

Abstract

Individuals who are trainees generally are students or graduates without any experience in that particular industry. In reality, there are two types of apprenticeship. The first is that trainees would not work the same as full-time staff and the other is that trainees would work exactly the same as full-time staff. So it can be seen that apprentice contract and employment contract during a probation period are similar in terms and condition. Therefore, what kind of the contract would be greatly depends on the intention of the parties. In the other words, in the case that the trainee has no intention to work for any pay, but for working experiences. The contract would be apprentice contract. On the other hand, if the trainee has an intention to work for wage. The contract would be employment contract. Although the trainees are not a full-time staffs but sometimes they do need to work as ones. However, the difference is that they need to be taught and controlled closely by someone in order that they could work properly. Some of the employers would think that they waste time and a person to teach the trainees. Furthermore, these trainees may not benefit company in any aspect and may also cause trouble to the company as the lack of experience.

As a result, the employers may decide not to make employment contract in order to avoid any responsibility according to the Labor Law. However, considering the working condition, the trainees should be protected by apprentice law. Nevertheless, some trainees and employers are in a legal relation that is not an employment relation so the enforced Labor law would not be enforced in such cases.

The type of relationship between the trainees and the employers would depend on the agreement between them. There are mainly two cases. The first is that the parties are in employment relation according to section 575 of the civil and commercial code. The other one is that the parties are not in employment relation. This

thesis would examine only the case that the trainees are not in employment relation by analyzing whether the current law would protect those trainees or not. According to the analysis, the main problem is the current law could not be enforced in every apprentice contract. In other words, the apprentice contracts that have been made may be the apprentice contract according to the Skill Development Promotion Act, 2002 the general apprentice contract. The apprentice contract according to the Skill Development Promotion Act, 2002 must follow the indicated definition. That is to say, it must be the particular employer that provides the labor training according to the curriculum, relating to the training which has been approved by a registrar of the act. The parties must have intention to be bound by apprentice contract according to the act. In the case of the general apprentice contracts which are not under the act, the parties may argue that the contracts which have been made would be able to be enforced by each party. If a party does not want to carry out the contract any more, could the other enforce the first party to carry out the contract? The author thinks that the general apprentice contract has the characteristic of an unenforceable debt (Obligation Naturelle) since it has been made by the informal social relation which does not intend to make a legal relation according to section 149 civil and commercial code. Therefore, if there is any breach of contract, the contract would not be able to be enforced or the other party would not be able to call for any damages.

In order to advance the legal framework on apprenticeship in Thailand, the thesis proposes that Thai law should have a specific law on apprenticeship which is protected apprentices and training employers, specify contract document (in writing), obligations of apprentices and training employers, rights of training employers which would reach the goal of apprenticeship.