

# Granting and Using Annual Leave in Ethiopia: A Look at the Practice at the *Teklehaimanot* Plant of MOHA Soft Drinks S.C.

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## Abstract

The current Ethiopian Labor Proclamation provides for a number of stipulations to regulate the relationship between employers and employees. These stipulations deal, among other things, with how annual leave can (should) be granted by employers and used by employees. This article explores the position of the Labor Proclamation in respect of some vital issues pertaining to the granting and use of annual leave. It will also examine how these issues are dealt with in practice by using the experience of one company, MOHA Soft Drinks Industry S.C. at the *Teklehaimanot Plant*. Although the practice at this Company may not be used to make generalizations about how other employers deal with the above issues, it can serve as a real eye-opener. The article concludes that the stipulations of the Labor Proclamation are not implemented as they ought to be and there are some deviations in practice.

**Key Terms:** Annual Leave, Granting annual leave, Labour Proclamation, employment benefits

## Introduction

Nowadays, it is not uncommon to find in employment laws the right of workers to annual leave.<sup>1</sup> Thus, workers can request and take annual leave after they have rendered service to their employers for some time. What then

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<sup>1</sup> For the practices annual leave in Israel see Benjamin W. Wolkinson and Richard N. Block, *Employment law: the workplace rights of employees and employers*, Blackwell Publishing, 1996, UK, p 126; in Greece, see Christina Vlachtsis, in Dennis Campbell (ed.), *Employment law*, Volume 28, Part 1, Kluwer Law International, 2007, p. 297; in Hong Kong, see Ng Sek Hong, *Labour Law in Hong Kong*, Kluwer Law International, 2010, BV, The Netherlands, p. 123-124; in China, see Christopher Hunter, Louisa Lam, Ketong Lin, *Employment law in China*, CCH Hong Kong Ltd, 2008, p. 118

is *annual leave*?<sup>2</sup> For the purpose of this article, we may understand annual leave as a temporary absence from a place of work with the intention to return while enjoying at least some employment benefits such as one's salary.<sup>3</sup> Thus, annual leave can be distinguished from other forms of temporary absence because, among other things, it is a paid absence. For instance, a worker on suspension is temporarily absent from her work but she does not get payment during her absence.

On the other hand, allowing a worker to be off their work temporarily and for some time can promote various interests. For instance, in some legal systems, the recognition of annual leave is premised on the conception that it forms part of health and safety issues.<sup>4</sup> Thus, workers will be saved from over-exhaustion and possible health and safety hazards they may be exposed to as a result of such over-exhaustion because annual leave, which is longer as opposed to for example weekly rest day, enables them to get both physical and psychological refreshment before they get back to their work. Workers who are back from annual leave will resume their work with renewed physical and psychological strength.<sup>5</sup> Of course, there is no guarantee that a worker will rest during her annual leave; instead, she may use her annual leave for various reasons such as doing personal businesses.<sup>6</sup>

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<sup>2</sup> *Annual leave* is sometimes called *annual vacations* or *annual holidays*. See, for example, Gorbacheva, *Labour Law in Russia*, Kluwer Law International, The Netherlands, 2011, p. 95; Richard Rudman, *New Zealand Employment Law Guide*, CCH New Zealand Limited, Auckland, 2009, p.142-145

<sup>3</sup> Thus, if a worker leaves her work with the intention of not coming back, we cannot say that she has taken an annual leave because the measure amounts to termination of employment relationship. Employment relationship refers to a relationship that is formed by an employer and a worker in accordance with article 4 of the Labour Proclamation.

<sup>4</sup> See Jane Moffatt (ed.), *Employment Law*, 2<sup>nd</sup> ed., Oxford University Press, New York, 2007, p.77

<sup>5</sup> For example, the Civil Servants Proclamation states that the purpose of annual leave is to enable a civil servant to get rest and resume work with renewed strength and the same reason can apply to the recognition of annual leave in the Labour Proclamation. See article 36(1) Federal Civil Servants Proclamation, Proclamation No. 515/2007.

<sup>6</sup> It is said that, in reality, a worker may use her annual leave for vacations, rest and relaxation, and personal business or emergencies. See *Annual Leave*, US Office of Personnel Management, available at [www.opm.gov/oca/leave/html/annual.asp](http://www.opm.gov/oca/leave/html/annual.asp), accessed 6 June 2011.

Moreover, employers can also get benefit if workers take and use their annual leave because workers who return to work with refreshed physical and psychological preparedness to resume their work can render better services. Further, the society will also be better off if annual leave is granted and used because labour can be saved for tomorrow. Thus, granting and using annual leave is capable of promoting the interests of various parties: the employee, employer and the society. As a result, workers can and should take and use annual leave after serving their employers for certain time which is usually a period of twelve months.<sup>7</sup>As we will see later on, this is true in Ethiopia, too.<sup>8</sup>

At this juncture, one must bear in mind that annual leave is a paid leave.<sup>9</sup> That is to say, employers grant their workers not only permission for temporary absence from their work but also payments to cover their cost during such absence. In Ethiopia, too, annual leave at the moment is a paid leave as provided under article 77(1) of the Labour Proclamation. In fact, the history of paid annual leave in Ethiopia goes as far back as the late 1950s and early 1960s. For instance, the 1958 Eritrean Employment Act and the 1960 Civil Code granted workers the right to get paid annual leave.<sup>10</sup>

Moreover, an employee who is entitled to paid annual leave is normally given payment for annual leave in advance of taking the leave, whereas the amount is equal to the amount she would get if she were working during normal hours of work.<sup>11</sup> This implies that the payment may include regular bonus or allowance that does not vary in relation to work but excludes

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<sup>7</sup> This is true, for example, in Greece, China, Hong Kong and others. For more on this points, see contribution by Christina Vlachtsis, *supra* note 1, p. 297; Christopher Hunter, *supra* note 1, p. 118; Ng Sek Hong, *supra* note 1, p. 124.

<sup>8</sup> Civil servants can be entitled to annual leave only after serving for eleven months. See article 36(2), Federal Civil Servants Proclamation, Proclamation No. 515/2007.

<sup>9</sup> Payment to a worker during annual leave is regarded as a reward to the worker for the work done. Marco Guadagni, *Ethiopian Labor Law Handbook*, University of Asmara, Faculty of Law, 1972, p. 66. In countries like Hong Kong, it is a statutory entitlement provided by law. See *supra* note 1, p. 123-124.

<sup>10</sup> See Marco Guadagni, *supra* note 9, p. 65. Of course, the provisions of both laws on annual leave were later on repealed and replaced by the provisions of the 1964 Minimum Labour Conditions Regulations. *Ibid.*

<sup>11</sup> See Jane Moffatt *supra* note 4, p.91.

any payment for overtime work.<sup>12</sup> Thus, for instance, while house allowance is included because it is a regular payment in the payment to a worker during annual leave, transport allowance is not. In Ethiopia, the Labour Proclamation does not make such stipulations.<sup>13</sup> Thus, a worker on annual leave may take her payments at the time the other workers on duty take their payments or in accordance with the provision of a collective agreement, if any.<sup>14</sup>

The other important point worth discussing in relation to annual leave is its duration. It is true that granting annual leave is, as stated before, a common practice. However, this does not mean that all workers are entitled to the same annual leave. In fact, the duration of annual leave may vary in two ways. First, the length of annual leave a worker gets depends on her period of service with a minimum period required by law.<sup>15</sup> This means, although all workers start from the same minimum period stipulated by law, senior workers get longer annual leave than new workers. For example, under Ethiopian Labour Proclamation, the minimum annual leave period for workers covered by the Labour Proclamation is fourteen working days for a new worker and one additional working day for every addition year of service.<sup>16</sup> Thus, a worker who has seven years of service at a given undertaking will have the right to take 20 working days annual leave as compared to a new worker who gets 14 working days annual leave. Second, the minimum period of annual leave required by law may vary from one system to another.<sup>17</sup> For

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<sup>12</sup> Ibid.

<sup>13</sup> For civil servants, however, the Civil Servants Proclamation states that a civil servant is entitled to advance payment of his monthly salary at the time of taking his annual leave. See article 38(2), the Federal Civil Servants Proclamation, Proclamation No. 515/2007.

<sup>14</sup> Of course, some collective agreements may provide that a worker is entitled to advance payment for her annual leave. In this regard, one can mention the Collective Agreement of the Teklehaimanot Plant of MOHA Soft Drinks Industry S.C. and Its Workers which allows a worker to request and get his salary in advance. See article 25.2.4 of the Collective agreement of MOHA Soft Drinks Industry S.C. and its Workers, July 2007, Addis Ababa.

<sup>15</sup> See Benjamin W. Wolkinson and Richard N. Block, *supra* note 1, p.126.

<sup>16</sup> See article 77(1)

<sup>17</sup> This difference may exist even in one country depending on types of workers. For instance, in Ethiopia, civil servants get a minimum of 20 while workers covered by the labour Proclamation get a minimum of 14 working days. Compare article 37(1) and (2) of the

instance, in Hong Kong, the minimum leave period is seven days and the maximum is 14 days.<sup>18</sup> In Ethiopia, the Labour Proclamation provides that the minimum annual leave period is fourteen working days with no maximum limit provided.<sup>19</sup> Thus, any employer that falls under the regulation of the Labour Proclamation is obliged to grant a minimum of 14 working days for a new employee plus one working day for every year of service for workers who have served for more than a year. For workers covered by the Civil Servants' Proclamation, the minimum period of annual leave is 20 working days and a maximum of 30 working days.<sup>20</sup>

### 1. Annual Leave How Granted

First of all, annual leave cannot be waived or substituted by payment.<sup>21</sup> The Labour Proclamation also prohibits a worker from waiving her annual leave by agreement. In this regard, it stipulates that an agreement by a worker to waive in any manner her right to annual leave shall be null and void.<sup>22</sup> Consequently, a worker cannot agree not to use or request taking her annual leave. If such agreement is included in a contract of employment, that part of the contract will be ineffective. This, in turn, implies that a worker who has agreed not to take her annual leave can request and use it when it falls due in accordance with the law regardless of what is agreed upon in her contract of employment. Of course, a worker can always waive her annual leave after it has fallen due because the employer is not required to force its worker to take annual leave. Nevertheless, an employer may be obliged by a collective agreement to compel a worker to take and use her annual leave. In this case, the worker may find it difficult to waive her annual leave after it has fallen due.

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Federal Civil Servants Proclamation, Proclamation No. 515/2007 and article 77(1) of the Labour Proclamation, Proclamation No.377/2003

<sup>18</sup> Ng Sek Hong, *supra* note 1, p. 124

<sup>19</sup> See article 77(1), Labour Proclamation, Proclamation No.377/2003.

<sup>20</sup> See article 37(1) and (2) Federal Civil Servants Proclamation, Proclamation No. 515/2007.

<sup>21</sup> See for example the practice in Hong Kong as discussed in Ng Sek Hong, *supra* note 1, p. 123-124.

<sup>22</sup> See Article 76(1), Labour Proclamation, Proclamation No.377/2003.

The other important point worth considering is the requirement that an employer must grant a worker her annual leave in the course of the calendar year in which it becomes due. It is said that annual leave becomes mature in the whole year and gradually, on day-by-day basis for that matter, even if a worker can enjoy it only at the end of the year in which it matures.<sup>23</sup> For example, every month gives birth to some period of annual leave which may be a day, two days, or more depending on the applicable law and collective agreement, if any. But the leave will not be used at the end of every month but at the end of the year in which it matures. In this regard, the employer has to first prepare a leave schedule by taking into account, as far as possible, the wishes of a worker and the needs of its undertaking and then grant his workers annual leave in accordance therewith.<sup>24</sup> Hence, while an employer must prepare a leave schedule in accordance with which his workers can be granted annual leave, the schedule has to be prepared in such a way that the interests of his workers are promoted without affecting the needs of the employer to maintain the normal functioning of his undertaking. For instance, if a worker is a college student and she wants to take her annual leave at the end of the first semester so that she will prepare for her examination, the employer must allow her to do so as long as he can maintain the normal functioning of his undertaking. Incidentally, any employer may choose to close down his business or part of it for the purpose of granting his employees paid annual leave if that is in his interest.<sup>25</sup>

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<sup>23</sup>See Marco Guadagni, *supra* note 9, p. 66. Marsden writes that annual leave accrues to workers on day-by-day basis throughout the year. See Stephen J. Marsden, *Australian Master Bookkeepers Guide*, 3<sup>rd</sup> ed., CCH, Wolters Kluwer Business, 2010, p 682. The practice, however, shows that a worker can enjoy annual leave before the end of the year in which it matures. More importantly, annual leave may be used before it matures as some workers can be given annual leave in advance.

<sup>24</sup>See article 76(2) and (3), Labour Proclamation, Proclamation No.377/2003.

<sup>25</sup>Ng Sek Hong, *supra* note 1, p. 125. According to the employment law of Hong Kong, if an employer elects any period of 12 consecutive months as the common leave year for all his employees, as he is allowed to do so, he is obliged to give one month's notice either to each of his employees in writing or by posting a notice in a conspicuous place in the place of employment. See *Id.*, p. 124-125

As far as the due date for annual leave is concerned, an employer is required to grant annual leave to a worker after she has served for a year.<sup>26</sup> Thus, although annual leave matures gradually and throughout the year, a worker is entitled to it only after the end of the year in which service is rendered. For example, a worker who has one year service will get her annual leave in the second calendar year, whereas a worker who has more than one year of service will get her annual leave in the calendar year that follows the year of service.

With regard to the duration of annual leave, as the previous discussion has revealed, the Labour Proclamation requires fourteen (14) working days to be the minimum period of annual leave for the first year of service and one working day for every additional year of service.<sup>27</sup> Of course, the Proclamation allows increasing the duration of annual leave with pay through a collective agreement for workers engaged in a work which is particularly arduous or if the condition in which the work is done is unhealthy.<sup>28</sup> For example, a collective agreement may provide that workers who work in the production division of an undertaking get 20 working days annual leave for the first year of service and additional two working days for every additional year of service. This is acceptable because the Labour Proclamation simply provides for a minimum protection that a worker is entitled to and that an employer is required to grant his workers. Indeed, collective agreement may provide for greater annual leave even for workers not engaged in arduous works and that is acceptable in light of the Proclamation.<sup>29</sup> For example, the collective agreement of Ethiopian Telecommunication Corporation provides that workers are entitled to 15 working days, not 14 working days, for the first

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<sup>26</sup> See article 76(1), Labour Proclamation, Proclamation No.377/2003.

<sup>27</sup> See article 77(1), Labour Proclamation, Proclamation No.377/2003. Article 77(3) states that the worker on annual leave receives a wage which is equal to the wage she receives when she was at work.

<sup>28</sup> See article 77(2), Labour Proclamation, Proclamation No.377/2003.

<sup>29</sup> This is so because article 134(2) of the Labour Proclamation allows collective agreement to prevail where it is more favorable to workers in similar matters than those provided for by law.

year of service and additional one working day for every additional year of service.<sup>30</sup>

At this juncture, one may wonder if a worker who has less than a year of service may be entitled to an annual leave. In Greece, for example, every employee from commencement of employment and up to completing twelve months of continued employment is entitled to a paid annual leave on a *pro rata* basis by reference to the duration of employment.<sup>31</sup> This means, a worker who has less than one year of service can get a paid annual leave that has matured proportional to the duration of her service.

In Hong Kong, too, where an employee has less than 12 months service, the employer should calculate her leave on a *pro rata* basis and any fraction of a day computed should be reckoned as a full day for annual leave calculation.<sup>32</sup> In our case, the Labour Proclamation stipulates that 26 days of service in an undertaking shall be deemed to be equivalent to one month of employment to qualify a worker for annual leave, if need be.<sup>33</sup> For example, if a worker is hired at the end of a calendar year and served only for 26 days in the old calendar year, she will have an annual leave proportionate to one month in the new calendar year. This means, a worker cannot be denied an annual leave because she has not served for a year in one given calendar year.<sup>34</sup> Similar stand is taken by some collective agreements as well. For example, the collective agreement of Ethiopian Telecommunication Corporation and its workers states that workers with less than one year of service get annual leave commensurate with the duration of their services.<sup>35</sup>

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<sup>30</sup>See article 16(1) of the *Collective Agreement of Ethiopian Telecommunication Corporation and Its Workers*, April 2007, Addis Ababa.

<sup>31</sup>See Christina Vlachtsis, *supra* note 1, p. 297.

<sup>32</sup>Ng Sek Hong, *supra* note 1, p. 124-125.

<sup>33</sup>See article 77(4), Labour Proclamation, Proclamation No.377/2003.

<sup>34</sup>In fact, article 77(6) stipulates that where the length of service of a worker does not qualify for an annual leave, that is, if it is less than a year in a given calendar year, the worker shall be entitled to an annual leave in proportion to the length of his service. Thus, a working is has six months service in an old calendar year will have 7 working days annual leave in a new calendar year is more favourable conditions are not provided in a collective agreement.

<sup>35</sup>See article 16(1) of the *Collective Agreement of Ethiopian Telecommunication Corporation and Its Workers*, April 2007, Addis Ababa.



The Collective agreement of the *Teklehaimanot* Plant of MOHA Soft Drinks Industry S.C. and its Workers also contains the same stipulation.<sup>36</sup>

## 2. Use, Division, Interruption and Conversion to Money of Annual Leave

As stated above, a worker is entitled to a certain amount of annual leave depending on the year of service she has at a given undertaking.<sup>37</sup> Moreover, we have seen that a worker cannot waive, at least in advance, the right to get and use her annual leave. Thus, when annual leave falls due, any worker can demand and use it while any employer is obliged to grant it. Of course, the demand to take annual leave by a worker has to be in accordance with the leave schedule that is prepared by an employer taking into account the interests of the workers and of his undertaking. However, issues like postponement, division or fragmentation, interruption and conversion to money of annual leave need special discussions.

### 2.1. Use of Annual Leave

A worker whose annual leave has fallen due and is ready to be used may want to postpone it for various reasons. Nonetheless, annual leave is as a rule said to be non-transferrable to another year.<sup>38</sup> Consequently, a worker should use her annual leave at the time it can be used in accordance with her employer's leave schedule. This is sensible in particular when it is viewed in

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<sup>36</sup>See article 26.2.3 of the Collective agreement of the *Teklehaimanot* Plant of MOHA Soft Drinks Industry S.C. and its Workers, April 2011, Addis Ababa.

<sup>37</sup>One may raise a question as to whether or not experiences at other undertakings may be considered to calculate annual leave because an employer who employs an experienced worker gets benefits from the experience of his employer which is gained while working for another employer. This seems a legitimate query because according to the collective agreements of some undertakings such as the collective agreement of Ethiopian Telecommunication Corporation, service rendered at public enterprise or government organs is taken into account to determine the length of annual leave a worker may be entitled to. See article 16(1) of the *Collective Agreement of Ethiopian Telecommunication Corporation and Its Workers*, April 2007, Addis Ababa. Nevertheless, there is nothing in the Labour Proclamation that shows that employers should consider experience or service rendered to other employer(s) as a factor to determine the duration of annual leave.

<sup>38</sup>See, for example, Marco Guadagni, *supra* note 9, p. 66.

light of the rationales behind granting annual leave. Of course, if postponement is, in principle, not allowed, workers themselves will be encouraged to use their annual leaves at the appropriate time. On the other hand, annual leave may be postponed under exceptional circumstances.<sup>39</sup> For instance, we may think of a possibility to postpone a worker's annual leave if she is on sick leave at the time she can use her annual leave in accordance with a leave schedule because the two leaves cannot be enjoyed simultaneously.

When we see the Labour Proclamation, the position is somewhat different because it does not prohibit postponement of annual leave. In fact, it allows postponement of annual leave if a worker requests to use her annual leave at some other time which is different from the time provided in a leave schedule provided that her employer agrees thereto.<sup>40</sup> This is in line with the practice in some countries.<sup>41</sup> With regard to the duration of postponement, however, the Proclamation imposes a limitation because it allows postponement of annual leave only for two years.<sup>42</sup> Accordingly, workers who are governed by the Labour Proclamation cannot postpone their annual leave indefinitely. If they do so, the leave will expire after two years thereby extinguishing their rights to claim it and their employers' obligations to grant it.<sup>43</sup> On the other hand, such limitation on the postponement of annual leave can facilitate the use of annual leave by workers.

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<sup>39</sup> Ibid.

<sup>40</sup> See article 79(2), Labour Proclamation, Proclamation No.377/2003.

<sup>41</sup> For example, there are countries where annual leave must be given and must be taken in the leave year except where the employee consents to taking his leave in six months following the leave year. Any leave not taken in that leave year will be considered forfeited by the employee and can only accrue for the six months in the following leave year. An employee has no cause of action against an employer for compensation for any leave untaken in previous years. See Jane Moffatt, *supra* note 4, p.92.

<sup>42</sup> See article 79(5), Labour Proclamation, Proclamation No.377/2003. At the beginning, that is, under the 1964 Minimum Labour conditions Regulations, postponement was possible only for one year. See Marco Guadagni, *supra* note 9, p. 65.

<sup>43</sup> Although one may wonder why postponement of annual leave for longer period is not allowed, it seems that the law tries to keep the rationale behind recognizing annual leave intact; that is enabling a worker to take rest for longer period so that she can resume her job with renewed physical and physiological conditions.

## 2.2. Division of Annual Leave

A worker may want to use her annual leave at the time it is due but she may not wish to use it all at the same time. This raises the question of division or fragmentation of annual leave into parts. However, the general trend is to require workers to use their annual leave consecutively.<sup>44</sup> This means, although some exceptions may be found,<sup>45</sup> annual leave is required to have an element of continuity.<sup>46</sup> The Labour Proclamation has also adopted similar stand as it stipulates that every worker is entitled to an uninterrupted annual leave.<sup>47</sup> Accordingly, if a worker deserves 20 working days of annual leave, she can and has to use them all without any division.

However, the Proclamation does not contain a blanket prohibition of dividing annual leave. Although it wants workers to use their annual leave uninterrupted, it at the same time allows them to request division into two parts if their employers consent thereto.<sup>48</sup> Accordingly, if a request is made by a worker and her employer agrees thereto, annual leave can be taken at two different times. All the same, division of an annual leave into various parts is not allowed. This is understandable because if annual leave is granted and used in a fragmented way, the purpose for which it is recognized will not be served.

At this juncture, it must be borne in mind that the Proclamation does not allow employers to divide their employees' annual leaves. So, the only time they can do so is when their employees request such division. This implies that what an employer can do, if it is necessary, is postponing his workers' annual leaves and not dividing them into parts.

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<sup>44</sup> Marco Guadagni, *supra* note 9, p. 66.

<sup>45</sup> For example, in Hong Kong, if a worker has ten or less days of annual leave, she can take a seven consecutive days leave and the remaining days together; however, if her annual leave exceeds ten days, she can fragment it into many parts provided that seven consecutive days are used as annual leave. For more, see generally, Ng Sek Hong, *supra* note 1, p. 124.

<sup>46</sup> See *Id.*, p. 123-124.

<sup>47</sup> See article 77(1), Labour Proclamation, Proclamation No.377/2003.

<sup>48</sup> *Id.*, article 79(1).

### 2.3. Interruption of Annual Leave

Situations may arise demanding the interruption of a worker's annual leave that is being used. The principle is, however, the same; that is, annual leave should be enjoyed uninterrupted. As a result, a worker should not, for example, be recalled if she is on annual leave. Nonetheless, there are certain circumstances under which annual leave may be interrupted. For example, the Proclamation states that if a worker who is on annual leave falls sick, her illness will interrupt the annual leave.<sup>49</sup> In this case, the worker will be on sick leave and she will resume using her annual leave when her sick leave expires. Moreover, an employer may also recall a worker who is on annual leave where unforeseen circumstances require her presence at her post.<sup>50</sup> This means, if two requirements are fulfilled, an employer can interrupt the annual leave of his worker. First, it is necessary that an *unforeseen* circumstance happens. This implies that something which is foreseeable does not justify interrupting a worker's annual leave. Second, the unforeseen circumstance that happens *must require the presence* of the worker on leave at her post. If another worker can fill the post and deal with the situation, there is no right to recall a worker.

### 2.4. Conversion of Annual Leave to Money

There is no doubt that some workers may wish to have their annual leaves converted to money as there may be some employers who are willing to pay money in lieu of annual leave because they need their workers to stay at work. The question then is whether or not they are at liberty to do so. In this regard, we may think of three possible positions taken by the law. First, workers may be allowed to convert their annual leave to money whenever they wish to although such permission may not be compatible with the rationale behind the

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<sup>49</sup> See *Id.*, articles 79(4), 85 and 86.

<sup>50</sup> See *Id.*, article 8(1). Emphasis added. In this case, the worker is entitled to a payment covering the remainder of her leave, excluding the time lost for the trip, and reimbursement of transport expenses incurred as direct consequences of her being recalled and per-diem. *Id.*, article 80(2) and (3).

recognition of annual leave<sup>51</sup> However, this position does not seem compatible with the rationale behind the recognition of annual leave. Second, a worker may be allowed to convert part of her annual leave to money. For instance, in Honk Kong, a worker can waive her annual leave and substitute it by money if it exceeds ten days or if employment relationship is terminated before annual leave is used.<sup>52</sup> Thus, annual leave which is less than ten days is not convertible to money so long as employment relationship subsists while annual leave earned in excess of ten days can be converted to money if a worker so wishes. The third possible position is prohibiting the conversion of annual leave to money when it can be granted and used, that is, so long as employment relationship exists.

The Labour Proclamation has adopted the third position because it prohibits, in principle, paying money in lieu of annual leave.<sup>53</sup> This is justified in light of the rationales behind the recognition of annual leave. However, it provides for circumstances under which annual leave may be converted to money. First, if there is a worker whose contract of employment is terminated her unused annual leave will be converted to money.<sup>54</sup> This is justified because granting and using annual leave under such circumstance is simply not possible. However, it must be borne in mind that the annual leave that can be converted to money under such circumstance is the one that has not expired. Hence, if a worker has, for example, annual leave that is postponed for five years, she will get payment only for the annual leave that is postponed for the last two years as the annual leave for the other years will expire.

The second circumstance under which conversion of annual leave to money is possible is when a worker who is on annual leave is recalled. In this

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<sup>51</sup>For example, in the case of a civil servant, although payment of money in lieu of annual leave is prohibited, a worker whose annual leave is postponed due to compelling reasons for two years can claim, if she wishes, payment for the first year of accumulated annual leave and the concerned government institution is obliged to pay her in lieu of such leave. See articles 36(3) and 39(2), the Federal Civil Servants Proclamation, Proclamation No. 515/2007. Thus, she will use annual leave for two years, one postponed and the other not, while she will get payment for the first postponed annual leave.

<sup>52</sup>Ng Sek Hong, *supra* note 1, p. 123-125.

<sup>53</sup>See article 76(2), Labour Proclamation, Proclamation No.377/2003.

<sup>54</sup>*Id.*, article 77(5).

case, the Labour Proclamation permits an employer to effect payment to his employee an amount that covers the remainder of her annual leave, excluding the time lost for the trip.<sup>55</sup> For example, if a worker is recalled while she is yet to use 10 working days and she spends two working days on her way back to work place, the Proclamation allows her to be paid for ten working days by disregarding the time she spends on her way back to her job because a worker on journey is not a worker on leave.

### **3. Consequences of not Observing the Stipulations of the Labour Proclamation**

Granting paid annual leave is required by the law. Thus, failure to do so will entail sanctions. For instance, in some countries, failure on the part of the employer to grant paid annual leave to worker constitutes an offence punishable by criminal sanctions.<sup>56</sup> In Ethiopia, too, failure by the employer to grant annual leave is regarded as a criminal offence. In this respect, article 184(1) (b) of the Labour Proclamation stipulates that any employer who contravenes its provisions on leaves commits an offence punishable under the law. Thus, if more serious penalty is not recognized in the Criminal Code, the employer will be required to pay fine not exceeding 500 birr. Of course, the amount of the stipulated fine is very small. But the issue here is not about the money but the reputation of the employer that will be affected by negative publicity. It is, however, important to note that article 187 of the Proclamation prohibits instituting a criminal proceeding of any kind under the Proclamation where one year has elapsed from the date on which the offence was committed.

Therefore, as the previous discussions have shown, granting annual leave to a worker is necessary and the trend is that every worker is entitled to such leave. Moreover, granting annual leave benefits not only the worker and the employer but also the society at large. As a result, employers must grant annual and employees must use them in accordance with the law and leave

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<sup>55</sup> Id., article 80(2).

<sup>56</sup> See, for example, *supra* note 1, p. 126.

schedules. Hence, annual leave should not in principle be postponed, divided into various parts, interrupted, or converted to money. We have also succinctly seen that failure to observe regulations on annual leave entails criminal sanction.

With this in mind, we will now see what the practice is like by considering how issues relating to annual leave, as discussed in this article, are dealt with at the *Teklehaimanot Plant* of MOHA Soft Drinks S.C. as a case in point. It should be noted, at the beginning, that the information included in this article in relation to the practice of granting and using annual leave by the workers of the *Teklehaimanot Plant* of MOHA Soft Drinks Industry S.C. (*the Plant* hereinafter) was obtained from Ato Endalkachew Tibabu, Personnel Supervisor at the Plant, on 8 and 9 February 2012, one senior employee at the Plant, who demanded anonymity, on 5 December 2012, and the 2011 collective agreement of the Plant and its workers. Hence, all analyses made in the following section are based mainly on the information obtained from these sources.

#### **4. Practice at the Teklehaimanot Plant of MOHA Soft Drinks S.C.**

##### **4.1. Introduction**

MOHA soft drinks Industry S.C was established on May 15, 1996 by acquiring *Nifas Silk Plant*, *Teklehaimanot Plant*, *Gondar Plant*, and *Dessie Plant* from the Ethiopian Privatization Agency. Currently, the Company has seven operating units including *Summit Plant*, *Bure Plant*, and the *Hawassa Plant*.<sup>57</sup> The *Teklehaimanot Plant*, one of the operating units MOHA soft drinks Industry S.C., has many hundreds of workers. For example, at the moment, the Plant has 702 permanent and contract workers. This figure does not include non-payroll workers or workers who are paid on the basis of piece of work they perform or *piece-rate workers*, as they are called. These employees are covered by the Labour Proclamation except the managerial employees who are excluded from the purview of the Labour Proclamation by

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<sup>57</sup>See *Moha Soft Drinks Industry S.C.*, available at [http://www.midroc-ethiopia.com.et/md\\_09moha.html](http://www.midroc-ethiopia.com.et/md_09moha.html), accessed on 5 December 2012.

virtue of article 2(1) of the Labour (Amendment) Proclamation, Proclamation No. 494/2006. In addition, the Plant has a collective agreement with its workers.<sup>58</sup> Thus, the relationship between the Plant and its workers is governed by these two laws: the Labour Proclamation and its collective agreement. Whenever there is a difference between the two regimes on a particular matter, the one that is more favourable to the worker will prevail.<sup>59</sup>

However, on the issue of annual leave, there is not much difference between the two regimes. Hence, we can proceed and examine how the workers at the Plant are given and using their annual leaves. Before we proceed to the discussions, readers must bear in mind that the information included in this article in relation to the practice of granting and using annual leave by the workers of the *Teklehaimanot Plant* of MOHA Soft Drinks Industry S.C. was obtained from two employees, one a personnel supervisor and the other a senior employee, at the Plant.<sup>60</sup>

## 4.2. Leave Schedule

To begin with, the *Teklehaimanot Plant* of MOHA Soft Drinks Industry S.C. has a leave schedule in accordance with which its workers can take and use their annual leave. The schedule is prepared by consulting every worker as to when she wants to use her annual leave and by also taking into account the needs of the Plant. Then, the personnel department arranges for the use of the leave by every worker as annual leave could not be granted to all workers at the same time because all the units of the Plant must continue operating. The problem however is that workers do not usually use their annual leave in accordance with the leave schedule/program.

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<sup>58</sup> The current collective agreement was concluded in 2011 by replacing the one concluded in 2007. See the Collective agreement of the *Teklehaimanot Plant* of MOHA Soft Drinks Industry S.C. and its Workers, April 2011, Addis Ababa.

<sup>59</sup> Article 134(2) of the Labour Proclamation provides “where the collective agreement is more favorable to the workers in similar matters than those provided for by law, the collective agreement shall prevail. However, where the law is more favourable to the workers than the collective agreement the law shall be applicable.”

<sup>60</sup> The personnel supervisor is Ato Endalkachew Tibabu. The information was obtained on 8 and 9 February 2012. The other employee demanded anonymity but the information was obtained on 5 December 2012.



### 4.3. Extent of Annual Leave

According to the collective agreement of the Plant and its workers, any worker is entitled to a leave of 14 working days for the first year of service and one additional working day for additional year of service. A worker who has less than one year of service is entitled to annual leave on *pro rata* basis. These stipulations of the collective agreement are consistent with the stipulations of the Labour Proclamation. However, unlike the Proclamation, the collective agreement grants workers the right to request and get payments in advance for the leave period.<sup>61</sup>

### 4.4. Granting of Annual Leave

According to the collective agreement of the Plant, workers are expected to use their annual leave according to their leave schedule. In this regard, while the Plant is expected to make workers take and use their annual leave according to the schedule, workers are obliged to use their annual leave based on their leave schedule. What this means is that a worker who is entitled to get her annual leave can inform the concerned unit within the Plant and use it. If, however, the worker fails to make such request, the Plant will compel the concerned worker to take and use her leave according to the leave schedule already prepared. Of course, the collective agreement allows changing the leave schedule already prepared by the consent of the Plant and the concerned worker. But, such change cannot be made for more than two times.<sup>62</sup>

However, as stated before, there is a tendency on the side of the workers not to take and use their annual leave in accordance with their annual leave schedule. Moreover, although, according to the collective agreement, the Plant is expected to push workers to use their annual leave in line with their leave programs, the practice at the Plant shows that only workers with accumulated annual leave such as workers with over one hundred working days annual leave are required to take and use their annual leave.<sup>63</sup> Of course, there are

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<sup>61</sup>See article 26 of the Collective agreement of the Teklehaimanot Plant of MOHA Soft Drinks Industry S.C. and its Workers, April 2011, Addis Ababa.

<sup>62</sup> See Id., article 26.2.7.

<sup>63</sup> We will see later on if a worker can legitimately have this much annual leave.

other instances where the Plant compels workers to use their annual leave. For example, when maintenance activities are carried out, the workers in the unit being maintained are required to use their annual leave. In any case, the Plant does not urge the workers it wants to stay at their posts to take and use their annual leaves according to their leave schedules. Hence, although the Proclamation does not oblige employers to compel their workers to use their annual leave, the collective agreement of the Plant, under article 27.2.7, does so. Nevertheless, the Plant does not usually discharge this duty by urging all its workers to take and use their annual leave. It is selective in its approach to compel workers to take and use their annual leave.

#### **4.5. Postponement of Annual Leave**

The collective agreement of the Plant and its workers does not deal with the issue of postponing annual leave. Hence, according to Art 79 of the Proclamation, a worker can request the postponement of his annual leave and, if the employer agrees, her leave can be postponed for two years. Similarly, an employer can, for reasons dictated by the work conditions of his undertaking, postpone the date of leave of a worker by not more than two years.

The practice at the Plant also shows that workers can postpone their annual leave. Moreover, the Plant can also postpone the leave of its worker. While this may be in line with the stipulations of the Proclamation, what is surprising is the fact that, in practice, there is no limit to workers' right to postpone their annual leaves. This means, workers at the Plant can postpone their annual leave for indefinite period. Consequently, it is said that, in practice, there is no worker whose annual leave has expired. For example, there are workers with annual leave of over two hundred working days.

Under normal course of things, a worker cannot have two hundred working days of unexpired annual leave let alone over two hundred working days. For example, a worker who has 80 years of service can get 93 working days annual leave. In her 81<sup>st</sup> year of service, she will have 94 working days of annual leave. If these two leaves are postponed, the sum will be 187 working days. But, it is obvious that a person cannot have 80 or more years of service at any undertaking. Therefore, the only logical conclusion is that the

Plant is allowing its workers to postpone their annual leave for indefinite period and that is how one can have unexpired annual leave of over two hundred working days. On the other hand, allowing a worker to have her annual leave postponed for more than two years is against the provisions of the Labour Proclamation. Besides, it defeats the very purpose for which annual leave is recognized.

#### **4.6. Division of Annual Leave**

As stated above, a worker who does not want to use her annual leave at once may request her employer to allow her to divide it into two parts. Division of annual leave into more than two parts is, however, prohibited by the law although the collective agreement of the Plant is silent on the matter. Coming to the practice at the Plant, a worker is allowed to divide her annual leave into as many parts as she wishes. In this regard, the smallest annual leave a worker can take is half a day. So, it is the worker who is deciding how to use her annual leave and the Plant seems to accept such decision. On the other hand, such practice of taking and granting annual leave is contrary to the provision of the Labour Proclamation and the rationale behind annual leave as the element of continuity is lacking during its enjoyment.

#### **4.7. Interruption of Annual Leave**

As already stated, the rule is that a worker must be left alone to use her annual leave uninterrupted. However, at times circumstances may justify interrupting the annual leave of a worker. This could happen when a worker who is on annual leave falls sick or when she is recalled from her annual leave because of the occurrence of unforeseen circumstances which require her presence at her post. According to the collective agreement of the Plant, these two grounds have been recognized as grounds justifying the interruption of annual leave.

The practice at the Plant also shows that a worker who becomes sick while using her annual leave will be on sick leave until such leave expires. However, in relation to recall, the practice at the Plant seems at variance with the stand of the law and the collective agreement. That is, a worker on annual

leave could be recalled even if the circumstance necessitating the recall is foreseeable and the presence of the worker on annual leave is not necessarily important because the post could be covered by another employee. Then, the worker whose annual leave is interrupted will have her remaining annual leave converted to money unless she wishes to use the remaining leave another time.

#### **4.8. Conversion of Annual Leave to Money**

As we have seen before, a worker whose contract of employment is terminated or who is recalled from her annual leave can have her unused annual leave converted to money. In this regard, the collective agreement of the Plant recognizes only the conversion to money of annual leave of a worker who is recalled. Of course, since the law allows converting an unused annual leave when a contract of employment is terminated, the failure of the collective agreement to recognize it has no significance at all. Moreover, the practice at the Plant also reveals that workers who are recalled from annual leave and those whose contracts of employment are terminated before they use their annual leave are having their unused annual leaves converted to money.

What is very interesting and not contemplated in the Labour Proclamation is the fact that a worker whose contract of employment is terminated is allowed to have all of her unused annual leave from the date of her employment converted to money. This is so because, at the Plant, annual leave never expires. For example, if a worker who has ten years of service at the Plant terminates her contract and she did not use any part of her annual leave, she will be given money for all the leave not used for the ten years of service, which will be 185 working days. So, none of her accumulated annual leave will expire. Nonetheless, such practice at the Plant is in stark contradiction with the objective of the law, which is encouraging workers to take rest from their work. Moreover, it is not a rationale risk for employees to assume because the employer can at any time invoke the law and deny them the right to claim and use the annual leave postponed for more than two years or convert it to money upon termination of a contract of employment.

## 5. Conclusion and Recommendations

As this succinct article has attempted to elaborate, annual leave is one of the benefits workers are entitled to. Hence, it is a routine exercise for labour laws to recognize them. However, these laws may differ in relation to issues such as the duration, division, postponement, conversion to money and expiry of annual leave. In Ethiopia, the minimum period of annual leave is 14 working days and then one additional working day for additional year of service. Moreover, a worker can enjoy her annual leave in two parts or postpone it for two years if she so wishes. Annual leave not used within the time frame the Proclamation stipulates will expire.

Further, the Proclamation permits the conversion of annual leave to money under exceptional circumstances, that is, when a worker is recalled from her leave or if employment relationship is terminated before annual leave is used and the leave is unexpired. However, the practice at the *Teklehaimanot Plant* of MOHA Soft Drinks Industry S.C. reveals that the provisions of the Labour Proclamation may not always be implemented as they ought to be. For example, the Plant prepares programs or schedules at the beginning of every year so that its employees can take and use their annual leaves according to such program or schedule. The program is prepared by taking the desires of the workers and the needs of the Plant into account. Moreover, the Plant grants a minimum of 14 working days annual leave to a worker with the first year of service at the Plant and then one additional working day for additional year of service.

As far as the use of the leave is concerned, the Plant allows, under normal course of things, a worker to use her annual leave if she makes a request to that effect. Therefore, to this extent, the practice at the Plant in relation to annual leave is consistent with the stipulations of the Labour Proclamation. However, there are areas where the practice at the Plant departs considerably from the stipulations of the Proclamation. First, although the Proclamation allows the use of annual leave in two parts, the practice at the Plant shows that annual leave can be fragmented into as many parts as possible depending on the desires of the worker. Second, contrary to the stipulation in the Labour Proclamation, the Plant in practice allows its workers to postpone their annual

leave for indefinite periods. Third, although the Proclamation allows the conversion of an unused annual leave, its intention is allowing workers to have such leave converted to money only if it has not expired. Nonetheless, at the Plant workers can have their annual leave converted to money without any limit, although this takes place only upon termination of their employment contract.

Finally, contrary to the stipulations of the Proclamation and the collective agreement, the Plant recalls workers on annual leave even if the circumstances used to interrupt annual leave are foreseeable and the presence of the worker to be recalled is not indispensable.

It is, therefore, recommended that while the practices consistent with the stipulations and the spirit of the Labour Proclamation should continue, practices which are at odds with the Proclamation must be abandoned. Moreover, other undertakings that are in the same path with the Plant must make the same rectification so that the very purpose for which annual leave is recognized is served.

As far the Proclamation is concerned, among other things, its rigid prohibition of the division of annual leave into more than two parts must be changed. It suffices if the Proclamation requires a worker to use part of her annual leave continuously and then allow the use of the remainder as the worker wishes and with the consent of her employer. After all, practice shows that workers are actually using their annual leaves by dividing them into many parts. This may have some practical benefits. For example, a worker who wants to pay a visit to her family may want to get leave. However, she cannot be given leave for such purpose according the Labour Proclamation because such factor is not recognized as entitling workers to leave of any type.<sup>64</sup> Hence, the worker has to pay a visit to her family when she uses her annual leave even if she wants to do that at some other time. However, if

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<sup>64</sup>Of course, article 81(2) states that a worker shall be entitled to leave without pay for up to 5 consecutive days in the case of *exceptional and serious events*. Here, the expression *exceptional and serious events* seems to show that a worker is entitled to unpaid leave for five consecutive days if she encounters some problems, whereas the need to pay visit to one's family does not seem to qualify as a problem or as an exceptional and serious event.

fragmentation of part of one's annual leave is allowed, a worker can use it under such circumstances.

Of course, a question as to whether the rationale behind recognizing annual leave could be served if fragmentation of part of annual leave is allowed may be raised. Nonetheless, I would argue that the rationale could remain unaffected by such permission. First, if a worker is required to use part of her annual leave without interruption, the required physical and psychological rest could be obtained. Of course, the length of part of annual leave to be used uninterruptedly could be determined by taking the *raison d'être* of annual leave into account. Second, there is no reason to fear that once the division of part of annual leave is allowed, everybody will prefer to divide it into many parts. Some workers may wish to use their annual leave at once or in two parts as the Proclamation allows. Therefore, the purpose of annual leave could still be served if the fragmentation of only part of it is allowed.