

# Employment & Labour Law

First Edition

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# Tanzania

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## Introduction

Tanzania overhauled its employment and labour laws in 2004 when it enacted the Employment and Labour Relations Act, Act No. 6 of 2004 (“the Employment Act”) and the Labour Institutions Act, Act No. 7 of 2004 (“Labour Institutions Act”). Whereas the Employment Act provides for labour standards, rights and duties, the Labour Institutions Act constitutes the governmental organs charged with the task of administering the labour laws. Subsequently, in 2007 several pieces of subsidiary legislation were promulgated to facilitate the enforcement of labour rights and standards stipulated in the Employment Act. One of the most significant of these is the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. It is noteworthy that the new labour laws enumerated above borrow heavily from the employment and labour laws which are currently in force in the Republic of South Africa. Indeed, the new laws further enact employment and labour standards which, by and large, conform to the labour standards set by the International Labour Organization.

## Fundamental rights and protection

As a general rule, the law prohibits the employment of children who are under the age of 18 years. Where the employer entertains doubt as to whether a potential employee is of majority age, the law requires the employer to investigate the issue of age prior to hiring. An employer commits a criminal offence where the employer recruits a minor. The only exception to the above prohibition of child labour is where there are special circumstances that require a child of the age not below 14 years to work in order to earn livelihood. In these circumstances, the child should be assigned light work which shall not prejudice the child’s education or vocational training.

The Employment Act further prohibits forced labour. Indeed, a criminal offence is committed where an employer exacts forced labour from a person. Nevertheless, the Act provides five exceptions where a person may be compelled to work despite his unwillingness, for instance, providing compulsory labour under the National Defence Act, 1966 for work of a military character.

The new labour laws further prohibit discrimination in the workplace, of any kind, by the employer, trade union or employers’ association. The breach of this prohibition amounts to a criminal offence. It is instructive that where discrimination is alleged in any proceedings, the Respondent employer, trade union or employers’ association is legally required to disprove the same.

Under the new labour regime, every employee has the right to form or join a trade union and participate in its lawful activities. However, a senior management employee is barred from joining a trade union that represents non-senior management employees of the employer. On another note, every employer is entitled to form or join an employers’ association and participate in its lawful activities.

## Employment standards

The Employment Act comprehensively regulates the hours of work of an employee. The ordinary days of work are set at six days in a week. Further, the ordinary hours of work are set at 45 hours in a week, and 9 hours in a work day, inclusive of a 1 hour meal break per work day. An employee can

be required to work for overtime hours only where the parties have concluded an agreement to that effect. In any event, the law provides a ceiling of 12 working hours per day inclusive of ordinary and overtime working hours.

The Employment Act further enacts detailed guidelines for the calculation of wages of an employee who is entitled to hourly, daily, weekly and monthly wage rates. The payment of remuneration to an employee must be in the form of money; not in kind. As a general rule, an employer is not entitled to make any deductions from an employee's remuneration.

The exception thereto is where the deduction is permitted by written law, collective agreement, wage determination, court order or arbitration award. Where the deduction is not based on any of the above grounds, the employee must agree in writing to such deductions from his remuneration. Indeed, the legal restriction on deductions from remuneration has been contentious, especially where the employer unilaterally deducts from the remuneration a sum of money to recover loans and advance payments made to an employee. The labour tribunals and the courts of law have been consistent that in the absence of a written agreement between the parties or court order sanctioning the deduction, such deduction is unlawful.

An employee is entitled to annual leave of not less than 28 consecutive days during one leave cycle. One leave cycle is constituted by a period of 12 months' consecutive employment. The 28 days' leave is inclusive of any public holiday which may fall within the period of the leave. During the annual leave, the employee is entitled to payment of his full remuneration in spite of his absence from work.

In Tanzania, an employee is entitled to sick leave for at least 126 days during one leave cycle. The employee is entitled to full wages during the first 63 days of the sick leave. For the second 63 days, the ailing employee is entitled to half wages. An employer is not obliged to pay an employee wages during sick leave if the employee does not produce a medical certificate issued by a medical practitioner. It is further noted that no wages are payable to an ailing employee if the employee is entitled to paid sick leave under any other law, fund or collective agreement.

It is further noted that a female employee is entitled to paid maternity leave of not less than 84 days during one leave cycle. The maternity leave period would be 100 days if the employee gave birth to more than one child. Most curiously, the employee is entitled to an additional 84 days' paid maternity leave within the same leave cycle if the child dies within a year of birth. The law further puts a ceiling of 4 maternity leave terms which an employee is entitled to take. Where the employee is breastfeeding, the employer is obliged to allow her time off, not exceeding two hours, to feed the child during working hours.

The labour reforms have factored in the concerns of working male parents as well. During each leave cycle, a male employee is entitled to 3 days of paid paternity leave. The only conditions stipulated are that the employee must be the father of the newly born child and that the leave must be taken within the first seven days of the birth of the child.

The Employment Act further provides for what we may refer to as "compassionate leave". An employee is entitled to 4 days' paid leave in the event of death or sickness of the employee's child. Upon the death of the employee's spouse, parent, grandparent, grandchild or sibling, the employee is nevertheless entitled to 4 days' paid leave.

### **Strikes and lockouts**

Under the Employment Act, every employee has the right to strike in respect of a dispute of interest. Equally, every employer is entitled to lockout in respect of a dispute of interest. A dispute of interest refers to a labour dispute which does not arise from the application, interpretation or implementation of an agreement with an employee, collective agreement, the Employment Act or any other written law administered by the Minister responsible for labour. It follows that for labour rights which are already provided for in a written agreement or labour laws, the right to strike or lockout is unavailable.

The law provides an elaborate procedure to be followed before an employee engages in a lawful strike. As already noted above, the dispute must be a dispute of interest. The first step is that the dispute must first be referred to the Labour Commission for Mediation and Arbitration ("CMA") for

mediation. The CMA is a quasi-judicial organ which undertakes mediation and arbitration of disputes in labour dispute proceedings. During mediation proceedings, decisions are arrived at by mutual consent of both parties. If the CMA mediation fails and the strike has been called by a trade union, the second step is that the trade union must conduct a ballot. For the strike to be sustainable, a majority of the trade union members who voted must support the strike. Finally, the employees are required to issue to the employer a 48-hour notice of their intention to strike before commencing lawful strike.

It is significant to underscore that the Employment Act further stipulates the procedure for lawful lockouts. Firstly, an employer who intends to engage in lockouts is required to refer the dispute to the CMA for mediation. If the dispute remains unresolved at the conclusion of mediation proceedings, the next step is for the employer or employer's association to issue to the employees or trade union a 48 hours notice of intention to lockout before commencing lockouts.

We are of the view that the staggered procedure, not to mention the intervening mediation proceedings, for lawful lockouts and strike action, gives the parties an opportunity to resolve their differences amicably. The stepped procedure further allows the employer to take remedial measures with a view to mitigating his losses when the intended strike commences.

### **Dispute resolution**

All labour disputes must first be referred to the CMA for mediation. The mediator is required to resolve the dispute through mediation inside 30 days unless the parties agree to a longer period. If mediation fails, either party may further refer the labour complaint to a CMA arbitrator; or in the case of a dispute of interest, to the High Court, Labour Division (hereinafter "the Labour Court"). Both the arbitrator and the Labour Court are required to take evidence, hear both parties' legal submissions before rendering a decision on the merits of the case.

The Labour Court has been consistent in enforcing the rule that all labour disputes must first be referred to the CMA for arbitration. In the case of *Hector Sequeira v. Serengeti Breweries Ltd*, High Court of Tanzania, Labour Division, Labour Complaint No. 20 of 2009, the Labour Court dismissed as "incompetent" a labour complaint which was filed directly in the Court without first pursuing mandatory CMA mediation. Indeed, the significance of mediation cannot be ignored. There is an increasing trend by employers to settle labour disputes during CMA mediation especially where the employer's case is apparently weaker.

Where a party is aggrieved by the award of the CMA arbitrator, he is entitled to apply to the Labour Court for revision of the award. Such an application is sustainable only where the revision application reveals issues relating to jurisdiction, material irregularity, error material to the merits of the case. Further appeal against the decision of the Labour Court lies in the Court of Appeal of Tanzania.

### **Conclusion**

In sum, we are of the view that the new labour regime obtaining in Tanzania is commendable for introducing mediation proceedings to resolve disputes. Where the parties are acting in good faith, mediation has proved to be a valuable tool in amicable settlement of disputes, thereby saving time and resources of the parties. The employment standards are further useful in setting the minimum labour rights, which both the employer and employee cannot downgrade by contract. Nevertheless, the stepped procedure for engaging in strikes and lockouts is meant to weed out surprise industrial action which may be detrimental to the employer's investment and the livelihood of employees.

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Dr Wilbert Kapinga is specialised in corporate law, finance law, banking, privatisation, telecommunications and competition law and has over 10 years' experience of transactions and projects in these areas. He is ranked Top Band (4 stars) specialising in Mergers and Acquisitions in the Chambers and Partners: the World's Leading Lawyers 2000-2001, and in the Chambers and Partners: The World's Leading Lawyers 2001-2002. Since the 2002-2003 Chambers & Partners, he is in Band 1 and still occupies the number 1 position as a leading individual in corporate law. He has been at the centre of advising several local and international banks on loan facilities, bond issuances and other type of securitisations. He has also been involved in a wide range of regulatory matters for petroleum and electric utilities and other facilities built through private finance initiatives.

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