

MODULE **6**

LABOUR LAW OF GHANA

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**Why should the
HR Professional seek
adequate working
knowledge of the
Labour Laws?**



HIERARCHY OF LAWS:

International Laws and Treaties (ILO Conventions)

Constitution of the Republic of Ghana, 1992

Acts of Parliament (Municipal Laws)

Labour Act, 2003 (Act 651)

Workmen's Compensation Law, 1987 (PNDCL 187)

Factories, Offices and Shops Act 1970 (Act 328)

Alternative Disputes Resolution Act, 2010 (Act 798)

Legal Instruments

Constitutional Instruments (CI)

Legislative Instruments (LI)

NLC Regulation 2006, LI1822

Labour Regulations 2007, LI 1833

HR Policies & Procedures

Conditions of Service or Collective Agreements

Contracts of Employment

Employee Handbooks

Regulations, Standard Operating Procedures (SOPs) and Codes

FRAMEWORK

4 SET OF RULES



CONTRACT OF EMPLOYMENT

COE
Policies

COLLECTIVE AGREEMENTS

Unions

COMMON LAW & CONVENTIONS

Court Decisions,
Precedence

**ACT 651, LI 1822, LI 1833
OTHER ACTS, CONSTITUTION**

Legislation
& Regulations

EMPLOYMENT ADJUDICATION BODIES

- The Labour Court (Specialised High Court)
- The National Labour Commission (S. 135)
- The Commission on Human Rights & Administrative Justice
- The Labour Department
 - Chief Labour Officer (S.83, 99)
 - Chief Labour Inspector (S.122)
- Independent Mediators & Arbitrators (Act 798)
- **Investigative, Committees of Enquiry & Disciplinary committees**
(Articles 19 & 23, 1992 Constitution of Ghana)

1 NLC/COURT SUMMONS

Notification
Litigation Hold
Response period
Retaliation

2 PREPARATION

Consult & Prepare
Evidence
Litigation Training

3 ANSWERING

Pleading Guilty
Not Guilty
Motion to Dismiss

4 PROCESS

Attempted
Settlement
Full Trial

PROCESSES AT NLC

- Complaint is filed
- Capacity, and Time
- Investigation
- NLC checks for jurisdiction & reasonable cause
- NLC sends a summons
- Response is filed
- Facilitation
- Mediation/voluntary arbitration
- Commission hearing & ruling
- Enforcement
- Appeal process

The Traditional Courts

- **Normal court proceedings – adversarial**

BASIC FACTS ABOUT ACT 651 (2003)

The Act 651, 2003 is a key Act that governs labour in Ghana; employer – worker relationship.

- Labour Act 651 was first initiated in 1995
- Date of Assent: October 8, 2003
- **Labour Act 651 is a decriminalized, applied law**

Scope of Application

- It applies to all employers and employees (workers)
- Exceptions: Armed Forces, Police Service, Prison Service, Security & All Intelligence Agencies

“now, the passing of the new Labour Act, 2003 (Act 651) has brought relief and hope to the employee, for now there are statutory duties and rights of the employer and the employee. The right to terminate employment does not depend on the whims of the employer.....

A termination may be unfair if the employer fails to prove that the reason for termination is fair or it was made in accordance with a fair procedure under the Act ”

What is a contract?

In very simple terms a contract is an agreement between two or more persons for the performance of certain obligations failing which there would be liabilities.

“A contract of service is whether express or implied, and if express whether oral or in writing”

CONTRACT OF SERVICE VS. CONTRACT FOR SERVICE

***THIRD PARTY EMPLOYMENT**

RIGHTS OF THE EMPLOYER

- To employ a worker, discipline, transfer, promote and terminate the employment of the worker
- To formulate policies, execute plans and programmes to set targets
- To modify, extend or cease operations
- To determine the type of products to make or sell and the prices of its goods and services

DUTIES OF THE EMPLOYER

- Provide employee with work and appropriate raw materials, machinery, equipment and tools
- To pay employees the agreed remuneration for services at the time and place agreed on in the COE or CA or by law or agreed between the employer & worker
- To take all practical steps to ensure that the worker is free from risk of personal injury or damage to his or her health during and in the course of the worker's employment or while lawfully on the employer's premises
- To develop the human resources by way of training and retraining of the worker

DUTIES OF THE EMPLOYER

- Provide and ensure the operation of an adequate procedure for discipline of the workers
- Furnish the worker with a copy of the worker's contract of employment – ***Employee Handbook***
- Keep open the channels of communication with the workers
- Protect the interests of the workers

DUTIES OF THE WORKER

- Work conscientiously in lawfully chosen occupation
- Report for work regularly and punctually
- Enhance productivity
- Exercise due care in the execution of assigned work
- Obey lawful instructions regarding the organization and execution of his or her work
- Take all reasonable care for the safety and health of fellow workers
- Protect the interests of the employer
- Take proper care of the property of the employer entrusted to the worker or under the immediate control of the worker

RIGHTS OF THE WORKER

- Work under satisfactory, safe and healthy conditions
- Receive equal pay for equal work without distinction of any kind
- Have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays
- Form or join a trade union
- To be trained and retained for the development of his or her skills
- Receive information relevant to his or her work

Types of Employment & Labour Contracting

- Permanent/Continues Employment [Appointment] (s.12)
- Casual Employment (s.74)
- Temporary Employment (s.75)
 - *Fixed term Employment*
- Part-time worker

Basic Drafting Styles of Employment Contract:

- 1.The Official Contract Agreement Format
- 2.The Official Letter Format
- 3.The MOU Format

STATUTORY CONTENT OF CONTRACTS

1. Name of Employer & Employee
2. Date of First Appointment
3. Job Title
4. Rate, Method and Intervals of pay
5. Hours of Work & Periods of Holiday
6. Condition relating to absence from work due to sickness

STATUTORY CONTENT OF CONTRACTS

7. Details of Social Security & Pension Scheme
8. Amount of Notice to Terminate employment by:
 - a. The Employer
 - b. The Worker
9. Disciplinary rules applicable
10. Procedure for Dealing with Grievances or Disputes
11. Overtime Payment if any

1. Probation and Conditions for Probation

- a. Duration*
- b. Confirmation of employment*
- c. Notice of Termination during probation*
- d. Other terms and conditions of probation*

2. Conditions and Terms of Termination of Employment

3. Redundancy & Conditions of Redundancy

4. Confidentiality, Conflict of Interest, Intellectual Property Rights & Non-compete clauses

5. Force Majeure

6. Modifying the Agreement (Novation clause)

EXECUTIVE CONTRACTS:

**Change of Control
(Mergers & Acquisitions)**

**Relocation, Off-Shoring, On-Shoring,
Outsourcing**

Prohibition of restrictive conditions of employment:

An employer shall not in respect of any person seeking employment, or of persons already in his employment

- (a) require that person to form or join a trade union or refrain from forming or joining a trade union of his or her choice;
- (b) require that person to participate or refrain from participating in a lawful activity of a trade union;
- (c) refuse to employ the person because of that person's membership of a trade union;
- (d) promise the person any benefit or advantage for not participating in trade union activities
- (e) discriminate against the person on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics.

NEGLIGENT HIRING AND NEGLIGENT RETENTION

- Employers need to know whether an applicant's background indicates that the applicant has a propensity for abusive or fatal behaviour.
- The courts ruled that an employer can be held liable for injuries committed by its employees if the company failed to investigate the applicant's criminal record and medical history.
- Injured parties have been successfully advancing the legal theory of **negligent hiring, claiming that employers knew, or should have known, that their employees were dangerous.**

Leave Entitlement – Minimum of 15 working days leave with full pay

- Employer to bear cost of leave interruption
- Termination of Employment not to affect leave entitlement
- Agreement to relinquish the entitlement to annual leave or forgo such leave is void.

- **Maternity Leave**
- **Sick Leave**

LEAVE FAQ

Can unused leave be rolled over?

What if the employee resigns?

Can leave period used for notice provision suffice?

Must employee be paid for an unused commiserating leave?

What if the employee is dismissed?

Can the employee sell his or her leave to the employer?

HR

CERTIFICATION CENTRE

EMPLOYMENT TERMINATIONS

This is by far the most contentious area in employment contract and needs to be handled with utmost care if the parties especially the employer must avoid liability.



WHAT'S TERMINATION

- Cessation of Employment
- Discontinuation of Contract of Employment
- Nullification of contract of Employment
- Removal of Employee from Workplace
- Resignation from position or job

Remedies for wrongful termination;

Re-instatement, Re-employment, Compensation

COMMON LAW DOCTRINE OF TORT

Tort claims seek to protect persons' interest in their physical and well being, in the possession and enjoyment of their property, in their financial resources, and in the tangible resource of reputation.

- **Defamation**
- **Invasion of Privacy**
- **Emotional Torture**

KEY AREAS OF CONCERN

- Grounds for Termination of Employment
- Notice of Termination of Employment
- Remuneration on Termination of Employment
- Fair Termination
- Unfair Termination
- Problematic Terminations
- Dismissals
- Remedies for Unfair Termination
- Rules of Natural Justice
- Terminal Procedure and Cardinal Principles

PROBLEMATIC TERMINATIONS

Constructive discharge

Retaliatory discharge

Coercion

Involuntary Exits

- Involuntary termination due to:
 - Early Retirement
 - Unilateral Termination
 - Compulsory Resignation
 - Demotion, or
 - Dismissal
- Employees may sue and must prove that termination was unfair and breach policy or law.

FAIR PROCEDURE AND JUSTIFICATION

RULES OF NATURAL JUSTICE

- **Audi Alterem Partem** (*Latin: Hear the other side*)

No accused or a person to be directly affected by a decision shall be condemned unless given full opportunity to prepare and submit his/her case and rebuttal to all accusations.

- **Nemo Judex in Causa sua** (*Latin: No man a judge in his/her own case*)

One person cannot accuse, prosecute and judge another at the same time. No case is valid if it was influenced by any financial considerations or other interests, bias or vindictiveness of the decision maker. **1992 Const.** Articles: 19 (13) & 23



ADDITIONS

Definite policy and procedure

Reasonable rules and penalties

Communication of rules

Consideration of the circumstances

Consistent treatment

Burden of Proof

GROUNDNS FOR TERMINATION – SEC. 15

- By mutual agreement between the employer and the worker
- By the worker on grounds of ill-treatment or sexual harassment
- By the employer on the death of the worker before the expiration of the period of employment
- By the employer if the worker is found on medical examination to be unfit for employment
- By the employer because of the inability of the worker to carry out his or her work due to;
I. sickness or accident
II. incompetence of the worker
III. proven misconduct of the worker
- **Redundancy exercises**
- **Vacation of Post**

*** FAIR AND UNFAIR TERMINATION**

SECTIONS 62, 63, 14



Summary Dismissal for misconduct *(No Notice required, No terminal benefits)*

- Misconduct/ Serious Misconduct is any act which is incompatible/ inconsistent with the faithful discharge of the employee's duties to the employer
- All dismissible offences/ acts must pre-defined and communicated
- Proven criminal offenses

TERMINATION PROCEDURE

This review should include the following steps:

- Determine whether there are valid, job-related reasons for terminating the employee.

(Substantive Justification)

- If the termination is due to a specific incident, determine whether it has been properly investigated and documented.
- Determine whether the employee was aware that his or her performance was unacceptable.
- Determine whether the termination action is consistent with prior treatment of other employees ***(Procedural Fairness)***.
- Review the employee's overall work record and ensure that the employee has received all rights to which he or she is entitled under the company's policies.
- Ensure that the employee is not the victim of retaliation for exercising his or her civil rights, such as making a claim of sexual harassment.

CARDINAL RULES OF TERMINATION/DISMISSAL

Never summarily discharge

Get all facts through disciplinary investigations

Conduct disciplinary interviews with care and deliberation

Don't delay investigations

Justify basis for discharge

Terminate/ Dismiss only when appropriate

Watch for red flags and involve experts

HR ACTION AND LEGAL IMPACT

Termination of Employment - Queries & DC Recommendations

Paul Kofi Aboagye Vs Ghana Commercial Bank

[2001]DLSC2370 (Suit No. CA 10/2000)

“The two queries in "Exhibit E" and "Exhibit G" merely asked the plaintiff to give reasons why he signed the draft...Surely these queries cannot by any stretch of imagination be considered or likened to a disciplinary charge or to notice. Nor did the queries refer to any disciplinary charge against him.”

[Bamford Addo, JSC]

“In my view, the Board was also wrong in altering the finding of the Disciplinary Committee which first sat on the matter from misconduct to gross misconduct. It is difficult to find the basis of this new and more serious finding.”

[Adjabeng, JSC]

“But by the second half of the 20th century, the traditional attitude of the common law to the employer’s hither to unrestrained right to dismiss the servant (employee) was experiencing service erosion with greater emphasis now being placed on the need to give some protection to the servant (employee) in a bid to promote industry. The area of dismissals in the common law of master servant is now largely superseded by statutory provisions and express employment contractual agreements which bind the parties”

[Adzoe JSC]

Lord Justice Bowen in Boston deep Fishing & Ice Co. Vs. Ansell (1888) 39 Ch 339,363

Remedies for Unfair Termination of Employment

Felix Yaw Bani Vs. Maersk Ghana Ltd

[2011]DLSC 2570 (CIVIL APPEAL NO. J4/48/2010)

“The Labour Act, 2003 (Act 651) has indeed reshaped the general principles of the law of employment contracts and has modified labour and employment practices regarding the employment relationship in Ghana. For example, it is not in the power of the Courts to consider claims of “unfair termination” under sections 62 and 63 of Act 651 as remedies for unfair termination does not lie expressly with the Courts. The Supreme Court held that “rather, it is the remedy that is made available to the National Labour Commission established under Act 651.”

Termination of Employment - Administrative Bodies

Stephen Kpordzi Vs. Stanbic Bank Ghana

[2008] HC (Suit No. AC. 72/2005) Unreported

“These Bodies, however, which exercise a monopoly in the important sphere of human activity with the power of depriving a man of his livelihood, must act in accordance with the elementary rules of justice. They must not condemn a man without giving him an opportunity to be heard in his own defence and any agreement or practice to the contrary would be invalid ”

Abbot Vs. Sullivan [1952] IKB 159, Lord Denning

HR ACTION AND LEGAL IMPACT

Redundancy Pay & Employee Diminution

Martin A. Etuahene Vs. Ghana Cocoa Marketing Board

[2019] DLSC5685 (J4/23/2018)

“Our understanding of the said provision is that for a worker to be entitled to severance or redundancy pay it is not only enough that, the legal relationship between the worker and the employer as existed be severed, as a result of a closed down, arrangement or amalgamation of the entity; but the worker must also have become unemployed or suffer diminution in his conditions of service, as a result of the severance. The close down, arrangement or amalgamation of the entity must trigger the two conditions before severance could be paid.”

MARFUL-SAU, JSC

Thank you

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