a perception contrary to reality that leads a person to conclude a contract, so the person expects something contrary to his truth, which pushes him to contract. The effect of the mistake in the contract varies according to whether the error is substantial or non-essential, if one of the parties to the employment contract falls into the fundamental mistake without which he would not have made the contract, the contract will be suspended and the fundamental error may relate to the person of the contractor as someone who contracts with a specific artist and then it becomes clear that he is another person and may relate to an essential capacity in the contractor, such as good reputation in the teacher. Here, the contractor who made the mistake has the right to rescind the contract or continue to implement it.

As for the error for non-essential, it may occur in the account or writing, and this error does not affect the contract because

it can be corrected, such as mentioning in the contract that the working hours are eight hours starting from eight in the morning and ending at five in the evening, while the eight hours end at four o'clock, this error does not affect the contract and can be corrected.

Third: Deception with outrageous injustice

Article 164 of the Code of Legal Provisions states that "deception: is the description of the sale to the buyer in a different form."

As for injustice, it is the lack of equality between what the contractor gives, and what he takes, that is, the exploitation of one of the contracting parties to the other and injustice in order to be considered is required to be obscene and be so if it does not fall under the evaluation of the evaluators.

The effect of deception and outrageous injustice is the termination of the contract by the victim party to the contract, but if the deception and the outrageous injustice occur independently of the other, this is not sufficient for the termination of the contract. In other words, the termination of the contract requires that deception be associated with gross injustice.

However, the legislator in the Palestinian Labor Law departed from that and was satisfied with the occurrence of deception alone to terminate the employment contract, in the case where the worker impersonates his identity or submits false certificates or documents that push the employer to conclude the contract. Otherwise, it is required that the deception be accompanied by gross injustice as one of the defects of consent that leads to the termination of the employment contract. Noting that the contractor who was a victim of the contract has the right not to choose to rescind the contract and to continue its performance.

Based on the foregoing and according to Article 24 of the Labour Code: "An individual employment contract is a written or oral agreement, express or implied..." It follows from this text that the employment contract is a consensual contract and not a formal contract, as it is sufficient for its convening to exchange the expression of the two identical wills and does not require a certain formality.

Article 28 of the same law casts doubt on the above, as it stipulates that "the employment contract shall be regulated in Arabic, including the basic conditions of work, especially wage, type, place and duration of work, and shall be signed by both parties and a copy of it shall be given to the worker, and the worker may prove his rights by all legal means of proof." Looking at the text, we found that this is not true because this text is regulatory and not commanding, and this is evident from the text phrase that "the employment contract is regulated in Arabic, not "the employment contract must be written in Arabic", and this means that the writing required by the text is not a condition for convening and therefore not a form that must be available at the time of convening, as the work is a consensual contract that may be concluded in writing or transparency.

If the individual employment contract is written, it must be written in Arabic, because enabling the parties to write this contract in a foreign language may pose a danger to the rights of the worker, who may not be qualified by his abilities to know the obligations he has under this contract because he does not know that language, and if one of the parties is a foreigner, in this case the original contract is written in Arabic and then translated into the foreign language known to the foreign party, but the Arabic origin is The competent

authority when interpreting the contract and determining the rights and obligations it contains.

The individual employment contract is written in two original copies, one of which is kept by the employer and is usually deposited in the worker's file and the other is delivered to the worker, but it is preferable that the number of copies of the employment contract be three copies, so that each party to the contract keeps a copy and the third copy is deposited with the Ministry of Labor, in order to refer to it in the event that the two copies of the two parties differ from each other and in order to enable one of them to obtain a copy of it in the event that he loses his copy, and for the provisions of The Ministry of Labor monitors what is contained in these contracts, and urges employers to make contracts in accordance with the provisions of the Labor Law, especially since some employers may set conditions that violate the provisions of the law in order to impose them on a worker who is unaware of that violation because he does not have sufficient knowledge of the law, then he is exploited and some gains are achieved at his expense.

In any case, the employment contract, when written, must include essential data, especially the name of the employer, the name of the worker, the type of work, the place of work, its duration and the agreed wage.

Second Requirement

The shop and the reason for the individual employment contract

The principle is that if persons have the freedom to conclude whatever contracts they want in accordance with the principle of consent, but this freedom is not absolute, the public interest has its requirements in addition to the private interest. Therefore, the contract can not be concluded unless its content responds to a set of conditions, such as a specific place and a project and an existing and legitimate reason, and the goal of appointing the shop and the existence of the reason is to protect the private interest of the parties to the contract, either the goal of the legitimacy of the shop and the reason is to protect the interest. These conditions are considered as means of ensuring that contracts take into account the public interest as well as the private interest.

Since the individual employment contract is generally subject to the general rules contained in the Civil Code, it was necessary for it to have a place and reason that meet the conditions specified in the Civil Code, and therefore the place and reason for the individual employment contract will be studied in the following two sections.

Section I

The shop in the individual employment contract

With regard to the place in contracts, there is a distinction between the place of the contract and the place of the obligation, the place of the contract is the legal process to be achieved from it, and the place of the obligation is the performance undertaken by the debtor, either the performance of a certain thing or the performance of an action or omission from work. With regard to the contract of the individual worker, Article 25 of the Palestinian Labor Law states that "... Agreement... The worker is obliged to perform work for the benefit of the employer under his management and supervision, and the employer is obliged to pay the agreed wage to the worker."

When attempting to apply the previous distinction between the object of the contract and the object of the obligation to

the individual employment contract, it becomes clear that the legal process to be achieved from this contract (the subject of the contract) is work and that the performance to which the worker is obligated is the performance of the work indicated to him, and the performance to which the employer is obligated is to pay the wage to the worker, and this performance is the object of the obligation arising from the individual employment contract.

In order for the place to be considered as an element of the contract, it is required that it be present or possible, that it be specific or appointable, and that it be able to deal with it, and the following we deal with each of these conditions:

1. That the shop exists and is possible: The place of the worker's obligation exists by virtue of the contract, because it is an obligation to do work, and therefore it is required to be possible, and it is so if the worker can do the work, but if it is impossible for him to do the work, the contract is considered invalid to select its corner, and because the rule is not an obligation to be impossible, and this impossibility is required to be an absolute impossibility not a relative impossibility, and the impossibility is absolute if the subject of the obligation is impossible in itself, that is, all persons cannot carry out the work that The worker adhered to it and an example of absolute impossibility is the contract of one person with another to work on converting silver into gold. This shop is absolutely impossible because reason and science do not accept the conversion of silver into gold, and thus the contract is null and void due to the absence of the shop.

The impossibility is relative if it is limited to the contractor alone, such as if it is impossible for the worker to perform a specific work due to ignorance of the principles of work, as if the worker's commitment to managing a pharmacy while he is ignorant of the pharmacy business, here the contract is not invalid, and the employer may resort to requesting specific performance by third parties to work at the worker's expense if possible, or to claim compensation without prejudice to his right to annulment.

2. The shop must be appointed or appointable: it must determine the type and nature of the work and determine the type and amount of wage, but the place in the employment contract is considered appointable, if it relates to the wage, and if the wage is not specified in the contract, the worker shall have a wage similar to the custom, and if there is no custom, the court shall assess it in accordance with the requirements of justice.

If a company announces its need for persons who have a diploma in accounting and apply to it and contract with them without indicating the type of work, it can be said from the circumstances that the work is related to the company's accounts.

3. That the shop is legitimate, i.e. does not violate the law and does not violate public order, so the contract is null and void if it is replaced by the obligation to distribute drugs or immoral tapes due to the illegality of the shop in such a case.

Section II

The reason for the individual employment contract

The reason for its existence and legitimacy is necessary that the contract does not do except for it, and its concept. The reason is based on the ideas of the reason for the obligation and the reason for the contract, as for the reason for the obligation, the "intentional reason" is the direct purpose that the contractor intends to reach from behind the obligation and

the reason in this sense is an element placed and included in the contract, the reason here does not change from one contract to another, but it is one in each of the categories of contracts, in contracts binding on both sides, the reason for the commitment of each contractor in this sect of contracts is the obligation of the other party.

The individual employment contract is a contract binding on both sides, that is, it entails mutual obligations on both parties, whereby the worker is obligated to perform the agreed work and the employer is obligated to pay the agreed wage, so the reason for the worker's obligation to perform the work is his desire to obtain the wage to which the employer is committed, and the reason for the employer's obligation to pay the wage is to obtain the benefit of the work performed by the worker, and the reason in this way does not differ from one employment contract to another.

With regard to the reason for the contract, it is the motive of the motive for the contract, and unlike the reason for the obligation, it is a personal element that differs - for the same contract - from one person to another, and it is outside the contract and is not included in it, but it is considered if it is included in the contracting circle, that is, if the motive is known to the other contracting party or at least he can know about it.

In an individual employment contract, the reason for the contract is the motive that prompted both the employer and the worker to contract with each other, which is the intention and intention, i.e., mere thoughts of the worker or employer, as he may be motivated to obtain wages for a trip whose expenses are used by wages.

The conditions that must be met in the reason for the contract are that it be present, correct and permissible and not contrary to public order or morals.

With regard to the reason for the obligation, there is only one condition that it exists, and if it does not exist, the contract is invalid, but as for the condition of validity, it has no place for the reason for the obligation because the correct reason is the reason that is not erroneous or fictitious, while the false or delusional reason is a reason that does not exist in the first place, if the worker performs work for an employer in a workshop based on the fact that this workshop belongs to the employer with whom he contracted, and later it was found that this employer is not the contractor, the reason for this change exists and the contract is invalidated on this basis.

As for fictitiousness, it is not a reason for the invalidity of the contract unless it is intended to conceal something illegal, in which case the reason for the invalidity is illegitimate rather than fictitious, such as if a person contracts with a woman to clean the house, and in fact this contract is to establish a sexual relationship between its parties.

Also, there is no need for the requirement of legality in the reason for the obligation because the obligation can only be legitimate in the individual employment contract the obligation of the worker to perform the agreed work is the reason for the employer's obligation to pay the wage, and the employer's obligation to pay the wage is the reason for the worker's obligation to perform the work. The reason in this sense can only be legitimate, since the reason cannot be conceivable to be unlawful unless the meaning of the motive is taken except by contracting.

As for the reason for the contract, i.e., the motive for the contract, there is no need for the condition of existence for him, because he does not imagine the absence of the motive motivating the contract, unless the contractor is not

distinguished, such as being insane, and therefore the reason for the contract is always present, but it is required in the reason for the contract that it be legitimate, otherwise the contract is void. If the motive of the worker is to obtain wages to purchase a gun to carry out a murder and this motive is known to the employer, the contract shall be null and void because of the illegality of the reason for the contract.

The second topic

Validity of the Individual Employment Contract

Since the individual employment contract is generally subject to the rules contained in the Civil Code, it must be valid, it must be issued by two contractors who have the capacity, otherwise their consent is marred by a defect in health, and the capacity is a language: it is the authority. The reform is a quality that the legislator values in a person that makes him fit to have rights established or duties established and his actions valid.

We have already mentioned that the worker under the employment contract is obligated to perform the work agreed upon in exchange for receiving the wage and the employer is obligated to pay the wage to the worker in return for the worker's performance of work for him, and therefore each of the parties to the employment contract receives compensation for what he gives and these contracts would benefit and harm at the same time.

In the same regard, the worker under the employment contract is obligated to perform the work agreed upon in exchange for receiving the wage and the employer is obligated to pay the wage to the worker in return for the worker's performance of work for him, and therefore each party to the employment contract receives compensation for what is given; hence it can be said that the employment contract is one of the contracts of compensation between benefit and harm. Therefore, what is the required capacity in both the employer and the worker??

To answer this question, this section will be divided into two requirements, the first deals with the eligibility of the employer and the second deals with the eligibility of the worker.

First Requirement

Employer Eligibility

The Palestinian Labor Law does not introduce special rules regarding employer eligibility. We must refer to the general rules on contract eligibility.

If the term capacity is used, it may mean capacity to perform and capacity to perform may mean capacity to perform and capacity to perform means the capacity of a person to acquire rights and assume obligations.

When a person is found, whether natural or moral, the capacity is obligatory, and the natural person is found by the completion of his birth alive and the legal person is established in accordance with the required legal procedures. As for the capacity to perform, it means the person's authority to take legal action or in other words his ability to act of his will in a way that leads to certain legal effects. The subject of this capacity is perception and distinction, that is, the person must show that his behavior whether it is beneficial to him or harmful to him and who has the capacity to perform has the capacity to oblige and vice versa is not true, and since the competence to perform is perception and discrimination, they fall with them and revolve around existence, non-existence and decrease.

What interests us in eligibility is the search for the capacity that must be available in the parties to the individual employment contract, namely the employer and the worker, and in order to determine the required eligibility in both, we must determine the location of the employment contract of the legal actions that a person can conclude and these actions for eligibility are divided into three sections:

1. Purely beneficial actions and actions: These are actions that accrue to those who perform them with pure benefit, such as a gift for the gifted person.
2. Purely harmful acts and acts: These are the actions that cause material damage to the person who commits them, without taking a return for what he loses, such as a gift to the donor.
3. Actions and actions between benefit and harm: They are netting contracts under which a person receives compensation for what he gives and these contracts would benefit and harm at the same time.

The employer is either a natural person or a legal person, in accordance with Article I of the Palestinian labour Law.

The legal person, unlike the natural person, does not envisage perception and discrimination, and therefore it does not have the capacity to perform and as an exception to the rules of eligibility, it is sufficient to have the capacity to oblige the legal person as an employer to have the capacity to conclude an employment contract and his capacity is according to the deed of its establishment or what is determined by law, but it must be the availability of the capacity to perform in the natural persons in charge of managing the legal person, such as the Chairman of the Board of Directors, and whoever contracts in his name must be authorized. As for the natural person, the capacity to perform alone is not enough, but must have the capacity to perform (perception and discrimination). Since the individual employment contract is one of the actions between benefit and harm, so the necessary capacity to carry out the work is the full capacity to contract, that is, the employer reaches the age of eighteen years of age, provided that he has his mental powers and has not been seized, and the distinguished minor who has completed fifteen years of age is entitled to conclude employment contracts for the funds authorized to trade.

Where his conduct in respect of it shall be considered as the conduct of an adult, i.e., not dependent on anyone's leave, If the employer is indiscriminate due to a young age, such as being less than seven years or suffering from insanity or dementia, his performance capacity is absent and therefore he is not entitled to conclude the employment contract, otherwise the contract is absolutely null and void, and his guardian replaces him in that, but if the employer is distinguished (seven years old), he is considered incompetent to perform because he has not reached the age of majority, and if he concludes the employment contract without the permission of his guardian, the contract is valid but dependent on the guardian's leave or the minor's leave after reaching the age of majority.

Second Requirement

Worker Eligibility

The worker is always a natural person, according to the first article of the Palestinian Labour Law No. 7 of 2000. Since he is always a natural person, the capacity to perform alone is not enough, but he must have the capacity to perform. There is no doubt that an eighteen-year-old can conclude an

employment contract as a worker with full capacity, but the problem arises as to the extent to which a person under eighteen years of age can conclude an employment contract. In order to answer this question, we say that the Palestinian legislator in the Labour Law deviated from the general rules regarding the capacity of the worker to conclude an employment contract, so the legislator made the minimum capacity for discrimination for the worker at the conclusion of the employment contract to be his attainment of fifteen years of age, and this is stipulated in the first article of the Labour Law, which defined the juvenile as "anyone who reaches the age of fifteen and has not exceeded eighteen", contrary to the provision of the general rules on the capacity to discriminate. which stipulates the age of discrimination is seven years?

The phrase "who has reached the age of fifteen" in the definition of a juvenile indicates that it is permissible to employ a person over the age of fourteen, so it is better to rephrase this phrase so that it becomes "who has completed fifteen".

In any case, if the worker is under fifteen years of age, he is prohibited from concluding such a contract, in accordance with article 93 of the Labour Code, which states: "It is prohibited to employ children before they reach the age of fifteen". Accordingly, if a juvenile concludes an employment contract before the completion of the age of fifteen, the contract shall be null and void, even if it is with the permission of his guardian, in order to protect the juvenile at this stage of life, because his body is still weak. His ability to perceive and understand is still limited, as he cannot understand work or comprehend its provisions, so the Palestinian legislator prohibited him from joining any work at this stage when he must go to educational schools to develop his abilities.

However, if the juvenile has completed the age of fifteen, he may conclude the employment contract voluntarily without the permission of his guardian in works that are not hazardous or harmful to health, but provided that a medical examination is carried out to ascertain his ability to carry out such work.

The third topic

Form and proof of the individual employment contract

This section will be divided into two requirements, the first deals with the form of the individual employment contract and the second deals with the proof of the individual employment contract.

First Requirement

Form of individual employment contract

Article 24 of the Palestinian Labor Law states that "an individual employment contract is an express or implicit written or oral agreement..." It follows from this text that the employment contract is a consensual contract and not a formal contract, as it is sufficient for its convening to exchange the expression of the two identical wills and does not require a certain formality.

Article 28 of the same law casts doubt on the above, as it stipulates that "the employment contract shall be regulated in Arabic, including the basic conditions of work, especially wage, type, place and duration of work, and shall be signed by both parties and a copy of it shall be given to the worker, and the worker may prove his rights by all legal means of proof." Looking at the text, we found that this is not true because this text is regulatory and not commanding, and this

is evident from the text phrase that "the employment contract is regulated in Arabic, not "the employment contract must be written in Arabic", and this means that the writing required by the text is not a condition for convening and therefore not a form that must be available at the time of convening, as the work is a consensual contract that may be concluded in writing or transparency.

If the individual employment contract is written, it must be written in Arabic, because enabling the parties to write this contract in a foreign language may pose a danger to the rights of the worker, who may not be qualified by his abilities to know the obligations he has under this contract because he does not know that language, and if one of the parties is a foreigner, in this case the original contract is written in Arabic and then translated into the foreign language known to the foreign party, but the Arabic origin is The competent authority when interpreting the contract and determining the rights and obligations it contains.

The individual employment contract is written in two original copies, one of which is kept by the employer and is usually deposited in the worker's file and the other is delivered to the worker, but it is preferable that the number of copies of the employment contract be three copies, so that each party to the contract keeps a copy and the third copy is deposited with the Ministry of Labor, in order to refer to it in the event that the two copies of the two parties differ from each other and in order to enable one of them to obtain a copy of it in the event that he loses his copy, and for the provisions of The Ministry of Labor monitors what is contained in these contracts, and urges employers to make contracts in accordance with the provisions of the Labor Law, especially since some employers may set conditions that violate the provisions of the law in order to impose them on a worker who is unaware of that violation because he does not have sufficient knowledge of the law, then he is exploited and some gains are achieved at his expense.

In any case, the employment contract, when written, must include essential data, especially the name of the employer, the name of the worker, the type of work, the place of work, its duration and the agreed wage.

Second Requirement

Proof of individual employment contract

The general rules of proof stipulate that if the value of the obligation exceeds two hundred Jordanian dinars or is of undetermined value, it may not be proved by testimony, but must be proved in writing unless there is an agreement or legal text that requires otherwise, but the Palestinian legislator in the labor law deviated from the general rules of proof, so he did not want to subject the employment contract to the same provisions that apply to other contracts, so he set some special rules, in addition to the general rules of proof. Differentiating between proof on the part of the worker and proof on the part of the employer. Accordingly, this requirement will be divided into two sections, the first dealing with proof on the part of the worker and the second dealing with proof on the part of the employer.

Section I

Proof on the part of the worker

The worker is the weak party in the employment contract, and therefore the legislator provided him with adequate means of protection to prove the contract and prove his rights generated by it, as the legislator dealt with the worker's right to prove

his rights by all legal means of proof."

We have already mentioned that writing in this text is not a condition for convening because the employment contract may be written or oral, and writing is not a condition for proof because if we consider writing a condition for proof, the worker will not be able to prove his rights in most cases because the employer may deliberately not write the contract, taking advantage of the worker's lack of opposition to that because of his weakness when concluding the contract, and in this way they evade their obligations towards the worker, especially since the idea of proof in writing assumes the ability of contractors to prepare evidence Written in advance, which is impossible in many employment contracts.

Therefore, the writing of the employment contract is not a condition for proof or convening, but rather a regulatory provision aimed at resolving any dispute that may arise about the wage, nature, duration and place of work.

However, the aforementioned text suggests that the worker has the right to prove his rights by all means of proof, even if the contract is written, because the Palestinian legislator put the text in a weak wording where he said "... The worker has the right to prove his rights by all legal means of proof", and it was more appropriate for the esteemed Palestinian legislator to add to the text the phrase "... If the contract is not regulated in writing.

Whether the contract is written or not, the worker may prove his rights by all means of proof, knowing that the worker's rights are mostly material matters, and in most cases, it is not possible to prepare written evidence for them, such as proving that the worker did not get his leave, or that he performed work on weekly rest days.

Section II

Proof from the employer

The text of Article 28 of the aforementioned Palestinian Labor Law allows the worker alone to prove his rights by all means of proof, and in the concept of violation, the employer may not prove his rights by all means of proof, but rather adheres to the general rules of proof, which stipulate that it is not permissible to prove actions whose value exceeds two hundred Jordanian dinars or whose value is not specified in writing, and the reason for this is that the employer is the strong party to this contract and can write and prepare written evidence in advance, unlike the worker. However, the employer can deny what the worker proves in the same way that the worker used by proof because saying otherwise leads to inequality between the litigants in the lawsuit, it is legally unacceptable for one of the litigants to be granted some benefits and in return the other opponent is deprived of these benefits.

The end

This research was launched from a basic idea that is to study the legal provisions governing the formation of the individual employment contract in accordance with the provisions of the Palestinian Labor Law No. 7 of 2000, by following the analytical approach, and we tried to show and clarify the extent to which the general rules in the theory of the contract apply to the conclusion of the individual employment contract, and we tried to show the specificity of concluding an individual employment contract and identify the content of the individual employment contract, its pillars and validity, in addition to Identify the variety of restrictions imposed by the law in several citizens in the provisions of the Labor Law,

whether these restrictions exist for the economic, social and other interest, and also the restriction of the parties to the employment contract in concluding their contracts, and we have concluded a set of results, the most important of which are:

- The Palestinian legislator has given both the worker and the employer the right, before concluding the employment contract definitively, to get to know each other, by including in the employment contract the probation clause, and the contract in this case is not binding on its parties and the probationary period is for three months and may not be repeated for more than once.
- With regard to the employment contract, the Palestinian legislator deviated from the general rules regarding the worker's eligibility, making the minimum capacity for discrimination for a worker at the time of concluding an employment contract to be the age of fifteen, contrary to the provision of the general rules on the capacity for cassation, which stipulates that the age of discrimination is seven years.
- The employment contract is limited to mentioning the essential elements, namely work, wage and contract duration, and then the detailed matters are referred to the labor regulation that must be included in the agreement at the time of concluding the contract.
- The employment contract is not required to be concluded in a specific form, it can be concluded in writing or orally explicitly or implicitly, and therefore the individual employment contract is considered a consensual contract.
- The Palestinian legislator deviated from the general rules of proof, as it differentiated between the worker's right and the employer's right to proof, allowing the worker alone the right to prove the employment contract by all means of proof, even if its value exceeds two hundred dinars or is of unspecified value, while the employer has stipulated writing about it to prove the contract. Through this study, the researcher proposes several recommendations, including:
 - The text of Article 29 of the law under study shall be amended to become as follows: "The employment contract may commence with a probationary period not exceeding three months, and it may not be repeated with the same employer.
 - That the definition of the basic wage contained in the first article of the law under study be amended to become the wage in exchange for cash only, because the interest of the worker requires obliging the employer to pay the wage to the worker in cash, it is unreasonable for the worker to spend nine hours at work and then go to spend another time to dispose of the in-kind wage paid by the employer.
 - The definition of a juvenile contained in the first article of the law under study should be amended to become as follows: "A juvenile is anyone who has completed fifteen years of age and has not exceeded eighteen."
 - The number of copies of the employment contract should be three copies instead of two copies, so that each party to the contract keeps a copy and the third copy is deposited with the Ministry of Labor, in order to refer to it in the event that the copies of the two parties differ from each other and in order to

enable one of them to obtain a copy of it in the event that he loses his copy. In order to ensure that the Ministry of Labour controls these contracts, he urged employers to bring the contracts into conformity with the provisions of the Labor Code. The text of Article 28 of the Palestinian Labor Law shall be amended to read as follows: "The employment contract shall be organized in Arabic, including the basic conditions of work, especially the wage, type, place and duration of work, and shall be signed by both parties and a copy of it shall be given to the worker, and the worker may prove his rights by all legal means of proof if the contract is not organized in writing."

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