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ANALYSIS OF ISSUES RELATED SOFTWARE EMPLOYEES CONTRACTS

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ABSTRACT

The details of the employment include elements such as holidays, pays, and working hours. Again, the other factor that is considered in this contract is whether the agreement allows for sharing the information or using it only by one party (Lloyd, 2017). It is crucial to read and adhere to the terms of use when an employee agrees to the terms of the software company. There has been the assumption that contracts have to be written. The case can be different for a software organization. It is true that most of the people have their contracts in writing. There are, however, cases that there are things that are not put in writing. They may not be included in writing since they can be too obvious. For example, there are no cases where the contract can state that an employee should not steal from the employer. The condition is necessary to make the contract work. They may not be included in writing. Customs and practices are also not included in writing

Keywords*: Employment Contract, Software Industry.*

I. INTRODUCTION

A contract between an employee and a software organization mainly defines the relationship between the parties. A contract between the employee and the software company starts as soon as the offer of the employee is accepted by the employer. Starting working for a software company is an indication that an offer of employment is accepted. Again, it proves that an employee has accepted the conditions and terms offered by the software company. When employing the individuals, the software company makes the employees entitled to a written statement of the major terms and conditions.

II. CASE LAW REVIEW

There are several cases that can be used to shows the variation in terms of employment. These case laws can be used to show the liability and the breach of contract when an employee decides to leave work in a software organization (Savelyev, 2017). One of the cases is Autoclenz Ltd v Belcher and others. In the case, the Supreme Court gave guidance on the employment status and some of the factors to consider when they are getting into an employment contract. The case could be used to define the cases when some of the employees may leave as they feel they are self-employed and they do not need the authority of the software organization when they opt out of the contract (Savelyev, 2017). Since the worker may be getting into a contract with the software provider, they are only facilitating the work of the employee, and the contract between them may be considered a sham as per the ruling of the Supreme Court.

The other case that could show the contract between a software organization and an employee is ProCD Inc. v Zeidenberg. The defendant, in the case, bought a CD-ROM database containing a restriction in the license (Lloyd, 2017). The restriction limited the purchase of the product by consumers the terms of the contract when purchasing the CD-ROM was inside the packaging, but the defendant ignored it. He then sold the information on the database. In the case, it could be argued that when the buyer does not return the product after realizing that it contained information that could not be resold, then they have agreed to the terms.

In Bowers v Baystate Technology Inc. Bowers creates a template that he thought could improve CAD software. He then applied for a patent application to the case and was issued the patentee. After commercializing 514 patents, he ordered for the reexamination of the templates. He determined that the template had been used by the technology

selling organization. There was a claim that the patient had been commercialized. It was important to determine whether the reexamination request implied withdrawal of the patent to those that had obtained it.

Register.com Inc. v Verio Inc. determined that Register. Com is likely to prevail on the breach of contract arising from the use of data from Verio Inc. it determines that Register.com violated the principles and the guidelines provided under database terms. The terms of use of the guidelines were determined to create a contract between the two parties.

III. METHODOLOGY

To determine the party liable when an employee leaves the contract that they have entered into with a software company, the case laws above will be analyzed. In the analysis of the case laws, it is crucial to determine whether the employer could be as in the case where they decided on what they do, or they are bound to stick to the provision of the contracts they enter at the start of operations.

IV. RESULT & DISCUSSION

From the analysis of the cases, it was determined that there are cases when the employee and the software organization may come into agreement to change the terms of employment. At some point, the party that may be bound by an employment contract may need to change it. One of the factors that might cause the change is when an employee needs to reorganize the operations due to the economic situations. Another situation is when the employee seeks improvement in their working conditions due to the additional responsibilities. Under these circumstances, an employee may leave the organization.

An existing contract between an employee and a software organization could only be varied when there is an agreement of both parties. Changes in the terms can be from an individual perspective or on collective terms. When there is a change in the terms, an employer also needs to notify the employee in written form within a specific time when the changes take effects.

When determining the liability when an employee leaves an organization after signing a contract, it is important to look at the factors in the agreement that dictates the terms through which there can be a termination. An employee, in this case, can terminate their contract by resigning. The software company may also decide to terminate a contract by dismissing an employee.

An employee needs to make it clear when they are resigning from a role. Communication, in this case, should be formal. When they do that in writing, the employer becomes liable for any situation that occurs. The liability is transferred from the employee to the employer. In the UK law of employment contract, an employee who has been in an organization for more than a month needs to give a one week notice unless there are specifications in terms of the agreement on the period in which the notice of resigning needs to be given (Raskin, 2016). When there is a longer period, the employee needs to give notice. Otherwise, they will be breaching the contract between them and the software organization. In the case that an employee wait to leave without giving notice or want to give it a shorter period, they need to approach the employer to determine whether they would agree. Even though there could be an agreement between the employee and the employee to leave the organization without giving notice, they are not bound by law. It is upon the software employer to determine whether or not they accept the terms.

Dismissing an employer is also a factor guided by law. When the software wants an employee to leave the organization, they need to notify them. One of the factors that they need to consider is the legal employment period before they give the dismissal. An employer may only dismiss an employee when they have given a one week notice for those that have been employed for a period of one month to two years. In the UK, when an individual has been employed for more than two years, a week notice is given every two years. An employee is at a point of dismissing the employee without notice when something has occurred considered to lead top gross conduct. These conducts are series making it impossible for an employee to continue working for the organization.

From the terms and case studies discussed above, when an employee signs an employment contract and leaves, the company may sue the employee for breaching the employment contract as they might have led to damage to the operations of the software organization. When the exit of the employee causes damage to the organization, the company may hold him liable for causing the damage. The company will prevail. The other case is when the software company sue on non-compete, the employee may prevail since he might argue that spoke of the agreements that they reached with the software organization were not considered. The company in the career would have breached the contract terms.

V. CONCLUSION

Software organizations always attempt to license the material embodiment of their software and intellectual property. The embodiments are factors such as the disks that contain the software (Marotta-Wurgler, 2011). They do so for many reasons. One of the reasons is to avoid the impact that they may get from copyright law and also avoid the use of Article 2 on UCC. Most of the theme only give licenses to the employees rather than selling them the intellectual property of the software. The relationship that exists between contract law and federal intellectual property is important in software contracts (Marotta-Wurgler, 2011). The case has been a problem since there is a look at the factor that when companies get into agreements, they broaden the intellectual rights.

In employees of software organizations, it is important to look at the guidelines of the database and guidelines in sharing information. In most cases, the employer will prevail on a breach of contract claiming that the use of data or information from the software providers violated the terms of use (Tonelli, Destefanis, Marchesi & Ortu, 2018). One of the main factor considered when determining the prevalence is whether the parties got to an agreement.

VI. DIRECTION FOR FUTURE RESEARCH

In future research, it is important to determine how the progress in the cases on intellectual property has changed the prevailing parties involving software companies. Again, it is crucial to determine whether the employment between the parties could be looked at in the form of terms of employment in other industries.

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