

Research Article

The Impact Of Probation Condition On Employment Contract In The Jordanian Law

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Abstract

This study examines the organizing all provisions of probation condition, and aimed to identify the natural law of probation condition, distinguish employment contract under probation from other contracts, identify the rights of employee and employer and obligations to the parties of employment contract under probation, and identify the impact of probation condition in exempt the employer from notice.

Keywords: Employment Contract, Probation Condition, Notice.

Introduction

The employment contract has particular importance among the contracts, in view of economic and social implications to all members of society, as the employment contract going through three stages: conclusion, execution and termination. The legislator aimed form organizing the provisions of this kind to accomplish a kind of balance between the parties of the employment contract, where he set a kind of protection to the employee, as he is the weaker party in this contract, in addition to find a kind of protection to the employer.

The probation period is a preparatory stage as a protection for the employer in order to verify the worker's efficiency and his ability to conduct the required work from him in the employment contract. The Jordanian legislator has regulated the provisions of the employment contract under probation condition in the articles (26, 27, 28) of Jordan Labour Code No. (8) of 1996, so, we will divide this study in two topics; the first one is about the nature of probation employment contract, and the second one is about the rights and obligations of both the employee and the employer under the probation employment contract.

First topic

Nature of probation employment contract

The labor law regulates the relationship between employee and employers by creating a kind of balance in the contractual relationship between the two parties of the contract, they are employee and employer, so, this law has direct impact on the social and economic life of individuals, as the employer considers the employee

There for the labor law gives the employer the right to subject the employee to probation period, in order to verify the employee's efficiency to conduct the required obligations set forth in the employment contract. Accordingly, this topic will be divided in two subjects; the first one is about the legal status of the employee under probation, the second one is about the legal provisions for the probationary period.

First subject

The legal status of the employee under probation

The basis of the relationship between employer and employee is through the identification of rights and responsibilities each towards the other, this relationship is different when the employee is under probation from employee's status after probation, let's clarify this through:

First Section: Definition of probation employment contract.

Before going to define the probation employment contract, it must start to defined the individual employment contract; it is a written or oral agreement explicitly or implicitly concluded between the employer and employee for fixed-term of unspecified term to accomplish a specific work, whereby the employee is committed to perform a work for employer under his management and supervision, and the employer is committed to pay the agreed wage to the employee⁽¹⁾.

Likewise, the Jordanian legislator defined the employment contract in Article (2) of the Labor Code as: "*An explicit or implicit verbal or written agreement whereby the employee undertakes to work for the employer and under his supervision or management in return for a wage and the employment contract is for a specific or unspecified period or for a specific or unspecified job*" Accordingly, the employment contract is a consensual contract which do not need a specific form to be held, but the Jordanian legislator requires that the employment contract be in writing, as it was mentioned in Article 15 of the same Code : "*The employment contract is organized in the Arabic language, at least two copies. Each of the two parties shall keep a copy, and the employee may prove his rights by all legal methods of proof if the contract is not concluded in writing*". we note here that writing is a condition for proof, but not a condition for the employment contract to be concluded, and if an agreement is reached between the two parties to the contract, then the employment contract is valid and its effects are arranged as soon as the contract is concluded and it is final, but sometimes the work contract contains a specific condition that makes this contract dependent on a condition, and this condition is considered a restriction on the freedom of consent, such as the existence of a condition in the work contract that the employee should be subjected to a probationary period before hire him as permanent employee.

The Jordanian legislator, under the Article (35) of Jordan Labour Code, gave the employer the option to set a condition of probationary period for the employee in order to confirm the employee's efficiency and his ability to perform the required work properly. Accordingly, we notice that the probationary period is not mandated by the law, but it is a choice for the employer who may set such a condition, at the same time the legislator gives employee the option to accept or reject such a condition.

If the probationary period has expired, and no consent from one of the parties, the employment contract shall be terminated, but if the probationary period has expired by consent of both parties, the contract shall be completed and productive of

(1) Abdulwahed Karam, Labour Code, Dar Althaqafah, Amman, P73.

its effects from the date of concluding the contract not from the date of end the probation period⁽¹⁾.

The probation period is set a specific period of time, and the employer may not increase this period. In the Jordanian Labor Code, set a period not exceeding three months⁽²⁾. There is another rule set by the legislator that an employer may not re-appoint an employee under probation more than once⁽³⁾, this case in which the employer is intended to be employed in the same work, but if the same employee will be used in another work in the same place at a job different from the previous work, then the prohibition clause is not fulfilled here, accordingly, the employee in this case may be subjected to a new probation period, and this is in the interest of the worker to be available a second chance to get a job with the employer⁽⁴⁾.

We point out here that the probation period is not mandatory, but it is a right for the employer, if he desires to use this right, he has that, and if he does not use this right, then the contract is valid and completed from the moment of its conclusion, in this regard the court of cassation ruled that: As the court of this interpretation indicated, where it ruled that: "Under the article (35) of the Labor Code that the probationary period is not mandatory by virtue of the law. Rather, it is considered optional for the right of the employer and allows him to agree with the employee that the probationary period is restricted for a specific period not exceeding three months, and the employer may, during this period, terminate the employment contract without notice, warning, or reward⁽⁵⁾.

Second Section: Distinguish the probation employment contract from other contracts.

The probation employment contract differs from other contracts, including:

First: Distinguish between a probation employment contract and a professional examination contract.

The professional examination contract is made before signing the employment contract, while the probation condition takes place after signing the employment contract, and the two contracts also differ in terms of wages, as the professional examination contract is often without wage, while the probation employment contract is paid, and the two contracts also differ in terms of the professional examination contract is for a short period of minutes or hours, while the probation employment contract may extend for a longer period to three months⁽⁶⁾.

There is no doubt that the first examination period does not raise significant problems in terms of employee's rights in the Labor Code or in the social security law, for not being bound to any contract during this period on the one hand, on the other hand, if the employer is the only ruling in relation to assessing the results of the professional examination, then the judiciary no longer takes that completely with regard to the probationary period in the employment contract⁽⁷⁾.

(1) Abdul Wahid Karam, Labor Law, House of Culture, Amman, 1998, p. 73

(2) See Article () of the Jordanian Labor Code.

(3) See Article () of the Jordanian Labor Code.

(4) Abdul Wahid Karam, previous reference, p. 74.

(5) Court of Cassation Decision No. (4482/2005) Adalah Publications, and see in the same direction, Court of Cassation Decision No No. (1882/2005, 250/2002).

(6) Abdul Rahman and Mattar, Labor Law, previous reference, p. 122

(7) Zahran, Hammam Muhammad, Labor Law, previous reference, p. 162

Also, an employee's passing the professional exam does not prevent the employee from subjecting the probation condition. Rather, it is usual to take a professional exam before hiring the employee to work on the condition of probation⁽¹⁾.

Second: Distinguish between a probation employment contract and a vocational training contract.

The probationary employment contract differs from the vocational training contract in terms of the objective and location in each of them: the aim of the probationary period is to verify the extent of the employee's suitability to work from the employer's point of view, or to verify the suitability of the work conditions for the employee, therefore the probationary period is given in a normal work contract, however, it is permissible under the condition of probation for the two parties or one of them to terminate the contract if he is not satisfied with the result of the probation⁽²⁾.

As for the purpose of vocational training, it is basically to teach the employee a specific profession or craft, so the employee is ignorant or not proficient in a professional manner, while the employer is fluent in this art or that profession and they agree that the second teach the first or learn him the principles of this profession or that the art⁽³⁾.

Second Subject

Legal provisions for the probationary period

The probation employment contract is a contract suspended on a condition that allows the parties of the contract after the end of the probation period to decide the fate of their contract, whether they wish to continue if the specifications of the person placed under probation is according to the required of the other party, and if it is not according to the required specifications, then this contract will be terminated and not continued. To clarify the matter, it is necessary to differentiate between the probation condition if the contract is in a fixed term and the probation condition in the contract for an unspecified term, as each of them is subject to different provisions as follows:

First section: Probation condition if the employment contract is for a fixed term

A contract is considered a fixed-term if a specific date is specified for it to end, and the aforementioned date may be explicitly specified, or at the end of a certain period, which was agreed upon to expire after Nine months from the date of its conclusion, or at the end of a specific season that can be determined accurately, such as the season of tourism or the season of reaping fruits, for example⁽⁴⁾.

(1) Zahran, Hammam, Individual Work Contract, Law No. 137 of (1981), and the New Draft Law, Jurisprudence and Judiciary, University Press, Alexandria, 1998, p. 163

(2) Shanab, Muhammad Labib, Explanation of Labor Code, Dar Al-Nahda Al-Arabiya, Cairo, 1966, p. 87

(3) Kira, Hassan, Principles of Labor Law, Employment Contract, Third Edition, Knowledge Establishment in Alexandria, 1979, pg.

(4) Dr. Mansour Ibrahim Al-Atoum, Explanation of Jordanian Labor Law No. (8) of (1996) Third Edition, 1999, without a publishing house, p. 88

and if the employee receives his wages on the basis of the piece, then the contract terminates with the end of the agreed work and not with the end of the piece⁽¹⁾.

As for the probation condition in this type of contracts (fixed-term contracts), the jurisprudential opinions differed about the condition of probation in fixed-term contracts, as some commented that the condition of probation is in contracts that are not fixed-term and not in fixed-term contracts on the basis that the fixed contract does not need a condition of probation, and the condition of probation is limited to the contract with not fixed-term⁽²⁾. As for those who commented that the condition of probation is permissible in fixed-term contracts, that is provided that an explicit agreement is made on this in the employment contract, so that agreement on the probation condition is in writing in order to prove the right of the parties, to prove the condition of probation to avoid the dispute later⁽³⁾.

If the employee leaves the work in the fixed-term contract for a legitimate reason, such as the case when the employer assigns the employee to a work that differs significantly from the work he was originally assigned to, then he does not entail any authorization to the employer⁽⁴⁾.

Unless necessary, or a force majeure in the other cases stipulated by the law, provided that this is within his capacity and within the limits of the circumstance that required this work⁽⁵⁾.

If the employer has arbitrarily dismissed the employee in the fixed-term contract that contains the probation condition, then the employee in this case is entitled to all his wages right for the remaining period of the contract. The Court of Cassation's decision, "If the work contract is for a fixed-term and the employer terminates it before the end of its term, then the employee shall have the right to fulfill all the rights and benefits stipulated in the employment contract in addition to remaining wages of the contract pursuant to Article 26 of the Jordanian Labor Code⁽⁶⁾.

Second Section: Provisions of probationary condition if the contract is unspecified period.

The contract is for an unspecified period when it is not attached to a specific period of time, and the contract is for an Indefinite period in the following cases:

First: If the contract does not include a clause specifying its duration.

Second: If the will of the contracting parties is not tended to specify implicitly, such as if the contract is concluded for the implementation of a specific work, or for a specific season.

Third: If the contract is for a fixed term - originally - but includes a condition that enables each of the contracting parties to terminate it as soon as notifying the other party, at any time, before the expiry of its original term.

(1) See the text of Article (15) of the Labor Code.

(2) Mansour Ibrahim Al-Atoum, previous reference, p. 76

(3) Hisham Refaat Hashem, Explanation of Jordanian Labor Law, 1st Edition, Al Muhtaseb Library, Amman, p.68

(4) See the text of Article (17) of the Jordanian Labor Law

(5) Abdel Sabour Fathy, The Mediator in Labor Law, Part 1, First Edition, 1985, p. 41

(6) Discrimination Rights No. (1956/99), the fifth and sixth editions of (2000), p. 1759, Adalah Center Publications.

Fourth: If the contracting parties continue to implement the specified contract after its term expires⁽¹⁾.

To figure out the provisions related to the probation condition in an indefinite employment contract, it is necessary to refer to the text of Article (35) of the Jordanian Labor Code.

- a) The employer has the right to employ any employee under probation, in order to verify his competence and potential to do the required work, provided that the probation period in any case does not exceed three months and that the wage of the employee under probation is not less than the minimum wage.
- b) The employer has the right to terminate the employment of a worker under probation without notice or remuneration during the probation period.
- c) If the employee continues his work after the end of the probation period, the contract is considered an employment contract for an unspecified period, and the probationary period is calculated as part of the employee's service period with the employer.

It can be observed from this article that the employer has the right to terminate an unspecified employment contract at any time during the first three months of its use without notice or reward, and this right is associated to the employee's competence and potential, and the employer's right to terminate the employment of the employee under probation without notice or reward is limited to unspecified term contracts, and if the employee continues to work after the probation period, the contract is considered an employment contract for an unspecified period, and the probationary period is calculated as part of the service period⁽²⁾.

It was stated in the decision of the court of cassation "*the employer according to Article (35 / A) may employ the employee under probation for a limited period not exceeding three months, to verify his competence, and the probationary period is not considered mandatory by the law, but rather it's an optional for the employer during which he may terminate the employment contract without notice or reward, and if the employer does not use this option, he may not claim that the employee is incompetent and dismiss him for that. But if he does so during the employment contract with the condition of probation; the employee may claim all his rights stipulated in the law since the beginning of his work, and is not said that the employee is under probation by law*"⁽³⁾.

Second Topic

Rights and obligations of Employee and the employer under the probationary employment contract

The probation employment contract entails obligations on the parties to the employment contract, whether the employee or the employer, accordingly we will clarify this in two subjects, the first one regarding the rights and obligations of the employee during the probation period, and the employer. The second subject: Exemption from notification in case service is terminated during the probationary period.

(1) See Article (809) of the Jordanian Civil Law, and Article (15) of the Jordanian Labor Law

(2) Al-Atoum, Mansour, previous reference, pp. 148--149

(3) Court of Cassation Decision No. (142/99), Jordanian Bar Association Magazine, Issues Three and Four, for the year (2000), p. 916

First subject

The rights and obligations of the employee and the employer during the probationary period

The legislator has set rights and obligations that protect the interests of the parties to the probation employment contract, which we explain as follows:

First section: Employee's Obligations

First: The primary obligation that the employee has at this stage of the employment contract is to perform the work agreed upon in the employment contract, but in the event that the type of work is not specified in the contract and it has not been specified, the judge before whom the dispute is presented can determine the work according to the requirements of custom⁽¹⁾, as the Article (815) of the Jordanian Civil Code stipulates that: *"The employee is bound by all that has been established as a consequence of work, even if it is not stipulated in the contract."* Therefore, we can say that custom determines the work itself if it is not specified in the contract in advance.

Therefore, it is necessary to perform the agreed work and not allow the employer to force the employee to perform the work of another employee unless he accepts that. This is according to what Article (17) of the Labor Code stipulates that: *"The employee is not obligated to perform a work that differs significantly from the nature of the agreed work in the employment contract, unless necessary to prevent the occurrence of an accident or the repair that resulted from it, or in the case of force majeure and in other cases stipulated by law, provided that this is within the limits of his capacity and within the limits of the conditions that required the work"*

Second: The Jordanian legislator obligated the employee to take into account his behavior the requirements of decency and morals, so he is not permitted to perform unlawful acts or actions, and this is what Article (814/2) stipulated and also what was mentioned in Paragraph (3) of it to follow the employer's orders, regarding the implementation of the agreed work in everything that does not endanger him and does not violate the law and morals

"If the employment contracted for is a violation of public order and morals, then the contract is absolutely null and void⁽²⁾. For example, if the employer agreed with the employee to kill someone in exchange for giving him a reward for that, then the subject matter of the contract is considered unlawful, which is to commit a crime and this is contrary to the public order, therefore, the contract is void, and the judge is the one who assesses the legitimacy of the interest and the extent to which it violates the public order and public morals or not. "⁽³⁾.

Third: The employee shall be obliged to preserving the work equipment so that he performs the work in the agreed manner in accordance with the principle of good faith, and to preserve all the tools under his hand⁽⁴⁾.

Fourth: Not to disclose the employer's secrets, whether industrial or commercial secrets, and not to disclose them in any way, even after the expiry of the employment contract according to the requirements of custom and custom⁽⁵⁾.

Fifth: Not to compete with the employer

(1) Al-Atoum, Mansour, previous reference, p.95

(2) Manal Al-Rashidi, previous reference, p.20

(3) Al-Atoum, Mansour Ibrahim, previous reference, p. 100

(4) See the text of Article (19) of the Jordanian Labor Law

(5) See the text of Article (814) of the Jordanian Civil Law.

The employee is obligated to perform the required work according to what has been agreed upon in the contract at the place and time specified in the employment contract concluded with the employer or by the law, while he performs it under the supervision and direction of the employer. In his spare time, he has complete freedom to take any work or do work for another employer, but nevertheless, he is not permitted, according to what is required by good faith, to compete with the employer in the profession he is practicing, whether his work is outside the original work according to the employment contract that was in his own favor, or for the benefit of someone else⁽¹⁾.

Second section: Employer's Obligations in the probation employment contract.

Since the legal status of the employee during the probation period is the same as the legal status of the employee within the meaning of Article (2) of the Labor Code, the employer must adhere to the following:

First: Pay the wage

Considering the wage as one of the employer's rights under probation, the text has explicitly stated this right in Paragraph (a) of Article (35) of the Jordanian Labor Code, which states: "*The employer may employ any employee under probation in order to verify his competence and potential to do the required work, provided that the probation period does not exceed in any case three months and that the wage of the employee under probation is not less than the minimum wage specified*"⁽²⁾.

Second: Determine the probationary period.

Article (35/ A) of the Jordanian Labor Code stipulates that: "*The employer may employ any employee under probation in order to verify his competence and potential to do the required work, provided that the probationary period in any case does not exceed three months ...*"

This article is considered a restriction on the employer's freedom to determine the period of probation. It is not permissible, either by his individual will or by agreement with the employee, that the probation period exceed the period specified by law⁽³⁾.

Third: Not to repeat the probationary period

The Jordanian Labor Code has neglected the text of this right, which is considered one of the most important rights of the employee in the employment contract under probation, and it is the most important obligations that lies with the employer. Whereas some Arab laws, such as the Egyptian and Iraqi laws, explicitly stipulate this right, and some refer to the explicit treatment of it eradicate the analysis that the employer may resort to in this matter⁽⁴⁾. Article (31) of the Egyptian Labor Law stipulates that: "*A period probation is specified in the employment contract and it is not permissible to appoint the employee under probation more than once with one employer.*"

(1) Manal Al-Rashidi, previous reference, p. 26

(2) See the text of Article (35) of the Jordanian Labor Law.

(3) Ahmad abdukkareem abu shanab, Explanation of labor law, vol 1, 2010, Amman, Dar althaqafah, p 126.

(4) Aloutom, Mansour Ibrahim, Explanation of Jordanian Labor Code No. (8) of (1996), a comparative study, Amman, 1999.

"However, we are discussing in this regard that this right is established in Jordanian law based on the text contained in Article (22) of the Arab Agreement on Work Levels ratified by the Hashemite Kingdom of Jordan"⁽¹⁾.

Third Section: Employee's rights during the probationary period

First: Legal regulation of working time

"Article (55) of the Labor Code⁽²⁾ requires every employer who employs ten employees or more to develop a rule of procedure for organizing work in his establishment in which he indicates the working hours, that is, the start and end of working hours. As for the employer who employs less than ten workers, is not obligated to develop such a procedure, but that does not mean that he is not obligated to set the working hours of his employees, in accordance to Article (822 / A) of the Civil Code, the employer must prepare everything necessary to enable the employee to fulfill his obligations. Therefore, the employer must indicate the employee's working hours if it was not agreed to in the contract, so that the employee can carry out his obligations to perform the agreed work, and it is equal for this statement to be oral, written, or in the form of rules of procedure, in institutions that employ more than Ten employees, he is obligated to develop the rules of procedure in which the working hours are indicated, as mentioned⁽³⁾.

Second: Rights to leave (vacation)

Considering an employee under probation within the meaning of Article Two of the Labor Code, obliges that he should also be entitled to have vacation. The Labor Code has regulated many of the leaves that an employee is entitled, which are annual leave, sick leave, additional leave, maternity leave, leave for spouses to transfer the work of one of them.

Third: The right to provide means of Occupational Safety and Health and social care.

“The legislator is concerned with the health and safety of the employee from the dangers he may exposed to while performing his work, and his interest in this is due to his desire to preserve the group of employees as one of the two sides of the production process, as well as his keenness to continue performing the role in national production. For this purpose, this commitment was regulated by several rules⁽⁴⁾. These rules were developed within the provisions of Chapter Nine on occupational safety and health, this obligation has been decided upon the employer according to several articles.

(1) This agreement was published on page (465) of the issue (2082) of the Official Gazette issued on 3/20/1968, and the Royal Decree approving it was published on page (456) of the same issue.

(2) See the Jordanian Labor Code No. (8) of (1999).

(3) Mohammed Alhasan, alousit fi shrh kanoun ala'ml, DAR ALNAHDA, vol 1, 2008, p 332.

(4) Muhammad Al-Hassan, previous reference, p. 383

Fourth: The employee's right to compensation for work injuries and occupational diseases

The second article of the Labor Code defines a work injury as an injury to the employee as a result of an accident during or because the performance of work, and it shall be considered in the ruling of that accident what happens while he is going to start his work or return from work.

The Court of Cassation, in order to compensate the worker for a work injury, stipulated the availability of one of the following two cases:

First: That the injury is caused by work, that is, there is a causal connection between the injury and work.

Second: The injury shall occur while doing work⁽¹⁾.

As for occupational diseases, Article Two of the Labor Code defined them as: “*incidence of one of the industrial diseases shown in Table No. 1 or incidence of any of the occupational injuries shown in Table No. 2 attached to this Code.*” The Court of Cassation defined occupational disease as the disease that gradually forms in the employee's body as a result of working in a specific profession⁽²⁾.

Second subject

Exemption from notification in the event of service termination during the probationary period

According to Article 35 of the Labor Law, the legislator has reserves the employer with the right to employ any employee under probation in order to verify his competence and capabilities to do the required work, provided that the probation period does not exceed three months and that the employee's wage during the probation is not less than the prescribed minimum of wages, while noting that “*the employer has the right to terminate the employment of the employee under probation without notice or remuneration during the probation period.*”

And this probation period is not imposed by law, it is a right of the employer, which he may stipulate, and the worker may accept this condition or refuse it, and if the employer is silent about the requirement of experience, the contract is definitive and has no experience. This is what we understand from the wording of the aforementioned article, which began by saying: “*The employer may employ any*

(1) Court of Cassation decision No. (4899/75), p. 150, in 1976, where it was stated that: “It is understood from the text of Article (56) of the Labor Code that the employee is not entitled to the compensation except in the following two cases: The first: that the injury is due to work, that is there is a causal connection between the injury and the work, the second: the injury occurred while performing the work. Where the jurisprudence and the judiciary have settled that the causation required by law regarding work injuries does not have to be directly arising from the work itself, but it is true that it is due to work indirectly as long as it is the connection between the work and the accident exists, whether in terms of the nature of the work, its circumstances, location, or otherwise, so that it can be said that had it not been for the work, the accident would not have been. There is no difference between the physical harm being apparent or hidden, internally or externally, such as neurological disorder and cerebral disorders”.

(2) Court of Cassation decision No. (12/74) published in the Bar Association journal of (1965), p. 618, citing Ramadan, The Mediator in Explaining the Labor Code, previous reference, p. 377.

worker under probation ...”⁽¹⁾. The Court of Cassation adopted this interpretation, ruling that “*Article 35 of the Labor Law makes use of the fact that the probationary period is not mandatory by law. Rather, it is optional for the employer that allows him to agree with the employee is under probation for a certain period not exceeding three months. During this period, the employer may terminate the employment contract without notice or remuneration ...*”⁽²⁾.

If the purpose of the notification, as we have previously explained, is not to surprise the employee with the employer's decision that includes terminating his services, and to give him the opportunity to search for a new job to avoid the unemployment and its consequences, then we may ask about the wisdom of denying the employee his right to notice if he terminates the contract during the probationary period. The basis on which this ruling is based is not clear enough to give a definitive answer to this question. However, the position of the legislator on this issue can be attributed to one or more of four possibilities that we list consecutively and respond to at the same time as follows:

First Section: Assuming the absence of wisdom from notice during the probationary period

Some may think that the notice is only to protect the employee from the sudden dismissal from work, and to allow him to search for a new job, also it is assumed that the employee will not be surprised by the end of the contract if the termination took place during the probation period; It is imperative that the employee has prepared psychologically and practically for this termination as long as the contract in which he entered is not conclusive but is dependent on the success of the probation.

Although this assumption is logically the most correct in explaining the absence of notice in the case of a work contract under probation, it can be said that it is not based on what is supported by reality, but rather that its opposite is correct. so, the employee is often preparing himself and arranges his affairs on the assumption that the probation is successful and the contract is passed and not vice versa. Hence, his dismissal during the probationary period will come as a surprise to him in most cases. Even if it is assumed otherwise, that is, workers under trial are psychologically prepared for the worst possibilities, which is their failure in the probation, then their dismissal from work, and this is an invalid assumption as mentioned above, the performance of the employee during the period of the probation and his vigorous pursuit of its success will not leave him looking for new job during it, which misses a major objective of the notice.

(1) This is in contrast to what was the case under the repealed law, where the probation period was imposed by the text of the law, whether or not it was stipulated in the contract, as Article (16/1 / A) of Law No. (21) of (1960) states that: “*The employer has the right to terminate the contract of employment of any employee who has been employed for an unlimited period at any time during the first three months of his employment (which is considered a period of probation) without notice or remuneration*”.

(2) Court of Cassation decision No. (4482/2005) Adalah Center publications, and see in the same direction Rights judgment cessation No. (1882/2005, 250/2002, 1734/2001, 2667/2001, 1470/2000, and 142/1999) Adalah Center publications.

This, in its entirety, explains for us the concern of the legislator, in other contexts⁽¹⁾, to oblige the employer to give notice even during the probation period. To demonstrate this, we cite three examples, the first of which is: that the staff regulations of faculty members in a number of public Jordanian universities⁽²⁾ have permitted the termination of a faculty member's service during his experience, which should not be less than five years and not more than ten years, to be notified of this at least three months prior to the specified date for termination of his service. Second: The personnel system at Al-Hussein Bin Talal University No. (97) of (2003) in its article (14 / b) made the appointed employee under a probation employment contract and the employee who was classified after two years of his appointment subject to probationary period not exceeding one year from the date of classification, renewable for another year, the order of his confirmation shall be considered two months before the end of the second year of the probation, and in the event that he is not proven in the service, his service shall be considered permanently terminated, provided that he is notified two months before the date of termination of his services. Finally, according to Article (13) of Yarmouk University Research Authority System No. (93) of (2003)⁽³⁾, a member of the research body at the university is appointed under probationary period for no more than five years, during which his service may be terminated, provided that he notified before three months at least from the date specified for termination of service⁽⁴⁾.

Second section: Shortness of probationary period

Some may argue that the shortness of probationary period leaves no room for notice; As the probation period does not exceed three months and the notice takes at least one month. If this month was counted from the probation period, it was on its account, and if it was not calculated from it, then the employer will be obliged to pay the notice allowance to the employee and not to occupy it during the notice period, because it exceeded the period of notice, even in a short period of time, appears to the employer with the appearance of someone who is satisfied with the work, and then deprives him of terminating his service in accordance with Article (35). Probation. And such a matter is not a new proposal at the legal level. Under English law, for example, the courts did not make notice of a single term, but rather linked it to circumstances according to the standard of reasonable notice.

From the Employment Rights Act, 1996 (ERA), the notice period is incremented according to the period that has elapsed from the contract; the notice

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- (1) Noting that many of the examples cited here fall within the framework of a civil service
 - (2) See Article (11) of the faculty system at the University of Jordan No. (106) for the year (2007), Article (15), of the faculty system at the Jordan University of Science and Technology No. (144) for the year (2003).
 - (3) See Article (13 / e) of each of: Bylaw of the Researchers Authority at Al-Balqa Applied University No. (51) of (1998), Bylaw of the Researchers 'Commission at the Hashemite University No. (50) of (1998), bylaw of the Researchers' Commission at Al al-Bayt University No. (49) of (1998), the bylaw of the Researchers Council at the University of Science and Technology No. 48.
 - (4) Nevertheless, it should be noted that a number of regulations pertaining to employees and employee have gone hand in hand with the Labor Law in denying a worker the right to notice if dismissal takes place during the probation period.

period shall be one week if the employee has spent a period of between one month and two years in his work, but if the work period exceeds two years, the notice period is calculated by one week for each year that exceeds two years, with a maximum of twelve weeks⁽¹⁾.

Close to this provision is stipulated in the Lebanese law, where Article (653) of the Obligations Law stipulates that: "*If the employee makes a commitment to work as a worker, servant, or employee in a store, in a shop or in a public place, the first fifteen days are considered as a time of probation period, as each of the parties has the right to terminate the contract if he wishes without paying compensation. Rather, the wage owed to the hired employee must be paid and informed of the termination of his service before two days*"⁽²⁾.

Third Section: Assuming Employee's in the probationary period.

It may be argued that the legislator wanted to deprive the employee of his right to notice or his wages on the grounds that the latter does not deserve any of his rights upon the termination of the contract under probation if the reason for termination is due to his inefficiency; Because the employer is not considered arbitrary in terminating the contract under probation if the termination is due to the employee's incompetence to work⁽³⁾, therefore the worker is not entitled to an arbitrary dismissal allowance. Consequently, it may be said that the employee does not deserve notice in this case; Because the dismissal appears to have taken place against the will of the employer, the basic principle is that the employer wants the employee to succeed in the probation, so that the work matters will be stable for him so that he does not have to incur the trouble of searching for a new employee.

It is replied to this that it is unlikely that the employer was exempt from the notice for this reason. On the one hand, the legislator did not differentiate, and he exempts the employer from notification during the probation period, between the case in which the employer terminates the contract due to the employee's failure in the probation period and the case in which the contract is terminated arbitrarily. In both cases, the legislator considers the same with regard to the unnecessary notice⁽⁴⁾.

(1) Bowers J & S Honeyball, Labour Law, 6th, London: Blackstone Press. 62, 63 (2000); Grant B. Employment Law. 1st ed. London: Thomson Learning 99 et seq. (2002) Bell A. Employment Law, 2nd ed. London: Sweet & Maxwell, 122 (2006).

(2) Hussein Hamdan, Lebanese labor law, 193 (2002).

(3) Abdul Wahid Karam, Labor Law 75 and 76 (1998), Hussein Hamdan, Lebanese Labor Law 201 (2002). However, Article 42 of the repealed Jordanian Labor Law No. 67 of 1971 suggests otherwise. In it, "the employer has the right - without stating the reasons - to terminate the contract during the first three months if it is under probation without notice or reward."

(4) Dr. Hisham Shakhtrah, Towards the Regulation of a Law for Notification by Publishing in the Jordanian Procedural Law in the Legal Journal, Cairo University, Jlaw.journals.ekbleg.

Conclusion, findings and recommendations

At the end of this study, we find that the period of probation and the employment contract is a legitimate right of the employer, as approved by the Jordanian legislator in order to verify the competence of the employee, and a number of recommendations have been reached.

Recommendations:

- 1) Amending the Article (35) of the Labor Code to prohibit the employment of an employee under probation more than once for the same type of work, on equal terms with the comparative legislation.
- 2) Determine the wage of the employee under probation so that it is not less than his peers (permanent contract) until proven otherwise.
- 3) Develop controls on the employer's right to terminate the employee's services during the probationary period, so that they are not an abuse of the right.
- 4) Establishing provisions clarifying the legal status of the probation condition in the fixed-term employment contract.
- 5) Giving the right to the employee to adhere to the probation condition in the employment contract similar to the employer.

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